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Part 2

SETTLEMENT OF LABOR-MANAGEMENT DISPUTES IN TRANSPORTATION

HEARINGS

BEFORE THE

SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

NINETY-SECOND CONGRESS

FIRST SESSION

ON

H.R. 3595, H.R. 3596, H.R. 2357, H.R. 5347, H.R. 8385, H.R. 9088, H.R. 9989, H.J. Res. 364 (and all identical bills)

RELATING TO SETTLEMENT OF EMERGENCY LABOR-MANAGEMENT DISPUTES AFFECTING THE TRANSPORTATION INDUSTRY

JULY 27, 28, 29; AUGUST 3, 4; SEPTEMBER 14, 15, 16, 21, 28, 29, AND 30, 1971

Serial No. 92-43

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Committee on Interstate and Foreign Commerce

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Tipton, Stuart G., president.
American Association of Port Authorities:
Altvater, George, executive director, Port of Houston Authority.
Amundsen, Paul A., executive director.
Reed, E. S., executive port director and general manager, Port of New Orleans.
Stanton, J. L., director of ports, State of Maryland.
American Bar Association, Jerre S. Williams.
American Federation of Labor and Congress of Industrial Organizations (AFL–CIO):
Biemiller, Andrew J., legislative director.
Hall, Paul, president, Maritime Trades Department.
Harris, Thomas E., associate general counsel.
Yost, James E., president, Railway Employes' Department.
American Retail Federation:
Ehrlich, Lawrence D., attorney.
Smetana, Gerald C.
Association of American Railroads, Stephen Ailes, president.
Brotherhood of Locomotive Engineers:
McCulloch, Edward L., vice president and national legislative representative.
Ross, Harold A., chief counsel.
Brotherhood of Maintenanace of Way Employes, H. C. Crotty, president.
Brotherhood of Railway, Airline & Steamship Clerks, Freight Handlers, Express & Station Employes:
Dennis, C. L., international president.
Highsaw, James, Jr., counsel.
Congress of Railway Unions, Lester P. Schoene, counsel.

Organizations represented at hearings—Continued

Defense Department:
- Chagnon, Paul R., Deputy Director of Inland Traffic, Military Traffic Management and Terminal Service.
- Cosimano, Joseph J., Strike Coordinator, Military Traffic Management and Terminal Service.

Forest Industries Council, Raplh W. Kittle.
Labor Department:
- Hodgson, Hon. James D., Secretary.
- Nash, Peter G., Solicitor.
- Usery, W. J., Jr., Assistant Secretary.

National Association of Manufacturers:
- Fisher, Lyle H., member, Industrial Relations Committee.
- Hale, Randolph M., Washington representative, Industrial Relations.
- Matturro, J. P., director, Labor-Management Relations.

National Coal Association, Carl E. Bagge, president.
National Railway Labor Conference, John P. Hiltz., Jr.
Oklahoma Wheat Commission, Charles D. Rhoades, executive director.
Railway Labor Executives' Association:
- Hickey, Edward J., Jr., general counsel.
- Soop, Taylor, executive secretary.

Seafarers International Union of North America, AFL–CIO, Paul Hall, president.
Transportation Association of America:
- Isbell, James E., Jr., representing the shipper members.
- Seyfarth, Henry E., chairman, Transport Labor Committee.
- Weller, John L., representing the investor members.

Transportation Department:
- Barnum, John, General Counsel.
- Lyon, Carl V., Acting Administrator, Federal Railroad Administration.
- Trimarco, Thomas, Assistant General Counsel.
- Volpe, Hon. John A., Secretary.

United Transportation Union:
- Chesser, Al, national legislative director and president-elect.
- Luna, Charles, president.

SETTLEMENT OF LABOR-MANAGEMENT DISPUTES IN TRANSPORTATION

WEDNESDAY, SEPTEMBER 15, 1971

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

The subcommittee met at 10 a.m., pursuant to notice in room 2322, Rayburn House Office Building, Hon. John D. Dingell presiding (Hon. John Jarman, chairman).

Mr. DINGELL. The Subcommittee on Transportation and Aeronautics will come to order.

This is the continuation of the hearings the subcommittee has been conducting on the settlement of transportation labor disputes.

Our first witness this morning is Mr. Stephen Ailes, president, Association of American Railroads.

Mr. Ailes, we are pleased you will be with us, and are happy to recognize you for such statement as you choose to give. The Chair requests you identify yourself for the record and if you wish to have associates at the table with you this morning, feel free to do so, but also see they are identified for the record.

I believe the witness list indicates you are accompanied by John P. Hiltz, chairman of the National Railway Labor Conference.

STATEMENTS OF STEPHEN AILES, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS, AND JOHN P. HILTZ, JR., CHAIRMAN, NATIONAL RAILWAY LABOR CONFERENCE

Mr. AILES. Yes, that is right.

Mr. DINGELL. We are happy to welcome you both.

Mr. AILES. Fine.

I have a statement here and so does Mr. Hiltz.

Needless to say, we are closely associated in working for the railroad industry. I am with the Association of American Railroads and Jack is with the National Railway Labor Conference. I would like to go through some of this matter from my point of view, and then be followed by Mr. Hiltz, because, as I say, we are together on this.

Mr. DINGELL. All right. Is it your wish to insert your statement in the record and to extrapolate from it?

Mr. AILES. All right, sir. What I would like to do is go through it, and I won't read it in full.

Mr. DINGELL. Without objection your full statement will be inserted in the record, and we will then permit you to give such other

comments as you choose. The same permission will be afforded to Mr. Hiltz.

Mr. AILES. All right.

Mr. Hiltz is the expert in this field. He has been head negotiator for the railroads for some period of time and has a wealth of experience in all of these matters.

I have been with the association about 8 or 9 months now, but have had a fairly close look at a series of labor controversies in this industry, and there are some comments I would like to make based on that experience.

These hearings and this whole problem obviously grows out of the history in recent years of a series of labor disputes in which Congress has necessarily had to be involved. In the last 4 years these disputes have been up here no less than seven times. There have been other situations when they came very close to getting here.

In each of these instances, at the 11th hour, Congress has had to act with ad hoc legislation for the simple reason that a national railway strike is simply intolerable in this country.

This subcommittee, the members and all of Congress are painfully familiar with this business.

I have an appendix here which tabulates these seven instances. I point out that the problem we have is not academic because, as you all remember, I am sure, a 2-day strike was halted by congressional action which granted part of the increase that they were striking for, but simply postponed this strike until October 1, I believe it is. Is that right?

Mr. HILTZ. That is correct.

Mr. AILES. And this is a date which is rapidly approaching.

If no other facts were known about these disputes than that the railroads have resisted union demands to the point that the matter got to Congress, one might reach the conclusion that the railroads had been tightfisted and hard boiled and had refused to grant wage concessions, but the plain fact is that the settlements that have been worked out with other unions and which have resulted from some matters that have been before you, have produced wage increases totaling 42 percent over a period of 42 months.

The situation in this country today is desperate, has called for a wage and price freeze, and has created many problems overseas. These increases are patently inflationary.

Our labor bill is around $5 billion a year which means that a 40-percent increase is an increase in cost in the neighborhood of $2 billion. The net earnings after interest and taxes for the whole industry last year were $227 million. It is perfectly apparent that as the railroads pay these increases, very substantial rate increases will have to occur. You simply cannot absorb $2 billion in increases out of $227 million in profits, and the rate increases required run around 18 percent.

As a minimum, this is cost-push inflation in the rarest and purest form. I point that out because in the national interest, it seems patently clear to me that whatever legislation results from the congressional inquiry here should not in any sense weaken the railroad's position at the bargaining table. It is just simply not in the national interest for an industry of this size to be compelled to grant increases in these dimensions.

I should add that these increases were based on the emergency board determination of what was in order. I think three propositions emerge from this recent railroad history.

The first is that a national strike in the railroad industry is unacceptable to the American public and is thus not available as a practical matter as a method of settling a railroad labor dispute. The public is not going to put up with a national strike, and Congress will not permit it to happen.

The second proposition which I am sure you unanimously support in Congress is that an ad hoc settlement by Congress is also an unsatisfactory method of settling the dispute, unsatisfactory to Congress and to the parties and it is simply not a technique that makes sense.

These issues are tremendously complicated some times and there is not any way that Congress can take hold of this kind of problem and shake it out and come up with a good answer in the 11th hour in the short period of time that is available when a national strike occurs.

Many, many Members of Congress have spoken to that effect, Congressmen Harvey and Eckhardt; editorials in the papers and many professors who have spoken to the subject say it is patently clear that this is not a way to handle these matters.

These two propositions lead to a third; namely, that some method must be found which provides a genuine inducement and incentive to collective bargaining in the industry, but which will bring about a final disposition of the matter if that bargaining fails.

Now, I would like to address myself to the selective strike as a means of accomplishing that end. Some do suggest that we have selective strikes, and they think they would be all right, but the theory is that you could have railway strikes that are small enough for Congress to ignore them, but still large enough to bring the industry to its knees and cause some settlement to be made.

H.R. 3595 has the selective strike as the sole method of settling the dispute, and it is made a more effective method because that legislation bars, the defensive actions which are available to the railroads today.

H.R. 9088 starts with the selective strike as the first remedy to be used, and the administration's bill, H.R. 3596, we are now told contemplates a selective strike in the partial operation weapon which it includes.

I think it is worth taking a look at the strike we have just been through. You all, I am sure, will recall that strikes, growing out of wage demands of the union and demands by the carriers for changes in work rules, were called by the UTU against three railroads and actually commenced against the Union Pacific Railroad and the Southern Railway System on July 16, 1971. Later, on July 24, the Southern Pacific and the Norfolk & Western were struck. On July 30, the strike was expanded to include the Santa Fe, the Duluth, Missable, & Iron Range, the Bessemer & Lake Erie, the Elgin Joliet, & Eastern, the Alton & Southern, and the Houston Belt & Terminal—the last two of which are switching and terminal roads.

According to the UTU announcements, if the strike had continued without settlement, it would have been expanded on August 6 to include the Chesapeake & Ohio-Baltimore & Ohio, the Chicago, Rock Island, & Pacific and the Chicago Milwaukee, St. Paul, & Pacific; and on August 11 would have been expanded to include the Erie

Lackawanna, the Louisville & Nashville, and the St. Louis-San Francisco.

The strike was settled by agreement on August 2, after 18 days. Actually 10 railroads were down and in another 10 days, 18 would have been struck. This is a fair chunk of the railroad industry.

The railroads involved hauled 34 percent of the revenue ton-miles of the industry; 160,000 workers were out, which was 28 percent of the work force. If the strike had gone unsettled until the 11th, the roads then struck would have accounted for 46 percent of the total railroad miles in this country and about well over half of the revenue-ton miles.

Now, I was in a position to watch the impact of that strike very closely. All the way across the country, I must say, it was severe and getting steadily worse. Many areas of the country lost railroad service altogether.

Bill Denton of Southern Pacific was saying last night, that Arizona or New Mexico is served by Southern Pacific in the whole southern half of the State, and by Santa Fe in the north. So, there really isn't interchangeable railroad service and when railroads go down, substantial areas are affected.

We have prepared studies as we went along which are attached as appendixes here.

Mr. DINGELL. I assume at this point you want permission to insert them at the appropriate place?

Mr. AILES. It would be appreciated. They show the percentages.

Mr. DINGELL. Without objection, they will be placed in the record following your prepared statement.

Mr. AILES. They show the percentage of railroad mileage down—Arizona is the State we talked about—92 percent of its railroad mileage was down. New Mexico, 80 percent, and so on. California and others were severely hit.

There is another table in one of those appendixes just referred to which gives you some notion of the amount of railroad mileage, car origination, car handlings, and whatnot that were affected as each railroad was added to this strike.

There is another factor the table shows in a slightly exaggerated form. That is that the railroad shipments in this country tend to be over more than one railroad. I think 75 percent of all railroad shipments go over at least two railroads. If you take out the cars that originated and terminated on the same line, and look at the cars that go over more than one railroad, you find there are two and a half railroads involved in the average haul, and this says when you take out the Southern, say, or a railroad in the central part of the United States, like Union Pacific, you may be affecting a far higher amount of traffic than you would assume you were affecting just by talking about the number of cars they originated or delivered.

As the strike went on, the effects were spreading, cumulative and devastating. This emphasizes that the railroads are a network analogous to the human circulatory system, and not a bunch of independent companies. When large portions of the network go down, countless activities and enterprises are stopped. This is clearly what happened.

Coal mines producing 24 percent of the domestic tonnage were down, and 94 percent of the expert centers were closed off by the

strikes. Factories were shut down. A good many people were out of work.

Paul McCracken, Chairman of the Council of Economic Advisers, said that if the strike continued as to all of the railroads that were listed and lasted through the month of August, that no less than $50 billion would come out of the gross national product.

I don't say it in the prepared statement here, but I should have added that we kept watch on a daily basis as to the effect of this strike on the railroads that were not struck. When the Southern can't accept cars that are destined for the Southern, you will find the yards on all railroads that connect with Southern begin to crowd up.

We had cars held for Union Pacific and others, and I can supply the figures, but there were something like 45,000 cars being held by the 18th day. These are cars clogging the yards of nonstruck railroads and interfering very substantially with the service that was being rendered by them.

Concern in this country mounted steadily. On July 30, Jack Hiltz and I were summoned to the White House with Charley Luna, and we were conferred with by the whole group of the President's economic advisers, and the President himself, George Shultz and Arnold Weber, Paul McCracken, General Lincoln, Secretary Volpe, Secretary Hodgson, Assistant Secretary Usery, and others. They impressed upon us what they thought was a rapidly deteriorating, nearly desperate situation.

They estimated nearly one-quarter of a million people unemployed as a result of the strike, and said that if it lasted until August 15, there would have been 1 million out of work. Eight States were down as far as railroad service was concerned, and 84 cities with a population of over 25,000, had no railroad service at all.

We talked about the area and Department of Defense problems, and Paul McCracken thought that the reduction in employment would amount to between 1 and 1½ to 2 percent in the index quite shortly.

Secretary Volpe pointed out to us if the railroad industry as a whole shut down, competing methods of transportation could not handle over 15 percent of the traffic that was going by railroad, and so on.

Major efforts were made over the weekend and the strike was finally settled on August 2.

Charles Luna made the statement that this proved that the selective strike would work. In the railroad industry, we were encouraged by the fact that the industry had held together during the severe stresses of this whole experience and felt that our having done so and having faced up to the strike resulted in a settlement of the controversy, that was a better agreement than anything we had previously been offered.

Yet I wondered how the southern California produce growers thought the selective strike worked, or how Nebraska grain dealers whose grain was piled up in public squares felt about it or what the hundreds of thousands of completely innocent bystanders out of work or who were inconvenienced by it, thought about it.

Furthermore, I have no doubt that if the situation had not been settled on August 2 and had gone into the following week, the matter would have been before Congress in one form or another, and Congress would have been faced with an extremely difficult problem of trying to resolve the dispute.

It was not a dispute over wages, but over work rules, a matter of great concern to the railroads, but a difficult problem for Congress to resolve, obviously.

Now, I think that all of this demonstrates really quite clearly the futility of relying on the selective strike as a panacea in these matters as H.R. 3595 does. The selective strike avoids congressional intervention only if the railroads give in immediately when it occurs, but if the railroads stand firm, as they did this last time, these situations are going to escalate to the point where congressional intervention is required and then we are right back where we were in the first place, and nothing has been accomplished except a whole lot of innocent bystanders have suffered severely by it. Nor is any purpose served whatsoever in putting whole regions of the country through some of the real hardships that were suffered at this time.

I think on the threshold question, the problem of the stage at which Government intervention is to occur, it seems clear that regional problems may be sufficiently acute to warrant action long before a national crisis is upon us.

One of the railroad officers that I talked to about this said, and I thought quite properly, we have to wait until we have a national disaster, is like saying anything that an invasion of the country is not an invasion until the invasion reaches the Mississippi River.

It seems that sanguinary simile might be appropriate here.

If we rely upon a selective strike, you end up in a situation where congressional intervention is really the final step, because, as we saw here, it moves that way very fast.

When one discusses this matter, one is told frequently that the Government should not interfere with collective bargaining in these situations because of the importance of free collective bargaining.

I was impressed that Arthur Goldberg told the Joint Economic Committee last Monday, in talking about what should happen under the stabilization program, "Cliches about the freedom of collective bargaining must yield to the hard realities of the consequences which have flowed from an overly nonintervention policy."

I think that is significant.

We strongly support the arsenal of weapons approach, because we believe that its uncertainty will cause collective bargaining to take place, and we believe also that this method can produce finality.

I should say some weapons, those of partial operation and seizure, seem to us to be unproductive. I don't believe anybody really thinks you can employ partial operations on the railroads and compel a railroad to incur 70 percent of its costs and receive 20 percent of its revenues, or however the numbers would come out.

Seizure is a drastic remedy, but does not accomplish a great deal, and it still does not resolve the dispute.

We believe the kind of bill such as we put forward here is a way of solving this matter. There are uncertainties in it, yet there is a basis for final settlement of disputes and such a bill would cause collective bargaining and at the same time would provide a way of finally determining these disputes if they get to that stage.

There is one thing I would like to mention that stands out clearly in the episode we have just been through. We are the only industry, the United States, that puts up unemployment compensation for our own strikers and employees who refuse to cross the picket line.

Under the Railroad Unemployment Insurance Act, that burden is placed upon us. We have put up some $37 million over the years and in this last strike we will put up about $12 million as a contribution to the employees who went out on strike against us.

I think myself that the railroad industry stood up well in the face of this last situation. I think our situation at the bargaining table is difficult but I think it has been made considerably tougher by the strike benefit requirement which seems to me to be unconscionable.

At this point, I want to defer to Jack Hiltz to talk in detail about H.R. 9989, the bill we propose and some others that are before you.

Thank you very much, Mr. Chairman.

(Mr. Ailes' prepared statement and attachments follow:)

STATEMENT OF STEPHEN AILES, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS

My name is Stephen Ailes. I am President of the Association of American Railroads. I appear before your subcommittee with Mr. John P. Hiltz, who is Chairman of the National Railway Labor Conference, to testify on pending legislation to deal with emergency labor disputes in the transportation industry. Our two organizations each represent substantially all of the Class I railroads of the United States.

Mr. Hiltz has a wealth of experience in the field of collective bargaining, and he will explain the statutory proposals that are supported by the railroads and airlines and give you the benefits of the industry's thinking about various other bills that are before your subcommittee.

Before he does that, I would like to comment briefly on the present labor situation in the railroad industry and to describe the problem as I see it.

The railroads welcome these hearings on the pending bills to amend the Railway Labor Act. Our industry has long held the view that this basic statute, which we have operated under since 1926, needs to be strengthened and improved to provide better means for the settlement of major labor disputes.

These hearings, it is fair to say, grow directly out of the history of railroad labor relations in the last four years and the climactic history of the last few months. During that time there have been six instances in which national labor disputes between railroad carriers and their employees came to a state of impasse after collective bargaining and the exhaustion of the procedures of the Railway Labor Act and in which a nationwide rail strike either immediately threatened or briefly commenced. In each of those disputes, at the eleventh hour the Congress of the United States reluctantly intervened with special ad hoc legislation. The overriding purpose of those interventions was to prevent a crippling railroad strike. The basis of each intervention was the generally held conviction that a national strike of any duration would cause, in the most literal sense, intolerable harm to the public interest. The subcommittee and members of Congress are painfully familiar with the history of those congressional actions; they are tabulated in the first appendix to this statement showing the dates and references to the Public Laws by which Congress intervened.

If no more facts were known about these disputes than I have stated, one might assume that the railroad industry had refused to bargain or grant wage concessions to reach agreement with the unions, but the fact is that the process in recent months has resulted in wage increases totaling 42 percent over 42 months. The inflationary character of these increases is apparent. They would represent an annual cost increase to the railroad industry of somewhere near $2 billion. There is no way an industry earning $227,000,000 annually can absorb such an added wage burden; an 18 percent rate increase would be needed just to cover the wage cost increases.

No better illustration of cost push inflation in full swing could be described than this. The cure for the problem certainly does not consist of changes in the law designed to weaken the railroads' position at the bargaining table.

On the other hand, this history demonstrates three propositions to be true.

1. A national strike in the railroad industry is unacceptable to the American public and is thus not available, as a practical matter, as a method of settling a railroad labor dispute.

2. Ad hoc action by Congress is also an unsatisfactory method of settling a railroad labor dispute—unsatisfactory to Congress and to the parties—and normally not effective to do more than provide a moratorium in the dispute.

3. Some method must be found which provides an inducement to the parties to bargain collectively, but which will bring about a final disposition of the matter when bargaining fails.

It has been suggested by some that merely permitting selective strikes will accomplish this end. The theory is that a railroad strike can be small enough to permit Congress to ignore it, but large enough to bring the industry to its knees. The selective strike is *the remedy* proposed in H.R. 3595 and is apparently the required first step in the list of remedies in H.R. 9088. It apparently is one of the weapons in the Administration bill, H.R. 3596.

I believe it will be helpful to consider the selective strike remedy in light of—and as illustrated by—the strikes conducted by the UTU against a number of selected railroads in July and August of this year. I would like to highlight for the subcommittee some of the facts about those strikes by way of essential background and then to comment on their significance in relation to the pending proposals for permanent legislation.

You will recall that strikes, growing out of wage demands of the union and demands by the carriers for changes in work rules, were called by the UTU against three railroads and actually commenced against the Union Pacific Railroad and the Southern Railway System on July 16, 1971. Later, on July 24, the Southern Pacific and the Norfolk and Western were struck. On July 30, the strike was expanded to include the Santa Fe, the Duluth, Missabe, and Iron Range, the Bessemer and Lake Erie, the Elgin, Joliet, and Eastern, the Alton and Southern, and the Houston Belt and Terminal (the last two of which are switching and terminal roads).

According to UTU announcements, if the strike had continued without settlement it would have been expanded on August 6 to include the Chesapeake and Ohio-Baltimore and Ohio, the Chicago, Rock Island, and Pacific, and the Chicago, Milwaukee, St. Paul, and Pacific; and on August 11 would have been expanded to include the Erie Lackawanna, the Louisville and Nashville, and the St. Louis-San Francisco. The strike was settled by agreement on August 2, after 18 days. On the day of settlement, ten roads were down, and in another ten days a total of 18 would have been out of operation. Not counting the two switching and terminal roads, the eight roads that had been struck on August 2 represented nearly a quarter of the total railroad miles in the United States, 34 percent of the revenue ton miles operated in 1970, and 161,967 railroad employees, or 28.6 percent of the national railroad work force. If the strike had gone unsettled until August 11, the roads that would have been struck at that time would have represented approximately 46 percent of the total railroad miles of the country, approximately 56 percent of the revenue ton miles of the United States, and approximately 49 percent of the entire railroad work force.

The eight line-haul railroads that were actually struck serve a total of 30 states. Extensive areas within those states were deprived of all railroad service from the moment the strike began. In many instances, of course, this meant cessation of all transportation service for users whose requirements are served only by railroad. One of the studies we have prepared shows the percentage of railroad miles knocked out of service by the strike in each individual state. This study, which is the second appendix to my statement, shows the percentage of miles eliminated in each successive stage of the actual strike through August 2, 1971, and also shows the percentage that would have been eliminated by the strikes against additional railroads that were scheduled for August 6 and August 11. Nine states actually suffered the elimination of at least half of their rail mileage: Arizona (92%), New Mexico (82%), California (79%), Idaho (75%), Oregon (70%), Nevada (62%), Virginia (55%), Wyoming (55%), and Utah (50%); and three other states came close to that figure: Georgia (48%), Kansas (48%), and Texas (46%). A third appendix shows the carload traffic handled, i.e., carloads originated and those received from connecting railroads, in the year 1970 by the roads that were in fact struck and those that would have been struck on August 6 and 11. This indicates that the roads actually struck participated in the handling of up to 50 percent of all carloads moved by railroad and that all of the railroads that would have been struck on August 11 participated in the handling of up to 89 percent of all carloads moved in that year.

The effects, as the strike proceeded, were spreading, cumulative, and devastating. This should surprise no one, for the nation's railroads constitute a single interconnected transportation network, analogous to the human circulatory system. When large portions of the rail network stop, countless activities and enterprises that depend on it will stop, too. That is what happened during the 18-day

UTU strike. The producers of raw materials, manufacturers, distributors, and consumers of almost everything that is grown, made and sold in the areas covered by the strike were deprived of indispensable service. Coal mines (producing 24 percent of domestic and 94 percent of export tonnage) stopped operating; factories shut down; thousands and thousands of employees were idled; grain was piled in streets and fields for want of rail service; lumber failed to move to markets; fresh fruits and vegetables rotted and spoiled; millions of dollars in wages and profits were lost; users and consumers went empty-handed. One single statement that perhaps best epitomized the massive impact of the strike was made by Paul W. McCracken, Chairman of the Council of Economic Advisers, who said on July 30 that if the strike continued through August and was extended to other railroads on the UTU's target list, it would knock as much as $50 billion out of the Gross National Product. This figure is more than double the $20 billion which the economy grew in the second quarter of 1971.

As the strike proceeded, developments were followed with mounting concern throughout the country. The seriousness of the impact was indicated by the fact that on July 30, the President summoned management and labor representatives to the White House. The strike was ended on August 2.

Charles Luna of the UTU expressed the view that the whole experience proved that the selective strike would work. We in the railroad industry were encouraged by the way the industry held together during the severe stress of this experience, and undeniably the settlement reached was from our point of view a better agreement than any that had been offered before the strike began.

But I wonder how well the Southern California produce grower, or the Nebraska grain dealer thought the selective strike worked, or what the hundreds of thousands of innocent bystanders who were put out of work, or were seriously inconvenienced, thought about it. Clearly, before a second week passed, Congress would have had to take action. And certainly the country would not have put up with similar disruptions in each of the instances when Congress has had to act in the past.

I believe that the UTU strike experience demonstrates the futility of relying, as H.R. 3595 does, on the selective strike as the means of avoiding the necessity of Congressional intervention, because, patently, there is no assurance that it will avoid that necessity. Nor is any purpose served in putting the country or regions of the country through the inconveniences and dislocations of such a strike before the other methods of solving the dispute are brought into play.

Finally, on the threshold question, the problem of the stage at which government intervention is to occur, it seems clear that regional problems may be sufficiently acute to warrant action long before a national crisis is upon us. Insisting upon waiting for nationwide disaster is, as someone has said, like saying an invasion is not an invasion until the invader reaches the Mississippi. Ad hoc Congressional action should not be the only remedy for a severe regional transportation crisis. I am familiar with the arguments against government intervention to interfere with the processes of free collective bargaining but, as Arthur Goldberg said before the Joint Economic Committee of the Congress last Monday, September 13, 1971, "Clichés about the freedom of collective bargaining must yield to the hard realities of the consequences which have flowed from an overly non-intervention policy."

The railroad industry supports the arsenal of weapons approach. We believe that the uncertainty as to which weapon will be employed will encourage collective bargaining. We believe it essential that the weapons include one or more which will settle a dispute if collective bargaining fails. Our proposal is designed to achieve this result.

We recognize that other weapons are available and perhaps desirable. Two, we believe are undesirable. They are partial operation and seizure.

1. Partial operations. This is something which sounds good but is wholly impracticable. In order to keep a railroad partly in business it would be necessary to maintain a staff almost as large as if it were running at full capacity. Partial operation would, in fact, be more costly to a railroad than if it were completely shut down by a work stoppage. Hence, it would impose an unfair burden.

2. Sizure. Over the years, seizure has been frequently mentioned as a possible weapon. The difficulty is that it settles nothing. All it does is penalize severely the management which has not acceded to labor's demands. Only when coupled with a form for prescribed settlement of the issues does it lead to a resolution

of the dispute, and then the seizure part of the "remedy" has solved nothing. This "weapon" should not be included in any "arsenal".

We support H.R. 9989 because the present situation is unsatisfactory to the public, to Congress, and to the railroads. For the reasons stated previously we believe a bill such as H.R. 9989 would improve the situation for all concerned. The purpose of the bill is not to protect the railroads from the railroad unions—the recent ITU strike should have made it clear that no such protection is necessary. The purpose is to provide for disposition of these disputes without major public inconvenience and Congressional intervention on an ad hoc basis.

There is one more aspect of present law that should be changed, one major inequity that calls for rectification.

Under the Railroad Unemployment Insurance Act, a railroad employee who refuses to work because of a strike against his employer can receive unemployment compensation unless the "strike was commenced in violation of the provisions of the Railway Labor Act or in violation of established rules and practices of a bona fide labor organization of which he is a member." The railroads are the only industry in the United States required to pay striking employees, as well as those who refuse to cross a picket line, unemployment benefits. These benefits are financed entirely by railroad contributions to the statutory fund. Thus, the railroads finance strikes against themselves. State unemployment benefits are generally not available to employees in other industries who are unemployed as a result of a labor dispute.

Consequently, much of the pressure on employees to settle rather than prolong a strike—financial hardship—is alleviated for railroad employees. According to the Railroad Retirement Board, railroad workers on strike and idled by strikes received unemployment benefits amounting to more than $37 million in the period from January 1, 1953 to November 30, 1970; and we estimate that such payments during the UTU strike will exceed $10 million. The payment of such benefits would be eliminated by the Administration bill (H.R. 3596) and by H.R. 9989.

At this point I would like to defer to Jack Hiltz who will deal with H.R. 9989 in more detail and with the effect it would have on bargaining in this industry.

Thank you.

APPENDIX A

TABULATION OF MAJOR RAILROAD LABOR DISPUTES RESOLVED BY CONGRESSIONAL ACTION

Year		Date	Public Law—
1971	Signalmen	May 17–19	92–17
1970	BRAC, UTU, BMWE, H. & R.E	Dec. 10–11	91–541
1970	Shopcrafts	March 5	91–226
1967	Do	July 16–17	90–54
1967	Do		[1] 90–13
1967	Do		[1] 90–10

[1] Extension of time.

APPENDIX B

PERCENT OF RAIL-MILES, BY STATES

State	Southern System and Union Pacific (1)	Norfolk & Western and Southern Pacific (2)	Atchison, Topeka & Santa Fe, Bessemer & Lake Erie, Duluth, Missabe & Iron Range, and Elgin, Joliet & Eastern (3)	Baltimore & Ohio, Chesapeake & Ohio, Chicago, Milwaukee, St. Paul & Pacific, Chicago, Rock Island & Pacific, and Missouri-Kansas-Texas (4)	Empire Land, Louisville & Nashville, and St. Louis-San Francisco (5)	Total (6)
Alabama	36				33	69
Arizona		51	41			92
Arkansas				16	12	28
California	4	56	19			79
Colorado	15		16	6		37
Delaware				12		12
Florida	4				7	11
Georgia	48				5	53
Idaho	65			8		73
Illinois	1	8	4	12	3	28
Indiana	4	16	1	15	3	39
Iowa		2		43		46
Kansas	13		35	17	7	72
Kentucky	9	1		19	49	78
Louisiana	1	15	2	4	1	23
Michigan		2		26		28
Minnesota			6	19		25
Mississippi	6				7	13
Missouri		9	4	15	20	48
Montana	3			25		28
Nebraska	24			3		27
Nevada	22	40				62
New Jersey					17	17
New Mexico		23	59	7		89
New York		1		3	20	23
North Carolina	30	3				33
Ohio		18		26	5	49
Oklahoma			25	34	25	84
Oregon	31	38				69
Pennsylvania		2	2	11	9	24
South Carolina	33					33
South Dakota				46		46
Tennessee	25				47	72
Texas		22	24	12	1	59
Utah	44	6				50
Virginia	17	38		18	2	75
Washington	17			18		35
West Virginia		18		58		76
Wisconsin				26		26
Wyoming	40					40

Source: Annual reports of railroads to ICC.

APPENDIX C.—CARLOAD TRAFFIC, YEAR 1970

Railroad	Carloads originated	Carloads received from connections	Total carloads handled	Ratio to total U.S. carload shipments (percent)
(1)	(2)	(3)	(4)	(5)
Union Pacific	873,373	722,383	1,595,756	5.9
Southern System:				
Alabama Great Southern	73,838	244,217	318,055	1.2
Central of Georgia	207,682	268,612	476,294	1.8
Cincinnati, New Orleans & Texas Pacific	61,344	442,544	503,888	1.9
Georgia, Southern & Florida	44,536	114,130	158,666	.6
Southern	905,749	1,051,056	1,956,805	7.2
Subtotal	2,166,522	2,842,942	5,009,464	18.5
Norfolk & Western	1,927,346	989,044	2,916,390	10.8
Southern Pacific	1,619,984	908,496	2,528,480	9.4
Subtotal	3,547,330	1,897,540	5,444,870	20.2
Cumulative total	5,713,852	4,740,482	10,454,334	38.7
Atchison, Topeka & Santa Fe	1,034,084	604,018	1,638,102	6.1
Bessemer & Lake Erie	224,718	212,399	437,117	1.6
Duluth, Missabe & Iron Range	525,318	25,503	550,821	2.0
Elgin, Joliet & Eastern	217,451	227,442	444,893	1.6
Subtotal	2,001,571	1,069,362	3,070,933	11.4
Cumulative total	7,715,423	5,809,844	13,525,267	50.1
Baltimore & Ohio	1,253,420	916,452	2,169,872	8.0
Chesapeake & Ohio	1,271,951	753,392	2,025,343	7.5
Chicago, Milwaukee, St. Paul & Pacific	664,319	363,963	1,028,282	3.8
Chicago, Rock Island & Pacific	601,186	477,972	1,079,158	4.0
Missouri-Kansas-Texas	135,596	184,926	320,522	1.2
Subtotal	3,926,472	2,696,705	6,623,177	24.5
Cumulative total	11,641,895	8,506,549	20,148,444	74.6
Erie Lackawanna	353,371	653,407	1,006,778	3.7
Louisville & Nashville	1,438,186	620,066	2,058,252	7.6
St. Louis-San Francisco	387,302	435,620	822,922	3.0
Subtotal	2,178,859	1,709,093	3,887,952	14.4
Cumulative total	13,820,754	10,215,642	24,036,396	89.0
All Class I railroads	27,014,937	23,050,178	50,065,115	185.3
Percent 20 roads of class I total	51.2	44.3	48.0	

Note: Comparison of cars handled by the 20 roads (originated and received from connections) with total carload shipments (cars originated by all roads) indicates that the 20 roads participate in up to 89 percent of the Nation's rail traffic.
Source: Freight Commodity Statistics, ICC, July 29, 1971.

Mr. DINGELL. Thank you, Mr. Ailes.

Mr. Hiltz, we will be happy to recognize you.

STATEMENT OF JOHN P. HILTZ, JR.

Mr. HILTZ. Mr. Chairman, as Mr. Ailes, I will not read all of my statement, but I understand it will be placed in the record.

Mr. DINGELL. Without objection, your full statement will appear in the record, and we will be most happy to recognize you now for such comment as you choose to make.

Mr. HILTZ. Thank you.

My name is John P. Hiltz, Jr., I am the chairman and the principal officer of the National Railway Labor Conference.

My main purpose in appearing before your committee today is to discuss the proposals of the railroad industry for changes in the Rail-

way Labor Act, and I very much appreciate the opportunity which you afford me for doing so. I shall also comment briefly on other proposals for this same purpose which are being considered by your committee.

It takes no study to ascertain that the labor disputes which have come before the Congress in recent years are those which occur in the transportation industries, mainly railroad and airline, and of course, mostly railroad.

As you know, the airlines support the same legislation for resolving these disputes as the railroads do. It is obvious, of course, that these disputes only come before the Congress after labor and management have failed to reach an agreement and, in fact, are at an impasse. But why do railroad labor disputes which reach an impasse come to the Congress when those of nontransportation industries do not? This question usually receives an imperfect and perfunctory answer. The answer usually given is that collective bargaining between labor and management in our industry does not work. But this is not the real answer. Collective bargaining in our industry does work—not perfectly, of course, and it can be improved, but it does work. The fact is that hundreds of agreements each year are negotiated in the railroad industry with no governmental intervention of any kind.

The real answer is that in our industry the public interest dictates that the regular processes of collective bargaining cannot be followed as they are followed in nontransportation industries. When labor disputes in other industries reach an impasse and the parties resort to self-help, no one says that collective bargaining has failed. Rather, such an eventuality is contemplated in the Taft-Hartley Act. In the railroad industry, however, the resort to self-help even though legal is not an acceptable or tolerable procedure because of its severe impact on the public. Thus, the tacit mandate from the public sector to our industry is that an agreement be reached through collective bargaining without reaching the impasse state. We are willing to bargain within this more limited framework, but the law must be changed to make such bargaining possible.

The overall challenge to your committee, as I see the situation, is to amend the Railway Labor Act in a way that preserves and improves the collective bargaining process so that an impasse which leads to the self-help measures so damaging to the public interest will not occur. The arsenal of weapons approach is designed to accomplish that objective. It operates to keep the parties in communication until the dispute is resolved.

We accept and endorse the accomplishment of that objective. Actually, of course, that is and always has been the basic purpose and intent of the Railway Labor Act. If collective bargaining has not been as effective as it should be under the Railway Labor Act, it is because the procedures of the act have evolved in such a way that the original purposes have become obscured. For example, the emergency board procedures which was intended to be the final step from which settlement would follow no longer serves that important function in all cases. The almost inevitable refusal of railroad unions to accept the findings of emergency boards has turned this procedure into merely one more step in railway labor disputes. As one of the weapons in an arsenal, however, a great measure of the vitality it once enjoyed will

be restored to it because it is contemplated that it will be selected for use in only those cases to which it is particularly adapted. The arsenal of weapons approach and the results which flow therefrom are entirely consistent with the original purpose of the act.

H.R. 9989 provides four weapons:

First, it provides that the Government may do nothing. I don't believe any other bill on this subject has this concept among its weapons. Since H.R. 9989 has a low threshold for intervention, we feel that this alternative permits surveillance and then abstention from intervention if, after consideration of the public interest, that is an appropriate response. In the cases where no action is recommended by the panel of secretaries provided for in our bill, an impasse with a resort to self-help is possible. By self-help, I mean a strike by the employees and a lockout or promulgation by management. This, of course, can occur under today's law.

The second weapon provided is to appoint a neutral board for nonbinding recommendations. This weapon is similar to today's emergency board procedures and needs no elaboration. Although this approach has admittedly lost a great deal of its vitality, as has been pointed out before, it still has provided the basis in the past for bringing about a great number of settlements and it is felt that it will continue to do so under certain conditions.

The third weapon is final and binding arbitration. This is the weapon which provokes the most controversy. Its opponents have made "compulsory arbitration" a scarce word. But we think it merits consideration. It is an old and almost traditional concept in our way of life. It is widely used in our society and its use is growing. And where it is used, it works. The attitude of a party to a dispute toward arbitration is materialy influenced by the strength of that party's position in the dispute. If the party feels that a fair and impartial finding with regard to the dispute will not give it what it desires, naturally it will not be anxious to submit its dispute to arbitration.

It is undisputed that arbitration will not be the best method for resolving all disputes; however, if it will be the best method for resolving some disputes, we feel that it should be included in the arsenal of weapons. Except for the final offer selection—a weapon which I will next discuss—arbitration is the only concept in any of the pending legislation which furnishes a procedure for settling the dispute with finality. We believe that both the final offer selection and compulsory arbitration should be included in the arsenal and that each be used in the type of dispute to which each is particularly adapted.

Finally, H.R. 9989 provides for the final offer selection. This approach while untried is quite well understood by all of us. It is the only weapon in the administration's proposals—H.R. 3596—which would provide an avenue for final settlement without injury to the public and without congressional involvement. We think highly of it as a weapon but we believe that in H.R. 9989 we have improved its application over that provided for in H.R. 3596.

Our arsenal of weapons is really an arsenal of procedures. It does not make an agreement for the parties. It does provide clear sets of alternative procedures by which the parties can be guided to an agreement if they cannot reach that objective without outside motivation. The weapons in the arsenal are set forth in a well-defined manner so

that the parties will know what they will be faced with if an impasse develops. It is expected that this will motivate them to avoid an impasse rather than to be subjected to a procedure not desirable to them. With four or more weapons in the arsenal, the odds are that the one selected, if the parties fail to negotiate a settlement, will not be the one they separately prefer.

We have put into H.R. 9989 what we regard to be out best effort in providing an arsenal. But it is possible that there can be additional weapons. It is also possible that a better approach would be the modification of the weapons which have been included. The final determination in this regard is up to your committee and will unquestionably be based on the information obtained from these hearings.

While the composition of the arsenal is fundamental to all of the pending legislation, it is the arsenal together with the threshold standard that comprise the heart of any new legislation. As a practical matter, I do not believe it is possible to draw any fine lines defining the threshold so as to ensure that the objectives of this legislation can be achieved. In order words, there should be no threshold specified by statute.

If the ultimate objective is, one, to pass a law which will protect the public from the impact of the use of economic force in our labor disputes, and, two, to have such disputes settled without involving the Congress, then the threshold must be flexible enough to allow the procedures for settlement to be utilized to settle the dispute. The procedures should not be triggered or blocked off for a given dispute by a fixed statutory standard. Labor disputes cannot be so easily measured and cataloged.

Labor laws work best when they can be tailored to the problems. A rigid statutory threshold will not do this effectively. The question of whether or not to invoke the arsenal procedures should be left to the discretion of knowledgeable objective people who can analyze a dispute in all of its complexities and make a value judgment. Trying to measure a multidimensional dispute against a one-dimension scale will simply not work.

We are convinced that all major railroad labor legislation should be subject to the arsenal, while at the same time it should be possible to refrain from intervention in any particular dispute.

When the Railway Labor Act was written, aside from the mediation function, Federal involvement was to be a one-time event. This was through the emergency board. Experience under the act, unfortunately, has evolved the Emergency Board into merely the entering wedge of Federal involvement. From there we frequently go to supermediation—at the Labor Department, then perhaps to Congress, then to the White House and then often through the whole sequence again.

H.R. 9989 substitutes for the Emergency Board procedure the more comprehensive arsenal procedure, and once the arsenal is used, the matter should end. The Labor Department would only be involved in its decisionmaking role as to the procedures. The White House would not be involved at all. Neither would the Congress.

The long sequence of intervention that has become an ordinary occurrence is not to our liking. It should be rendered unnecessary, and H.R. 9989 would make it inappropriate. This would be an important

step to improving the climate of collective bargaining in our industry. It would motivate the parties to settle at the bargaining table.

Mr. Chairman, the next part deals with other proposals for settling these emergency labor disputes. I will not go into it in detail. However, I do feel constrained to say a little extra on the subject of selective strikes, which is a weapon common to all of the proposals before your committee, except the proposal of H.R. 9989, which I have just been discussing.

It seems to me that the objective of this committee's effort is to minimize governmental involvement in our collective bargaining. We feel that selective strikes and partial operations increase Federal intervention dramatically, and it involves the Government in running the show by determining the scope, extent and duration of strikes. It is unreasonable to believe as a practical matter the Government can successfully do this.

What can be accomplished by this type of Federal involvement in our labor relations? It is certainly novel. There is no precedent for it in any other industry. It is not an extension of any role yet prescribed for Government in the labor relations area.

Why has this idea emerged? In my opinion, it has appeared in legislative form in an effort to eliminate a total rail strike that will provide labor, but not management with a satisfactory substitute. No true substitute for a strike has yet been conceived. It is illusory to think that a selective strike is a fair substitute. It is loaded in favor of labor. It tips the scale in favor of labor, and seriously affects the bargaining power and position of the parties.

It is my understanding that the committee and those appearing before it share a common purpose in devising a scheme to protect the public without weakening the collective bargaining process, and without weakening one side or strengthening the other.

As Congressman Harvey said in his testimony before this committee, an essential requirement in any attempt to reduce strikes in the railroad industry and encourage the peaceful settlement of disputes is that a careful balance between the parties should be effected.

A selective strike has one additional characteristic, it is in fact nothing more than a whipsaw strike. That is, a strike designed to divide and conquer the employer group by putting pressure on individual members.

On our biggest issues we use national bargaining as a normal procedure in the railway industry, and it is generally conceded desirable by both labor and management, and everybody will agree multiemployer bargaining cannot survive whipsaw strikes and they are illegal wherever they occur.

The Court of Appeals in the District of Columbia in the *Delaware & Hudson* case, tried to fix guidelines by which a less than nationwide strike—that is a selective strike—could take place without a whipsaw effect. It is agreed that a selective strike which is really a whipsaw would be unlawful.

It may be theoretically possible to sterilize a strike against some employers to remove the whipsaw principle involved to the group, but the possibility is only theoretical.

Selective strikes, now illegal in the court's opinion, if allowed in the future or enhanced as they would be by some of the legislation

before you, would give labor a stronger weapon than it had before. Management's ability to defend itself is weak enough in the transportation industry, and I don't think it should be weakened any further.

Loading all of the power on labor's side will not improve collective bargaining. The whipsaw effect surely cannot be eliminated from the selective strike method. A whipsaw objective is implicit in the selection of the target itself. Take a weak railroad with special problems, take a railroad with unique characteristics and put it up before the industry and before its customers, where it is also singled out for deprivation. It is the old principle of "unitd we stand, divided we fall."

What union would not relish the possibilities of forcing a settlement with all railroads by holding one or two hostages? It takes little imagination to see how the selective strike can be used to labor's advantage.

One distincton needs clarification with regard to partial operation and selective strike. It has to do with the rail competition and service. While many areas of the country are served by only one railroad, most are served competitively by more than one. For example, traffic to the East from major cities on the west coast have alternative routes over two or more railroads to the cities. Los Angeles has three transcontinental carriers serving it, but this does not mean that if one or two of those carriers are on strike the customers of the struck lines can get rail transportation from the other nonstruck lines.

In some cases this may be possible, but in most cases it will not. Many shippers and receivers are located on the tracks of only one railroad. If that road is struck, these customers are cut off. It does not matter that alternate transcontinental routes are open if the freight cars cannot get to those routes from the spur or siding of the customers.

Many Union Pacific customers in Los Angeles were not comforted when it was struck from the fact that Southern Pacific and Santa Fe continued to serve Los Angeles.

In short, a shipper can be completely isolated in a terminal area even though a selective strike leaves routes open to and from his terminal area. Neither selective strikes or partial operation will save the shipping public from injury though a cursory look at a railway map may suggest otherwise.

We feel it would be a backward step for the public and industry and for the Congress to prescribe selective strikes as a weapon, because it unfairly strengthens labor and is a poor substitute for the total strike. What we need are substitutes for the impasse which initiates the strike.

Our suggested arsenal is the substitute with an impasse rather than for the strike.

Mr. Chairman, the next part of my statement deals with what might be called auxiliary issues which H.R. 9989 corrects in the Railway Labor Act. These are not particularly pertinent to the subject before you, and therefore I will not go into them in detail and just ask that this portion of my statement be included in the record.

This concludes my statement, Mr. Chairman.

(Mr. Hiltz' prepared statement follows:)

STATEMENT OF JOHN P. HILTZ, JR., CHAIRMAN, NATIONAL RAILWAY LABOR CONFERENCE

My name is John P. Hiltz, Jr. I am the Chairman and the principal officer of the National Railway Labor Conference, a position that I have held since August 1, 1967. The Conference is an unincorporated association whose membership comprises almost all of the nation's Class I rail carriers. It, in conjunction with the Eastern, Southeastern, and Western Carriers' Conference Committees, represents those carriers in national labor negotiations and advises them about a wide variety of problems that arise in their relationship with the labor organizations representing their employees.

My main purpose in appearing before your Committee today is to discuss the proposals of the railroad industry for changes in the Railway Labor Act and I very much appreciate the opportunity which you afford me for doing so. I shall also comment briefly on other proposals for this same purpose which are being considered by your Committee.

It is gratifying to those concerned in the railroad industry to note that your Committee has recognized the tremendous importance of this problem of railroad labor emergencies by affording all interested parties time to be heard on this problem, its issues, and the suggested solutions. Such in-depth consideration is unquestionably a significant step toward an effective resolution of this important issue.

It takes no study to ascertain that the labor disputes which have come before the Congress in recent years are those which occur in the transportation industries, mainly railroad and airline, and of course, mostly railroad. As you know, the airlines support the same legislation for resolving these disputes as the railroads do. It is obvious, of course, that these disputes only come before the Congress after labor and management have failed to reach an agreement and, in fact, are at an impasse. But why do railroad labor disputes which reach an impasse come to Congress when those of non-transportation industries do not? This question usually receives an imperfect and perfunctory answer. The answer usually given is that collective bargaining between labor and management in our industry does not work. But this is not the real answer. Collective bargaining in our industry does work—not perfectly, of course, and it can be improved, but it does work. The fact is that hundreds of agreements each year are negotiated in the railroad industry with no governmental intervention of any kind.

The real answer is that in our industry the public interest dictates that the regular processes of collective bargaining cannot be followed as they are followed in non-transportation industries. When labor disputes in other industries reach an impasse and the parties resort to self-help, no one says that collective bargaining has failed. Rather, such an eventuality is contemplated in the Taft-Hartley Act. In the railroad industry, however, the resort to self-help, even though legal, is not an acceptable or tolerable procedure because of its severe impact on the public. Thus the tacit mandate from the public sector to our industry is that an agreement be reached through collective bargaining without reaching the impasse state. We are willing to bargain within this more limited framework, but the law must be changed to make such bargaining possible.

The overall challenge to your Committee, as I see the situation, is to amend the Railway Labor Act in a way that preserves and improves the collective bargaining process so that an impasse which leads to the self-help measures so damaging to the public interest will not occur. The arsenal of weapons approach is designed to accomplish that objective. It operates to keep the parties in communication until the dispute is resolved.

We accept and endorse the accomplishment of that objective. Actually, of course, that is and always has been the basic purpose and intent of the Railway Labor Act. If collective bargaining has not been as effective as it should be under the Railway Labor Act, it is because the procedures of the Act have evolved in such a way that the original purposes have become obscured. For example, the emergency board procedure which was intended to be the final step from which settlement would follow no longer serves that important function in all cases. The almost inevitable refusal of railroad unions to accept the findings of emergency boards has turned this procedure into merely one more step in railway labor disputes. As one of the weapons in an arsenal, however, a great measure of the vitality it once enjoyed will be restored to it because it is contemplated that it will be selected for use in only those cases to which it is particularly adapted. The arsenal of weapons approach and the results which flow therefrom are entirely consistent with the original purpose of the Act.

The railroad and airline industries jointly put into H.R. 9989 their best efforts to establish a procedure for settling labor issues without resort to Congress, and I would like to highlight the concepts of that bill. At the outset, however, I want to emphasize that we are not dogmatic in our approach. We want to make the arsenal as broad as possible and capable of meeting all sorts of issues. Since labor laws grow and are fashioned to meet new problems, a broad and flexible approach is essential. We welcome ideas on how to improve our bill. It may be possible to articulate additional weapons that would be more effective in resolving a dispute than those we have listed.

H.R. 9989 provides four weapons:

First, it provides that the government may do nothing. I don't believe any other bill on this subject has this concept among its weapons. Since H.R. 9989 has a low threshold for intervention, we feel that this alternative permits surevillance and then abstention from intervention if, after consideration of the public interest, that is an appropriate response. In the cases where no action is recommended by the panel of Secretaries provided for in our bill, an impasse with a resort to self-help is possible. By self-help I mean a strike by the employees and a lockout or promulgation by management. This, of course, can occur under today's law.

The Florida East Coast Railway strike is a good example. In the initial stages of this dispute the National Mediation Board declined to recommend an emergency board. The strike took place. Months went by and no settlement was reached. Later, at the request of the labor unions the Mediation Board reversed itself and recommended an emergency board. The Board did its job and made recommendations for settlement, but no settlement was made. Today, 8 years later, the strike still goes on and the railroad is operating under strike conditions. There is no way under existing law to stop this strike. The impasse is total and up to this point in time appears to be permanent.

The second weapon provided is to appoint a neutral board for nonbinding recommendations. This weapon is similar to today's emergency board procedures and needs no elaboration. Although this approach has admittedly lost a great deal of its vitality, as has been pointed out before, it still has provided the basis in the past for bringing about a great number of settlements and it is felt that it will continue to do so under certain conditions.

The third weapon is final and binding arbitration. This is the weapon which provokes the most controversy. Its opponents have made "compulsory arbitration" a scare word. But we think it deserves careful analysis and consideration. It is an old and almost traditional concept in our way of life. It is widely used in our society and its use is growing. And where it is used, it works. The attitude of a party to a dispute toward arbitration is materially influenced by the strength of that party's position in the dispute. If the party feels that a fair and impartial finding with regard to the dispute will not give it what it desires, naturally it will not be anxious to submit its dispute to arbitration. It is undisputed that arbitration will not be the best method for resolving all disputes; however, if it will be the best method for resolving some disputes we feel that it should be included in the arsenal of weapons. Except for the final offer selection—a weapon which I will next discuss—arbitration is the only concept in any of the pending legislation which furnishes a procedure for settling the dispute with finality. We believe that both the final offer selection and compulsory arbitration should be included in the arsenal and that each be used in the type of dispute to which each is particularly adapted.

To those of you who might recoil at the thought of enacting an arsenal of weapons which includes compulsory arbitration, I suggest that you review what your colleagues recently concluded in passing the Postal Reorganization Act of 1970 (P.L. 91-375). In determining to prohibit postal employees from striking and substituting in lieu thereof a procedure for compulsory arbitration, the House Post Office and Civil Service Committee declared:

> "The Postal Service is too important to the people and the economy of this Nation to tolerate postal strikes.
>
> "Collective bargaining in public employment involves factors that differ importantly from those traditionally found in the private sector. In the private sector, a strike involves an economic contest pitting the stockholders' capacity to forego profits against labors' capacity to forego wages. A strike may impair the ability of the enterprise to compete successfully in the market. In the public sector, the stakes are quite different: A strike would not merely threaten the income of a public enterprise and cause loss of wages to workers, it would also directly imperil the public welfare. The extent to

which the public welfare might be so imperiled has been vividly brought home to all by the events of last March.

"Since it will continue to be unlawful for postal employees to strike, H.R. 17070 provides for binding arbitration in the event of unresolved collective bargaining impasses so as to assure parity of bargaining power between labor and management." House Report (Post Office and Civil Service Committees) No. 91–1104, May 19, 1970 [To accompany H.R. 17070].

The same is true in the railroad industry where the exercise of self-help in a labor dispute, however legal, cannot be tolerated because of its severe impact on the public welfare.

Finally, H.R. 9989 provides for the final offer selection. This approach while untried is quite well understood by all of us. It is the only weapon in the Administration's proposals (H.R. 3596) which would provide an avenue for final settlement without injury to the public and without Congressional involvement. We think highly of it as a weapon but we believe that in H.R. 9989 we have improved its application over that provided for in H.R. 3596.

Although he did not recommend it, I believe Congressman Eckhardt observed at the earlier hearings that the plan of H.R. 3596 might be improved by a series of final offers each closer than the last to the last offer of the other side. If the thought can be carried to a logical conclusion, this idea would lead to virtually identical final offers so that the parties would have "negotiated" the final settlement. Our approach in H.R. 9989 does not go that far but it works in the direction of the Congressman's idea. We would provide for revised final offers after the first final offers were exchanged. This would avoid the dangers of offers based on misconceptions of the content expected and it would avoid any element of surprise. We also provide for bargaining after all final offers have been exchanged. It is not at all unrealistic to expect that this will obviate the need for any final selection in many disputes. The parties will in many cases reach an agreement by themselves during the final offer process.

Our arsenal of weapons is really an arsenal of procedures. It does not make an agreement for the parties. It does provide a clear set of alternative procedures by which the parties can be guided to an agreement if they cannot reach that objective without outside motivation. The weapons in the arsenal are set forth in a well-defined manner so that the parties will know what they will be faced with if an impasse develops. It is expected that this will motivate them to avoid an impasse rather than to be subjected to a procedure not desirable to them. With four or more weapons in the arsenal the odds are that the one selected, if the parties fail to negotiate a settlement, will not be the one they separately prefer.

We have put into H.R. 9989 what we regard to be our best effort in providing an arsenal. But it is possible that there can be additional weapons. It is also possible that a better approach would be the modification of the weapons which have been included. The final determination in this regard is up to your Committee and will unquestionably be based on the information obtained from these hearings.

While the composition of the arsenal is fundamental to all of the pending legislation, it is the arsenal together with the threshold standard that comprise the heart of any new law. As a practical matter I do not believe it is possible to draw any fine lines defining the threshold so as to ensure that the objectives of this legislation can be achieved. In other words there should be no threshold specified by statute. If the ultimate objective is (1) to pass a law which will protect the public from the impact of the use of economic force in our labor disputes and (2) to have such disputes settled without involving the Congress, then the threshold must be flexible enough to allow the procedures fo rsettlement to be utilized to settle the dispute. The procedures should not be triggered or blocked off for a given dispute by a fixed statutory standard. Labor disputes cannot be so easily measured and catalogued. Labor laws work best when they can be tailored to the problems. A rigid statutory threshold will not do this effectively. The question of whether or not to invoke the arsenal procedures should be left to the discretion of knowledgeable objective people who can analyze a dispute in all of its complexities and make a value judgment. Trying to measure a multi-dimensional dispute against a one-dimension scale will not work. We are convinced that all major railroad labor disputes should be subject to the arsenal, while at the same time it should be possible to refrain from intervention in any particular dispute.

At these hearings I believe there has been some suggestion that the arsenal approach increases governmental intervention into our collective bargaining.

If this were true, I would oppose the approach. I view the arsenal approach as a means of reducing intervention and confining it to a known quantity. My preference is for as little government intervention as possible, and I think H.R. 9989 in particular minimizes it. It minimizes it because it provides a procedure for a final settlement of the dispute without any Congressional involvement. It is a finite, one-shot involvement.

When the Railway Labor Act was written, aside from the mediation function, federal involvement was to be a one-time event. This was through the emergency board. Experience under the Act unfortunately has evolved the emergency board into merely the entering wedge of federal involvement. From there we frequently go to super-mediation—at the Labor Department, then perhaps to Congress, then to the White House and then often through the whole sequence again. H.R. 9989 substitutes for the emergency board procedure the more comprehensive arsenal procedure, and once the arsenal is used the matter should end. The Labor Department would only be involved in its decision-making role as to the procedures. The White House would not be involved at all. Neither would the Congress. The long sequence of intervention that has become an ordinary occurrence is not to our liking. It should be rendered unnecessary, and H.R. 9989 would make it inappropriate. This would be an important step to improving the climate of collective bargaining in our industry. It would motivate the parties to settle at the bargaining table.

OTHER PROPOSALS FOR SETTLING EMERGENCY LABOR DISPUTES

I should like to briefly review and comment on other proposals pending before this Committee. It is unnecessary, I believe, to outline any substantive details, for these proposals are well-known to the Committee. It will suffice to call attention only to those aspects which are of particular concern to us.

First, I will deal with H.R. 3596—the Administration's Bill to provide for an "Emergency Public Interest Protection Act of 1971." Although we cannot endorse this legislation, we subscribe to some of its purposes and support a number of its key provisions. We believe that it represents a substantial improvement in many ways over existing procedures.

For example, we agree with the "arsenal of weapons" approach—giving the President a variety of ways to respond to a labor dispute. This is much better than a single rigid procedure which must be followed in every instance. We support the basic premise implicit in this approach—that some method must be developed to resolve railroad and airline labor disputes short of economic self-help.

We believe, however, that the Administration's bill would be improved if its arsenal contained weapons other than and in addition to those provided. In view of the obstacles in applying the "partial operation" concept to the railroads, that proposal should be abandoned. The "final offer" procedure, which we support, may be suitable for some disputes and inappropriate for others, so additional alternatives should be provided. These are included in our affirmative proposals.

The railroads also concur in the Administration's proposal to abolish the National Railroad Adjustment Board. This outmoded and time-consuming procedure for resolving grievances should cease. Furthermore, the financial burden for handling railroad grievance disputes should be removed from the government and shared by the parties as is the custom in all other industries.

In addition, we support the Administration's proposal to eliminate the payment of unemployment benefits to strikers and employees who refuse to cross a picket line. Presently, the railroad industry is the only employer required to support strikes against itself. This inequitable condition should certainly be corrected.

Finally, we support the bill's provisions establishing special study groups to examine the problems in those industries peculiarly affected by labor disputes.

However, we are seriously concerned with the Administration's proposed "national health or safety" standard which must be met before the arsenal of weapons may be utilized. We believe that the better approach is to eliminate the threshold standard and all the associated definitional problems it brings and provide as one of the options the opportunity to refrain from taking any further action. Thus the parties to any labor dispute are provided with an incentive to bargain while the public interest is protected.

One other aspect of the Administration's bill which causes serious concern is

the weakening of the mediation process that would occur if it is adopted. Under the Railway Labor Act, mediation by the National Mediation Board is required if the parties are unable to resolve a dispute themselves. Prior to and during mediation the parties are required to maintain the status quo, thus preventing strikes and lockouts and giving the mediation process a chance to work. The Administration Bill would substitute mediation by the Federal Mediation and Conciliation Service for that presently provided by the National Mediation Board and would eliminate the status quo provision. Thus a strike could occur before or during the mediation effort. We feel that the present provisions of the Railway Labor Act give the mediation process a good chance to function.

Insofar as H.R. 3595 is concerned, the railroads are opposed to this bill. It would, in our judgment, make things even worse than they are.

It would amend Section 10 of the Railway Labor Act so as to broaden the self-help that may be exerted by the unions while severely restricting the self-help that may be utilized by the carriers. It would confirm the right of the unions to engage in selective strikes against one or a few (up to nine) of the carriers involved in the dispute, and, surprisingly, would also ensure to the unions a right to strike all of the carriers at once. At the same time, the bill would deprive the carriers of their right under the present law to lock out their employees either as a defensive measure in response to selective strikes or as an offensive measure to bring pressure upon the employees to compromise their demands. The bill would further deprive the carriers of most of their right under present law to implement proposed changes unilaterally after all the processes of the Railway Labor Act had been exhausted. In addition, the bill would require partial operation by struck carriers to transport commodities and persons deemed by the Secretary of Transportation to be essential to the national safety or health. This would result in increasing losses of carriers from a strike while reducing the incentive for employees to terminate strikes except on their own terms.

H.R. 3595 would not prohibit national strikes. Rather, it expressly confirms the right of the unions to engage in such strikes. Only the carriers would be prohibited from engaging in self-help on a national basis.

To the extent that the bill would lessen the number of national strikes by authorizing selective strikes, it would multiply the number of strikes overall and the selective strikes authorized by it could directly shut down as much as 40% of the industry at a time. If H.R. 3595 should be enacted, the number of railroad strikes would multiply, and because it would weaken the bargaining position of the industry, even more inflationary wage increases would be necessary to settle such strikes. This, in turn, would lead to increased freight rates. All things considered, enactment of H.R. 3595 would be a disaster to the railroad industry, to the public, and, ultimately, to railroad employees themselves.

Our views on H.R. 9088 are much the same as our views on the Administration's Bill. We support its objectives and certain of its specific provisions but we think that it could be improved by amendments which would expand its "arsenal" in the one direction but contract it in another.

The preferred weapon in the "arsenal" of H.R. 9088 is the selective strike. In addition, H.R. 9088's version of authorized selective strikes would deprive the industry of the right to lockout, a right available to employers in other industries and sanctioned as a legitimate response to a selective strike in the *Delaware & Hudson* decision. Coupled with the authorization of selective strikes, H.R. 9088 also permits partial operations, which in our industry is unworkable as a practical matter.

Another weapon is a version of the "final offer selection" process, first proposed in the Administration Bill. We favor this. To fill up the void which would result from elimination of the selective strike weapon, and to cover those situations which might not fit the "final offer selection" process, we would suggest insertion of arbitration machinery along the lines suggested in H.R. 9989.

H.R. 2357 is good in many respects, but we strenuously urge a less stringent threshold standard. We endorse its provision for arbitration, but, of course, we oppose the seizure "weapon" included in its "arsenal." As we have said time and again, seizure settles nothing without some provision for resolving the dispute and, when you have the latter, seizure is superfluous. In effect, seizure maximizes government intervention. It is the basic aim of us all to reduce, if not eliminate, governmental involvement in our labor relations. We believe, therefore, that seizure should be eliminated and some form of the "final offer selection" process substituted in its place.

H.R. 5347, provides for submission of carriers' last offers to a secret ballot of employees. It also provides for partial operations under certain circumstances when strikes do take place. This bill falls far short of the remedy that is needed.

National Labor Relations Act experience has demonstrated that last offer secret ballots only rarely lead to settlements. In most cases they result in stiffening the positions of the parties, impeding rather than enhancing the bargaining process. Partial operations under strike conditions is harmful for all the reasons we have previously stated.

CONCLUSION

The various bills pending before this Committee run the gamut of ideas that have been put forward thus far to protect the public from damaging transportation strikes without affecting the bargaining power of either labor or management. From these ideas I am confident that the Committee can fashion an arsenal of procedures that will bring settlements of our bargaining disputes at the table and without public impact strikes.

We hope that the Committee will approve an arsenal that contains procedures for settlement and rejects plans which encourage the use of economic force. All of the self-help plans put forward thus far are for the benefit of labor and enhance its bargaining power at the expense of the railroads. To the extent that they make labor stronger, they also encourage labor to use such self-help tactics. I would hope that Congress does not want to pass a bill which would have such a severe effect on collective bargaining as selective strikes, partial operations, and seizure would have.

Above all, in considering the arsenal of procedures approach we must be practical from the standpoint of—will it work. While preserving or encouraging selective strikes and other forms of economic force may have some political appeal, its practical impact on the industry would be devastating. That is why we believe that H.R. 9989 has the best set of procedures for settlement yet put into a legislative package. We hope you will give serious consideration and study. I and my staff are always ready to assist you in this task in any way we can.

OTHER CHANGES IN THE RAILWAY LABOR ACT PROPOSED BY H.R. 9989

In addition to the proposed changes relating to the "major disputes" provisions of the Railway Labor Act, H.R. 9989 would also strengthen the Act by bringing certain provisions into accord with national labor policy established by the Congress since the Railway Labor Act was last amended in any substantial manner. While the National Labor Relations Act, the principal labor law governing industries other than the railroads and airlines, has been revised periodically during its history both to address itself to new problems that have developed since it was first enacted and to improve the collective bargaining processes, the Railway Labor Act has not received substantial Congressional scrutiny since 1934. The result of this lack of review is obvious. While the Congress has amended the National Labor Relations Act and has established a national labor policy on many issues that require identical treatment in the railroad and airline industries (e.g., secondary boycotts), that national policy has not applied in these industries because the Railway Labor Act was not amended and remains silent on these issues. Thus, the remaining purpose of H.R. 9989 is to improve collective bargaining in the railroad and airline industries by updating the provisions of the Railway Labor Act to accord with the established national labor policy. A short discussion of these changes follows.

SECONDARY BOYCOTTS

A prime example illustrating this purpose is the proposal to prohibit secondary boycotts contained in Section 15 of H.R. 9989. In labor relations parlance, a secondary boycott occurs when a union brings economic pressure not upon the employer with whom it is involved in a dispute but upon some third party who has no concern in it. Its aim is to compel the third party to stop doing business with the employer in the hope that this will pressure the employer into giving in to the union's demands.

The National Labor Relations Act, as originally enacted, contained no provisions affecting secondary boycotts. However, the 1947 Taft-Hartley amendments and the 1959 Landrum-Griffith amendments both proscribed a variety of secondary activities. These amendments were direct responses to the recognition that certain abuses in this area had developed since the Act's first passage and were in need of correction.

On the other hand, the Railway Labor Act never contained any provisions prohibiting any form of secondary boycotts and none have been added in the years since the Act's passage. Consequently, a substantial amount of litigation

over actions of unions engaged in secondary activities has developed, the result of which has been a Supreme Court decision holding that even state laws regulating secondary boycott activities are not applicable in railroad labor disputes (See *Brotherhood of Railroad Trainmen* v. *Jacksonville Terminal Co.*, 394 U.S. 369 (1968)).

This kind of dichotomy should cease. The national policy against secondary boycotts should be extended to the railroad and airline industries.

ABOLISHMENT OF THE NATIONAL RAILROAD ADJUSTMENT BOARD

For more than 35 years, the National Railroad Adjustment Board has resolved so-called minor disputes—i.e., grievances over the interpretation or application of collective agreements—when the parties have been unable to do so themselves. The NRAB was established pursuant to Section 3 of the Railway Labor Act. Its determination in these cases are "final and binding upon both parties to the dispute" (45 U.S.C. § 153(m)) and strikes in connection with these matters are unlawful and subject to injunction. *Brotherhood of Railroad Trainmen* v. *Chicago River and Indiana Railroad Company*, 353 U.S. 30 (1957); *Brotherhood of Locomotive Engineers* v. *Louisville & Nashville Railroad Co.*, 373 U.S. 33 (1963).

Both the Administration proposal (H.R. 3596) and the industry's bill (H.R. 9989) would abolish the NRAB in favor of a voluntary contractual system of arbitrary grievance disputes as found in other industries generally. The railroad industry recognizes that the NRAB provides an outmoded, slow, and often unwieldy, tortuous path to resolution and, therefore, supports its dissolution and replacement with the special boards and public law boards that are comparable to the procedures utilized in other industries.

In addition, the industry's proposal would retain the attendant prohibition against strikes over minor disputes just as is found in other industries where there are contract provisions for final arbitration of grievances (Cf. *Boys Market* v. *Retail Clerk's Union, Local 770*, 398 U.S. 235 (1970)). Furthermore, the parties to the dispute would assume the full costs of arbitration rather than the anomalous present requirement of having the government pay the costs of neutrals and other related expenses.

Each of these revisions makes good sense and is in accord with existing practices in other industries.

RESOLUTION OF JURISDICTIONAL DISPUTES

H.R. 9989 would also repair the failure of the Railway Labor Act to require the National Mediation Board to resolve jurisdictional disputes between competing labor unions. Here again, the National Labor Relations Act provides mandatory authority for the National Labor Relations Board to settle such conflicts in industries governed by that Act.

Jurisdictional disputes arise when a union representing a group of employees on a railroad and one or more other unions representing other groups of employees disagree as to which union represents employees or prospective employees for collective bargaining purposes. Employers caught in the middle of these conflicting demands on the part of unions seeking to enlarge their membership have unsuccessfully sought to require the NMB to resolve these disputes and eliminate unnecessary labor disputes (Cf. *Brotherhood of Locomotive Firemen & Enginemen* v. *National Mediation Board*, 410 F. 2d 1025 (1969)).

The failure of the NMB to resolve these disputes places the carrier in an unfortunate position. It must either decide to do nothing and therefore perpetuate the problem or risk choosing the wrong union to bargain with and hence violate the Railway Labor Act. No employer should be placed in such a predicament. Jurisdictional disputes between competing unions should be resolved by the NMB as provided by H.R. 9989.

REPRESENTATION ELECTIONS

The failures of the Railway Labor Act in representational matters are similar and related to the problems associated with jurisdictional disputes—namely, the inability of the employer party to present representational disputes for resolution and to be heard on them.

Despite the obvious propriety of permitting an employer to be heard on representational matters concerning its own employees and the fact that this is the

policy under the National Labor Relations Act, the National Mediation Board construes the Railway Labor Act as requiring employees to select a collective bargaining representative and that, therefore, a representation election is simply for the purpose of selecting a representative—not to determine whether the employees actually desire a collective bargaining representative and, if so, which representative they wish. Thus, the Board uses an election ballot which does not permit the employees the opportunity to vote "no union".

In addition, under the Railway Labor Act the employer is not provided the opportunity to initiate representational proceedings. If competing unions are involved in a representational battle concerning a group of railroad employees, the railroad does not have the right to request an investigation and determination by the National Mediation Board but must remain powerless until one of the competing unions seeks such a requet. When the NMB finally holds hearings to determine what union should be certified as the bargaining representative, the Board does not permit the railroad, as a matter of right, to participate in these hearings. Only the competing labor unions or any employees desiring to remain unrepresented may be heard as a matter of right.

Under the National Labor Relations Act, the rights of an employer are quite different. An employer may initiate a hearing concerning a question of representation. Indeed, an employer may initiate a hearing on the question of whether a previously certified union continues to represent a majority of the employees in the union. Once any of these issues come to hearing, the employer has all the rights of any other party. And, finally, once the matter has been resolved, the employer is protected from subsequent turmoil on the same question of representation for a given period of time.

What the railroad industry proposes in H.R. 9989 is quite modest. H.R. 9989 would amend the Railway Labor Act to provide that the involved railroad may participate fully in any representational proceeding; that a railroad may initiate a question concerning representation; and finally, that employees voting in a representational proceeding would have the opportunity to vote against union representation.

ELIMINATION OF UNION RATIFICATION REQUIREMENTS

One of the abuses that has arisen relatively recently in labor-management affairs is the practice on the part of a growing number of unions to require membership ratification of collective bargaining agreements tentatively agreed to by union negotiating officials. Although the Railway Labor Act requires authorized representatives of both parties to negotiate and resolve all disputes, if possible, the practice of requiring subsequent membership ratification has occurred with increasing frequency in the railroad industry. In December, 1969, the Congress was required to intervene in a nationwide railroad shopcraft dispute when one of four unions bargaining jointly was unable to secure membership ratification, although the majority of members in all four units together were willing to accept the tentative contract. Surely, no industry should be subject to this uncertainty.

Negotiators on both sides should be empowered to consummate final and binding labor contracts without resort to ratification. If negotiations are to be meaningful, representatives who negotiate on behalf of employees must have the authority to reach a final and binding agreement, not one that is merely another floor from which to negotiate again. Ratification votes serve only to undermine the negotiating process. Even George Meany, President of the AFL–CIO, concurred in this view when he referred to ratification requirements as "bad bargaining."

The requirement for ratification by union membership substantially affects the strategy and tactics employed at the bargaining table. In essence, it requires the company to bargain with an absent party—the entire membership—rather than the certified representative of its employees. Membership ratification should be prohibited.

THE PRESERVATION OF THE NATIONAL MEDIATION BOARD

Apart from H.R. 9989, only H.R. 3596, the Administration's bill, concerns itself directly with the role of the National Mediation Board. The Administration suggests that the Board's present mediation function be transferred to the Federal Mediation and Conciliation Service with only the representational function to remain with the Board in its reconstituted form. We sharply disagree

with this approach and suggest, in the alternative, that the Board be strengthened and given the authority to act authoritatively in those areas where it is now limited.

The National Mediation Board is a unique agency blending certain functions performed for other industries by the National Labor Relations Board and the Federal Mediation and Conciliation Service. During its long history, the Board has developed an expertise in the railroad and airline industries shared by no other agency and one that cannot easily be transferred. Just as the Railway Labor Act was drafted to meet those unique features of the railroad industry, (likened to a state within a state by Justice Frankfurter) the NMB has developed the concomitant administrative talent. Just as the Railway Labor Act needs to be strengthened and updated—not gutted, the same is true for the NMB.

It is the railroad industry's view that much of the criticism of labor relations in the railroad industry could be eliminated by providing for a stronger and more effective National Mediation Board. Thus, many of the proposed changes discussed earlier attempt either to provide the Board itself with the proper tools for handling a broad range of labor matters or, in those instances where it would be improper for the Board to intervene, the authority to establish a neutral body which could effectively resolve such matters.

Additionally, H.R. 9989 would increase the term of office for NMB members from three to five years. The unique problems within the industry require a familiarity and experience which comes only after substantial participation in the mediatory processes. This necessary experience is hardly gained when the present three-year term for members expires.

The extension of the term in office from three to five years would be beneficial to the effective administration of the Railway Labor Act and in keeping with the terms of members of other government agencies.

EXCLUSION OF SUPERVISORS FROM THE ACT

One other important matter covered by H.R. 9989 is the proposal to bring the Act's policies into accord with the NLRA by eliminating the organizing of supervisors and subordinate officials.

In the railroad and airline industries, as well as industries generally, supervisors constitute the first line of managerial authority. However, in the railroad and airline industries these company officials may organize and be represented. The conflicts on loyalties are obvious. The Act should be amended in recognition of this fact and bring the dividing line between management and labor in harmony with that in other industries.

Mr. DINGELL. Thank you very much, Mr. Hiltz.

Mr. Harvey?

Mr. HARVEY. Thank you, Mr. Chairman.

Mr. Ailes and Mr. Hiltz, we welcome you both here this morning and we thank you both for the very fine statements that you have given this committee.

I want to say that, as a member of this committee, I certainly share your view that some legislation is urgently necessary in this matter, and that it is a matter of great effort and utmost importance to our country.

I certainly hope that this committee and this Congress will report out some legislation, but even if they do not, I remain convinced in my own mind that if it is not this Congress, it will be the next one or one very soon that will act on emergency strike legislation. The matter is of such great importance to our country that our people will not tolerate going without a solution for very many more months or years.

So, you put your finger on a problem which is very, very acute for the Nation today.

I don't agree with you entirely with regard to your solution, and I think you gentlemen know of my own testimony at the hearings, and you indicated that you do. I think it would be very nice if we

could say that no strikes, regardless of their consequences, could be permitted or tolerated in the transportation industry, and that all of the parties would agree to arbitration of their disputes. But you gentlemen both know that this is just not the case. It has not been over the years and it certainly is not the case right now.

I begin then, on the basic premise that selective strikes, as a remedy, are with us at the present time, particularly as a result of the court's decision that Mr. Hiltz cited. I started off in my own thinking then on the basis that it is just not realistic to think that this Congress is going to pass any legislation that is going to prohibit entirely the right of railroad employees to strike under any circumstances, regardless of how small the strike may be. I just don't think that Congress will ever pass that sort of legislation, and I don't believe there is a single member of the subcommittee here or on the full committee that will disagree.

I think they will all start from the fundamental basis that some strikes will be permitted in the railroad industry. Then our problem is defining what sort of selective strike is going to be permitted.

In the bill I have introduced, we tried to define it by limiting its effect to 20 percent of the revenue-ton miles. In the bill that Mr. Staggers and Mr. Eckhardt introduced with approval of the labor unions, they limit it to basically 40 percent of the revenue-ton miles.

In the bill I introduced we also have a provision, in addition to the limitations that I just mentioned, that would still require certification by the President that the effects of a strike would not impair the national health and safety. Therefore, a selective strike could be prohibited with even less than 20 percent of the revenue to miles effected.

My question to you gentlemen is this: If we are going to have selective strikes, how would you define them?

Mr. AILES. May I say something on that score?

Mr. HARVEY. Yes.

Mr. AILES. This is a subject that we have discussed a great deal among ourselves. We don't take the position that all strikes of any kind in the railroad industry should be outlawed. There certainly can be local disputes that cause minimum damage to a region or area that probably do not merit Federal intervention.

The difficulty we have is with the court decision and the problem of national handling. I am sure you are familiar with the decision. We got into the most complicated legal morass in this last strike because of the Northwestern situation. The court held in the D. & H. case that a strike to produce a national solution was all right.

Mr. HARVEY. Right.

Mr. AILES. I must say this surprised me. That says you can strike against "A" to make "B" or "C" or "D" do something. As a nonexpert in the field, I would have thought that was the one thing you couldn't do, but apparently there is some precedent for that result.

Well, the Northwestern promptly said: "We want out," I am sure the UTU was hesitant to negotiate with them, because they had taken the position that the purpose of the strike was not to get the Northwestern out—I mean any individual carrier out, but to get a national settlement.

On the other hand, the court in Chicago directed UTU to negotiate with Northwestern and we had a complicated legal situation as the result.

Our problem in selective strikes is whether or not you can really have selective strikes and national handling. I would like to point out that national handling is not solely at our request. The unions are very, very strong for it, and Mr. Luna testified in this litigation that they insisted upon it and would be lost without it.

Mr. HARVEY. I have not been totally convinced that the unions are completely for national handling, and I was under the impression, for example, in the settlement of the recent selective strike that you were moving in a way toward greater regional, individual carrier bargaining.

It seemed to me at one juncture that I read in the paper that Mr. Luna refused to sit down with Mr. Hiltz, but insisted that he sit with the company presidents. He felt that he could negotiate agreements individually with the presidents, but that he could not do it nationally.

Mr. AILES. That was another problem. He was seeking a national agreement with a group of railroad presidents representing each region. This was still national handling. But Luna testified in this case:

> When they issued the notice, they said: Please get together and come back and deal with us.

His counsel asked him: Did you seek national handling? He answered:

> I am sure we did on wages. We always try to handle wages on a national basis because as long as I recall the wages it has been the same.
>
> Has it been consistently your objective since the movement started to handle the wage issue on a national basis?
>
> You have to. We would have chaos in our industry and organization, too, if two men were doing the same work and getting different pay. It has to be handled that way.
>
> Was this your objective?
>
> It is my objective now.

That is what he said. Jack can give you a thousand quotes to the same effect.

The unions are insistent that every brakeman be paid the same all the way across the country. That is responsible for national handling. Perhaps you had better talk on that.

Mr. HILTZ. This is so with all of them. They have endorsed national handling on the question of wages and major working conditions.

Mr. HARVEY. Excuse me, Mr. Hiltz, and I will let you finish, but when you start out with national handling, you immediately come to the question of whether you can have a national strike. It is obvious, and Congress agreed over and over again, that a national strike of railroad employees cannot be tolerated.

The next question is: If a national strike cannot be tolerated, then how much of a strike can be tolerated? My question to you gentlemen is: What help can you give the committee as to what sort of strike can be tolerated? I know you say: "We don't want any strikes at all."

Mr. AILES. In a national handling situation.

Mr. HARVEY. I say that is just not realistic. I think it would be nice and wonderful for the country if it were the case that we didn't have any strikes in the transportation industry, but Congress is not going along with that and Congress is not about to pass a program that is going to impose compulsory arbitration on the railroad workers.

I remain convinced of this and I think my committee members do also. The question is: What sort of help can you give the committee in prescribing limits within which a selective strike can be tolerated?

Mr. HILTZ. We do not think any selective strike can be tolerated, as Mr. Ailes said, in a national dispute. We think it places an imbalance of power in the hands of the union to bring about a settlement by picking some carrier that is practically in bankruptcy to strike.

Mr. HARVEY. Isn't this the case, though. Look, we have strikes in the auto industry and UAW picketed Ford and this year they picketed General Motors and this is the first time in 25 years they struck.

Mr. HILTZ. Last year it was Ford.

Mr. HARVEY. And Ford is one of the weaker ones, and Chrysler is, too, from that standpoint, but that is industry's problem generally.

Why should the railroads be an exception? I am just asking the question.

Mr. HILTZ. Well, I think if you want an industry that is no longer viable, perhaps there shouldn't be an exception.

Mr. HARVEY. But my point is: selective strikes are with us. You referred in your text to the *Delaware & Hudson* court case.

Mr. HILTZ. That is right, so long as it doesn't break up national handling.

Mr. HARVEY. The court said selective strikes, so long as they are working toward national settlement, are permissible.

Mr. HILTZ. Correct.

Mr. HARVEY. We are going to live with it for a long time on the committee.

Mr. HILTZ. But if it does not break up national handling, this is fine, and we can live with it. If the strike is not designed to break up national handling.

Mr. DINGELL. If you will yield, gentlemen, what happened there was the union struck some of the companies and the others proceeded to simply impose the work rules.

Mr. HILTZ. That is correct, sir.

Mr. DINGELL. And the negotiation went forward.

Mr. HILTZ. That is correct.

Mr. DINGELL. So, the selective strike did not break up national handling.

Mr. HILTZ. Some of the remedies proposed by your committee are that the promulgation weapon be taken away from us and the lockout weapon be taken away from us which are the only weapons we have at the present time, thus we are left barefooted, whereas you are adding another weapon to the arsenal that the unions already have.

Mr. AILES. Mr. Harvey, let me say I think the problem is complicated by the fact we are talking about two different things here. One is, how much inconvenience can the public stand? Agreed, that the national strike is much too much, and that immediate action is needed. It is perfectly possible to conceive of situations down the line that do not cause enough confusion and difficulty to justify intervention.

Mr. HARVEY. If there is an alternate form of transportation and the strike is without national consequences, you can't, or we on the committee cannot say they cannot go on strike.

Mr. HILTZ. This is contemplated in our bill. Do nothing.

Mr. HARVEY. With regard to that feature in your bill, we can do it now. We don't need your bill.

Mr. HILTZ. That is right.

Mr. AILES. Just let me finish this proposition. We recognize, of course, that there are situations that simply don't justify Government intervention, but all I am saying is that the problem of the selective strike and the national handling situation is not over yet. I am sure you have read Judge Leventhal's opinion; it is terribly complicated. The selective strike and national handling are fundamentally inconsistent.

The obvious remedy, the obvious self-help remedy in the national handling situation is the national strike which is ruled out as a matter of testimony.

We had a very complicated go-around with respect to this matter in the last strike, and I am sure we will again.

The opinion says:

> If I have made the wrong assumption about what is happening here, perhaps the court will have to take it under consideration again.

I say, we cannot tell you what is a good way to handle the selective strike in national handling because the law is unclear about it.

Mr. HARVEY. The law is unclear, but it is the law and the Supreme Court refused to hear the test case at the present time. It will be with us and we have to live with it, every man on the committee will have to live with it.

Mr. AILES. We are well aware of that, but this opinion is far short of saying that the selective strike, regardless of purpose or regardless of size, or how it is handled, is a proper self-help remedy in a national handling situation. It really falls far short of that as witnessed by the various legal proceedings that have been gone through in the last strike.

Mr. HARVEY. I have one other comment on selective strike. One of you said they have a whipsaw effect. What if you require that any settlement received in the selective strike be required to be offered to the other carriers? Doesn't that eliminate the whipsaw tactic?

Mr. HILTZ. Congressman, the original application of the selective strike in a national handling situation will be a whipsaw tactic. It will be picking the weakest carrier or carrier most likely to give in and causing him to give in. To extend that, we have this situation.

Mr. HARVEY. Mr. Hiltz, this is one of the facts of life and it has occurred in the airline industry. I don't know how long they have been picketing airline carriers and the only thing the unions have not been doing is requiring that the settlement be offered to the other carriers. This is my objection.

Mr. HILTZ. This offering to other carriers will eliminate some of the objective whipsawing, however there are many thing that may be acceptable to an individual carrier that are not acceptable or even applicable to the other carriers.

Witness the Northwestern situation in this UTU dispute. Northwestern had conditions with regard to interdivisional individual runs which did not pertain on all carriers. Northwestern was therefore able to agree to certain things with regard to interdivisional runs that the other carriers could not agree to, indeed they were not applicable to other carriers.

So, this is a whipsaw tactic in itself to get the carrier with a special problem to try to force that special problem on all of the other carriers.

Mr. HARVEY. That is the goal of the union leaders, to get the largest possible settlement as your goal is to get a smaller settlement.

Mr. HILTZ. But it should not be to get a settlement that is meaningless to the balance of the industry and the Chicago Northwestern settlement would have been meaningless to most of the industry.

Mr. HARVEY. I am not in a position to discuss that because I am not that knowledgeable. I don't want to continue to take too much time from the other members, but I want to say I share your desire to have the Congress come up with some sort of bill to solve this pressing problem, but I think your approach to this is just unrealistic.

I would say that with regard to your bill, H.R. 9989, it may be a fine bill. I think it would solve the problem that we had before, but I just don't think there is one chance in a thousand that that bill will get through Congress. I think you gentlemen just have to be realistic and come to Congress with some idea of what can be passed and what can't be passed.

Mr. AILES. May I say in that connection, as I think I tried to say and I know Jack said: We don't say it is the only way to solve this problem. That bill is a result of some hard effort over a period of about a year of a group of people in the railroad industry and who work in the field and indeed in the airline industry, who work in it, and this is what we thought was the best device to handle this.

What we basically believe in is the arsenal of weapons approach, some method of achieving finality. We are willing to go on with just that. This happens to be our best shot at it, and we, like you, want to see the problem solved by whatever is the best way to solve it. That is what this means to us.

We are prepared to support anything that will solve the problem; namely, provide incentive to collective bargaining, and some means of finality if the collective bargaining does not work.

Mr. HARVEY. I certainly share your appraisal of the arsenal of weapons approach. I think it is a very, very fine one.

I would add one thing, Mr. Chairman, and that is if that approach is to be effective, then I think you have to give either the President or panel administering the approach the right to pick more than one weapon in sequence if he wants to do it. I notice you limit him to just one weapon, and I don't think Congress will buy that.

What do you do, if he does nothing and you appoint a mutual board and the matter is not solved? You come back to Congress, right back where we started, and this is a weak spot.

Mr. AILES. Mr. Chairman, may I say one thing on that?

Mr. DINGELL. Yes.

Mr. AILES. We recognize that problem. There are two schools of thought. Some say if you have a series of alternatives, some say you go down the list and choose one. Others say you have to act and take the various actions until you solve it. We don't know which is right, and we came out with the first one for that reason; that history or experience with the Railway Labor Act shows you the whole procedures are gone through.

Mr. HARVEY. May I add this: you touched on it, but why do we have national bargaining? Because you want it or because Mr. Luna wants it? What is the basis for it?

Mr. AILES. I just read Luna's testimony in the case. Again, Jack ought to talk to this point.

Mr. HILTZ. There are about four pages, Congressman Harvey, which I will let you have. I won't read it, but it gives a compilation of the various statements of the labor chiefs in the railroad industry as to their preference for national handling.

Mr. KUYKENDALL. Will you yield?

Mr. HARVEY. Yes.

Mr. KUYKENDALL. To put it simply, it is not because the unions can't stand it because of union politics, one section of the country not wanting to be guided by another and industry doesn't want a whipsaw.

Mr. AILES. The national union leaders say they couldn't negotiate, they would not have the negotiating team available to negotiate for 70 railroads, so they want to negotiate for one group.

Mr. KUYKENDALL. I see your point of view.

Mr. AILES. May I suggest that statement go into the record?

Mr. DINGELL. I have not seen it, but without objection your statement will appear in the record at this point.

Mr. MURPHY. Mr. Chairman, what statement is that?

Mr. DINGELL. The Chair wants to get these matters straightened out, and handle it in an orderly fashion. I assume Mr. Harvey is finished, and the Chair recognizes Mr. Kuykendall.

Mr. MURPHY. You asked unanimous consent to insert something in the record, and I reserve the right to object. I want to know what the statement is.

Mr. HARVEY. I can't describe it because I haven't read it.

Mr. HILTZ. This is an excerpt from my affidavit in the *Delaware & Hudson* case.

Mr. DINGELL. If you want to object, I will honor it.

Mr. MURPHY. I want it identified.

Mr. DINGELL. I can't say. I think the witness has a right to make a complete record.

Mr. MURPHY. I want to know what it is.

Mr. HILTZ. I can state it is an excerpt from my affidavit in the *Delaware & Hudson* case which details the attitudes of the various labor chiefs in the railroad industry on national handling.

Mr. DINGELL. I think, Mr. Hiltz, if you submit it you should furnish the entire affidavit.

Mr. HILTZ. I will be glad to.

Mr. DINGELL. Now, I think you have a right to assist the committee by making your record in full and I don't think we have a problem there.

Mr. MURPHY. I have no objection to submitting the entire statement as long as it is identified as his.

Mr. DINGELL. I will allow you to submit the entire document and direct this extract be returned and you, in turn, can give us the full document.

Testimony resumes on p. 466.)

(The following letter and attachment were received for the record:)

NATIONAL RAILWAY LABOR CONFERENCE,
Washington, D.C., September 17, 1971.

Mr. W. E. WILLIAMSON,
Clerk, House Committee on Interstate and Foreign Commerce, Washington, D.C.

DEAR MR. WILLIAMSON: At the hearing on September 15, 1971 before the Subcommittee on Transportation and Aeronautics I referred to portions of my affidavit which was filed in the case of *Delaware & Hudson Railway Company v. United Transportation Union* which involved the legality of selective strikes. I was asked to furnish the Subcommittee a copy of the entire affidavit and accordingly a copy is enclosed. The pages which I referred to at the hearing were pages 12 through 14.

Yours very truly,

R. P. HILTZ., Jr.

Enclosure.

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DELAWARE & HUDSON RAILWAY COMPANY ET AL.,

Plaintiffs,

v.

Civil Action No. _____

UNITED TRANSPORTATION UNION,

BROTHERHOOD OF RAILWAY, AIRLINE & STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS & STATION EMPLOYES,

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES, and

HOTEL AND RESTAURANT EMPLOYEES & BARTENDERS INTERNATIONAL UNION,

Defendants.

(Without Exhibits)

Dated Sept. 14, 1970

AFFIDAVIT OF JOHN P. HILTZ, JR.

AFFIDAVIT OF JOHN P. HILTZ, Jr.
ON BEHALF OF THE CARRIERS

JOHN P. HILTZ, Jr., being duly sworn, deposes and says:

1. I am the Chairman and principal officer of the National Railway Labor Conference (hereinafter referred to as the "NRLC"), a position which I have held since August 1, 1967. I reside at 1306 Bishop Lane, Alexandria, Virginia. My office is located at 1225 Connecticut Avenue, N.W., Washington, D. C.

2. Prior to becoming Chairman of the NRLC, I was President of The Delaware and Hudson Railroad Corporation, a position which I held between 1962 and 1967. I previously was the Vice President of Operations and Maintenance (1956-1962) and the General Manager (1955-1956) of that railroad. Prior to that time, I held various positions with the New York Central Railroad Company; the Delaware, Lackawanna and Western Railroad Company; the Long Island Rail Road Company; and the Pennsylvania Railroad Company, commencing in 1934 following my graduation from the Carnegie Institute of Technology with a Bachelor of Science degree in engineering.

3. The NRLC is an unincorporated association whose membership comprises over 95 percent of the nation's Class I line-haul rail carriers and terminal railroads. Each of the railroads on whose behalf this affidavit is submitted (hereinafter referred to collectively as the "carriers") is a member or the subsidiary of a member of the NRLC. The NRLC and three regional Carriers' Conference committees -- the Eastern Carriers' Conference Committee, the Southeastern Carriers' Conference Committee, and the Western Carriers' Conference Committee -- represent member carriers in national multi-carrier labor negotiations with organizations representing their employees, including the United Transportation Union (hereinafter "UTU"), the Brotherhood of Railway, Airline & Steamship Clerks, Freight Handlers, Express and Station Employes (hereinafter "BRAC"), the Brotherhood of Maintenance of Way Employes (hereinafter "BMWE"), and the Hotel & Restaurant Employees & Bartenders International Union (hereinafter "HREB"), and in general advise those carriers about labor relations matters. The NRLC and the Carriers' Conference Committees

represented the carriers in all of the national negotiations with the four unions identified above in the labor disputes which I discuss below. I was the principal spokesman for the carriers in all such negotiations.

4. The UTU was created, effective January 1, 1969, by a merger of the Brotherhood of Locomotive Firemen and Enginemen, the Brotherhood of Railroad Trainmen, the Order of Railway Conductors and Brakemen, and the Switchmen's Union of North America. It represents approximately 140,000 employees of the carriers. These employees operate the railroad equipment and machinery that is involved in train movements in the yard and over the road. The only operating employees of the carriers not represented by the UTU are the engineers represented by the Brotherhood of Locomotive Engineers.

5. BRAC, BMWE, and HREB together represent approximately 220,000 non-operating employees of the carriers. BRAC represents clerical, office, station and storehouse employees, ticket agents and telegraphers, and the patrolmen engaged in providing security for railroad property. BMWE represents employees whose function it is to maintain and improve railroad track, bridges, and buildings. HREB represents chefs, cooks, and waiters.

6. Except as may be otherwise indicated, the statements made herein are based upon my personal knowledge, upon information obtained in the regular course of my duties in the positions described above, or upon information in the files of the NRLC.

STATUS OF THE PRESENT DISPUTE

7. The labor disputes discussed below have arisen during a general wage and fringe benefit movement instituted by the unions. However, the particular dispute between the carriers and the three unions representing non-operating employees (BRAC, BMWE, and HREB hereafter referred to collectively as the "non-operating unions") has followed a somewhat different course and involves different issues than the dispute between the carriers and the union representing operating employees (UTU).

The dispute between the carriers and the non-operating unions

8. On or about May 29, 1969 each of the non-operating unions served each of the carriers whose employees they represent with identical notices, pursuant to Section 6 of the Railway Labor Act, proposing changes in existing agreements relating to vacations. A copy of these proposals is attached as Exhibit A hereto.

9. On or about September 2, 1969 each of the non-operating unions served each of the carriers whose employees they represent with identical sets of three notices, pursuant to Section 6 of the Railway Labor Act, proposing changes in existing agreements relating to wages and to holidays and proposing new accidental injury or death benefits. The wage proposals made by BRAC were supplemented by an additional notice served by BRAC on each of the carriers on or about October 24, 1969. A copy of the general wage proposals, as supplemented in the case of BRAC by the notice served on or about October 24, 1969, is attached hereto as Exhibit B. A copy of the holiday proposals is attached hereto as Exhibit C. And a copy of the proposals relating to accidental injury or death benefits is attached hereto as Exhibit D.

10. On or about October 15, 1969 each of the non-operating unions served each of the carriers whose employees they represent with identical notices, pursuant to Section 6 of the Railway Labor Act, proposing a guaranteed annual wage for certain classes of employees and proposing in addition new rules relating to aspects of employment security such as abolition of positions, transfers, and moving allowances. A copy of these proposals is attached hereto as Exhibit E.

11. On or about September 12, 1969 each of the carriers whose employees were represented by the non-operating unions served such unions with a notice, pursuant to Section 6 of the Railway Labor Act, setting forth counterproposals to be bargained about concurrently with the proposals made by the non-operating unions on May 29, 1969 and September 2, 1969. A copy of these counterproposals is attached hereto as Exhibit F.

12. On or about November 3, 1969 each of the carriers whose employees were represented by the non-operating unions served such unions with a notice, pursuant to Section 6 of the Railway Labor Act, setting forth counterproposals to be bargained about concurrently with the proposals made by the non-operating unions on October 15, 1969. A copy of these counterproposals is attached hereto as Exhibit G.

13. All the proposals of the parties contained in the Section 6 notices referred to in Paragraphs 8-12 above dealt with the kind of issues, including wages and fringe benefits,that have been traditional subjects of multi-carrier national bargaining or "national handling" (described in greater detail below) in the railroad industry. In each of their Section 6 notices the non-operating unions requested each of the carriers to bargain about the various proposals on a multi-carrier national basis in accordance with the established practice, as follows:

> "In the event that we are unable to reach an agreement upon the foregoing request at such separate system conferences, we further propose that the matter be handled on a joint national basis.
>
> "In accordance with established procedure which has been followed for more than thirty years, and on the assumption that an agreement may not be reached in separate system conferences, our organization has joined with other organizations serving a like notice upon you and other carrier managements, in the creation of an Employees' National Conference Committee, composed of the Chief Executives of the Brotherhood of Railway Clerks, including the TC Division and Allied Services Division-Patrolmen's Section, Maintenance of Way Employes and Hotel and Restaurant Employees' and Bartenders' International Union.
>
> "In the event an agreement is not reached in our separate system conferences, we request that you join with other carrier managements who are receiving a like notice, in the creation of a Carriers' National Conference Committee which will be authorized, like our Employees' National Conference Committee, to negotiate to a conclusion in accordance with the procedures of the Railway Labor Act, the subject matter of this notice."

In accordance with that request and with the established practice followed for many years, when no agreement was reached in the initial conferences on

the individual properties, the carriers authorized the NRLC and the Carriers' Conference Committees to negotiate the dispute created by the Section 6 notices referred to above to a conclusion in multi-carrier national bargaining. The non-operating unions likewise authorized a National Conference Committee, under the chairmanship of Mr. A.R. Lowry, President of the Transportation Communication Division of BRAC, to negotiate the issues raised by the notices to a conclusion.

14. Multi-carrier national bargaining by the national representatives of the parties commenced on or about January 6, 1970 and continued from time-to-time thereafter until January 14, 1970. The conferences were then terminated and the parties applied for the mediatory services of the National Mediation Board (hereinafter referred to as the "Board"), pursuant to Section 5 First of the Railway Labor Act (45 U.S.C. § 155 First). The Board docketed the dispute as its Case No. A-8853 on June 16, 1970 and commenced mediation on June 29, 1970. That mediation, which was conducted between the national representatives of the parties on a multi-carrier national basis, also failed to bring about an agreement settling the dispute. On July 29, 1970, under Section 5 First of the Act (45 U.S.C. § 155 First), the Board requested the parties to submit the issues raised by the Section 6 notices referred to in Paragraphs 8-12 above to arbitration pursuant to Sections 7 and 8 of the Act (45 U.S.C. §§ 157, 158). The carriers accepted the proffer of arbitration in a letter dated July 31, 1970, but the non-operating unions declined the proffer in a letter bearing the same date. The Board then notified the parties by letter dated August 10, 1970 that its mediatory efforts had failed and that it was on that day terminating its services.

15. The parties were required by Section 5 First of the Railway Labor Act (45 U.S.C. § 155 First) to maintain the status quo in the dispute for a period of 30 days after the Board terminated its services. If during

this 30-day period the President had created an emergency board to investigate the dispute pursuant to Section 10 of the Act, 45 U.S.C. § 160, the parties would have been required to maintain the status quo for up to an additional 60 days. During the 30-day period following termination of mediatory services by the Board, further negotiations took place on a multi-carrier basis between the national bargaining representatives of the parties but no agreement was reached. No emergency board was created by the President, and the parties accordingly became free as of September 10, 1970 to exercise the kind of self-help that is authorized by the Railway Labor Act in these circumstances.

16. The parties agreed to extend the status quo required by Section 10 through September 14, 1970 and to engage in additional negotiations during that period, at the request and with the assistance of officials of the Department of Labor and the National Mediation Board. However, no agreements settling the dispute have been reached.

The dispute between the carriers and the UTU

17. On or about October 20, 1969 the UTU served each of the carriers with identical notices, pursuant to Section 6 of the Railway Labor Act, proposing changes in existing national agreements relating to wages. A copy of these proposals is attached hereto as Exhibit H.

18. On or about November 20, 1969 the UTU served each of the carriers with identical notices propcsing wage and fringe benefit adjustments with respect to cost-of-living increases, vacations with pay, paid holidays, expenses away from home, sick leave, car scale additive, overtime in passenger service, and basic work month. A copy of these proposals is attached hereto as Exhibit I.

19. On or about November 7, 1969 the carriers served the UTU with a notice, pursuant to Section 6 of the Act, setting forth counterproposals to be bargained about concurrently with the proposals made by the UTU on October 20, 1969. A copy of these counterproposals is attached hereto as Exhibit J.

20. The proposals of the parties contained in the Section 6 notices referred to in paragraphs 17-19 above, like the proposals exchanged by the carriers and the non-operating unions, dealt with wage, rule, and fringe benefit issues that have been traditional subjects of national handling by the parties. The Section 6 notices served by the UTU requested each of the carriers to bargain about the various proposals on a multi-carrier national basis in accordance with the established practice, as follows:

> "This request is being presented to other railroads on this date; and in event settlement is not reached, it is requested that you join with other railroad companies in authorizing a national conference committee to represent you in dealing with the subject."

When no agreement was reached in the initial conferences on the individual properties, the parties followed the established practice and authorized the dispute to be handled by their national bargaining representatives, meaning in the case of the carriers the NRLC and the Carriers' Conference Committees.

21. Multi-carrier bargaining by the national representatives of the parties commenced on or about March 17, 1970 and continued from time-to-time thereafter until April 15, 1970. The conferences were then terminated, and on April 16, 1970 the carriers applied pursuant to Section 5 First of the Railway Labor Act (45 U.S.C. § 155 First) for the mediatory services of the Board in connection with the three Section 6 notices referred to in Paragraphs 17-19 above. On the same date the UTU applied for the Board's services in connection with its own Section 6 notice of October 20, 1969 and the carriers' counternotice of November 7, 1969.

22. On May 19, 1970 the Board docketed as its Case No. A-8830 the dispute arising out of the two Section 6 notices of October 20, 1969 and November 7, 1969. On June 24, 1970 the Board incorporated in its Case No. A-8830 the dispute arising out of the UTU notice served on November 20, 1969. Mediation commenced on June 30, 1970. That mediation, which was conducted between the national bargaining representatives of the parties

on a multi-carrier basis, also failed to produce a settlement. On August 3, 1970, in accordance with Section 5 First of the Railway Labor Act (45 U.S.C. § 155 First) the Board requested the parties to submit the dispute created by the three Section 6 notices of October 20, 1969, November 7, 1969, and November 20, 1969 to arbitration pursuant to Sections 7 and 8 of the Act (45 U.S.C. §§ 157, 158). By letter dated August 6, 1970 the carriers advised the Board through their national representatives that they accepted the proffer of arbitration subject to agreement by the parties on the provisions of an arbitration agreement. However, the proffer of arbitration was declined by the UTU in a letter also bearing the date of August 6, 1970. Accordingly, on August 10, 1970 the Board notified the parties in writing that its mediatory efforts had failed and that it was on that day terminating its services.

23. As was true in the case of the dispute involving the non-operating unions, the parties were required by Section 5 First of the Railway Labor Act (45 U.S.C. § 155 First) to maintain the status quo in their dispute for a period of 30 days after the Board terminated its services. The national bargaining representatives of the parties did meet during this 30-day period in a further attempt to compose their differences, but no agreement was reached. The President has not created an emergency board under Section 10 of the Act, which would have had the effect of requiring the parties to maintain the status quo for up to an additional 60 days. Accordingly, the parties became free as of September 10, 1970 to exercise the kind of self-help that is authorized by the Railway Labor Act in the circumstances I have described, but they agreed to extend the status quo required by Section 10 through September 14, 1970 and to engage in additional negotiations during that period, at the request and with the assistance of officials of the Department of Labor and of the National Mediation Board. However, no agreement settling the dispute has been reached.

MULTI-EMPLOYER BARGAINING AND WHIPSAW STRIKES

24. For many years, the carriers have bargained on a multi-carrier national basis with the unions representing their employees, when a particular union either serves the carriers generally with similar proposals under Section 6 of the Railway Labor Act (45 U.S.C. § 156) or is served by the carriers generally with similar proposals. This multi-carrier national bargaining often is referred to as "national handling." If the particular dispute is not settled in the initial conferences on the individual carriers, all subsequent bargaining is conducted on a multi-carrier national basis between the national representatives of the carriers (now the NRLC and the Carriers' Conference Committees, as indicated above) and national representatives of the union or unions involved until a national agreement disposing of the dispute is reached. Proposals for changes in general wage rates or for other wage adjustments generally, including the allowance of various fringe benefits, are among the kind of proposals which are particularly suitable for national handling, and have been the most frequent subject of multi-employer national bargaining with the four unions now merged into the UTU, with the three non-operating unions, and with other unions.

25. As I noted in Paragraphs 8-12 above, the Section 6 notices served by the non-operating unions on May 29, 1969, September 2, 1969, and October 15, 1969 and the notices served by the carriers on September 12, 1969 and November 3, 1969 dealt with the subjects of basic wage rates, vacations, holidays, accidental injury or death benefits, and guaranteed annual wage and other aspects of employment security such as abolition of positions and moving allowances. Dating at least as far back as 1932, bargaining on all these subjects has consistently been handled on a multi-carrier basis between national representatives of the carriers and the three non-operating unions involved in the present dispute. In the

depression years of 1932, 1933, and 1934 regional or national agreements resulting in decreased wages were concluded between the carriers and the non-operating unions. Regional or national agreements resulting in increased wages have been entered into by the carriers with one or another of the three non-operating unions on August 5, 1937; December 1, 1941; January 17, 1944; May 25, 1946; September 3, 1947; March 19, 1949; March 18, 1953; August 21, 1954; December 3, 1954; December 21, 1955; November 1, 1956; August 19, 1960; June 15, 1962; November 20, 1964; December 16, 1966; January 13, 1967; December 28, 1967; and May 17, 1968. Regional or national agreements relating to vacations have been entered into by the carriers and one or another of the three non-operating unions on December 17, 1941; February 23, 1945; May 1, 1945; August 21, 1954; August 19, 1960; November 20, 1964; January 13, 1967; September 30, 1967; and December 28, 1967. With respect to holidays, regional or national agreements have been entered into by the carriers with one or another of the non-operating unions on August 21, 1954; August 19, 1960; November 20, 1964; and December 28, 1967. Health and welfare benefits have been the subjects of national or regional agreements on December 21, 1955; November 1, 1956; August 19, 1960 and November 20, 1964. While prior to October 15, 1969 the non-operating unions had not served any Section 6 notices proposing a guaranteed annual wage, other aspects of employment security such as the protection of positions against abolition and moving allowances have been the subject of national agreements, notably the Job Stabilization Agreement of February 7, 1965, between the carriers and the three non-operating unions.

26. Similarly, the issues raised by the Section 6 notices served by the UTU on October 20, 1969 and November 20, 1969 and by the Section 6 notice that the carriers served on November 7, 1969 have been traditional subjects of national handling by the parties. The UTU, as I noted in Paragraph 4 above, was created, effective January 1, 1969, by a merger of the Brotherhood

of Locomotive Firemen and Enginemen, the Brotherhood of Railroad Trainmen, the Order of Railway Conductors and Brakemen, and the Switchmen's Union of North America. As noted in Paragraphs 17-18 above, the Section 6 notices served by the UTU on October 20, 1969 and November 20, 1969 proposed basic wage increases and fringe benefit adjustments relating to cost-of-living allowances, vacations with pay, paid holidays, expenses away from home, sick leave, car scale additive, overtime in passenger service, and basic work month. So far as wages are concerned, going back to 1932, regional or national agreements have been concluded by the carriers and one or another of the four predecessor unions of the UTU on more than 30 occasions, with one or more agreements being made in each of the years 1932, 1933, 1934, 1937, 1941, 1943, 1944, 1946, 1947, 1948, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1960, 1962, 1964, 1966, 1967, 1968, and 1969. Holidays or vacations were the subject of regional or national agreements with one or another of the UTU predecessor unions in 1944, 1945, 1949, 1953, 1954, 1957, 1960, 1961, 1964, 1966, 1967, 1968, and 1969. Similar agreements dealing with overtime or basic work month (or work day or work week) were reached in 1947, 1948, 1951, 1952, and 1955. Agreements covering the other items to which the UTU notices relate have been less frequent, but they have been reached on a regional or national basis after multi-carrier bargaining. For example, national agreements containing cost-of-living adjustment provisions were concluded with the operating unions in 1951, 1952, 1953, and 1957. A national agreement was concluded with all the operating unions on June 25, 1964 dealing with, among other things, expenses away from home.

27. As I have already noted, the 1969 Section 6 notices served by the UTU and the non-operating unions requested national handling of the various proposals. As I have also noted, the labor disputes created by the notices were in fact handled on a national basis throughout the exhaustion of the procedures of the Railway Labor Act. In my view the union notices and the actual course of negotiations clearly demonstrate the unions' recognition

that national handling with respect to their proposals was both appropriate and necessary.

28. Where general wage adjustments and other problems common to the industry are concerned, union leaders have recognized the need for national handling in words as well as in practice. Thus, in 1921, the Federated Shop Crafts opposed a carrier proposal to do away with then-existing national agreements on the ground that the burden of negotiating individual-carrier agreements on subjects covered by national agreements would be excessive, and that under the law they had the "right to negotiate uniform conditions of employment on all roads. . . ." In that connection, the Unions contended "that an agreement applying to all railroads will be a great, if not the greatest, factor in assisting to establish efficient and economical railroad operation." Accordingly, the Unions authorized their negotiators to negotiate "a National Agreement which would apply alike to all roads." Presentation by Railway Employees' Department before U.S. Railway Labor Board, pp. 2, 5. Again, in the so-called Union Shop Case in 1952, counsel for the seventeen unions representing non-operating railroad employees pointed to the fact that "every national movement, whether for wage or rules changes, had been handled and finally disposed of on a national basis" since 1931, and urged that:

> "As a result of the foregoing pattern consistently followed in every national movement for twenty years, national handling has become firmly established as a part of the necessary procedure for the handling of national movements. It has uniformly been recognized by both sides as essential if collective bargaining of a uniform national proposal is to function, else the bargaining process cannot hope to dispose of such an issue in anything like an ordinary fashion. The refusal to bargain concertedly in such a situation thus amounts simply to a refusal to have the only type of collective bargaining that can effectively dispose of the issues. . . ." Brief for the Seventeen Cooperative Labor Organizations, at 79.

A former President of the Brotherhood of Railroad Trainmen stated in testimony quoted by Emergency Board No. 116, "there is nothing that upsets the railroad men more than to find that somebody else gets more money for doing the same character of work that he is doing." Report to the President of

Emergency Board No. 116, at 13 (March 5, 1957). Similarly, Charles Luna, formerly president of the Trainmen's Union and now President of the United Transportation Union, recently testified that wages and fringe benefits

> "nearly have to be the same on all railroads. If you didn't where you have, I would say, ten or fifteen railroads in the same town and five or six of them belonged to the same lodge, if they were different you would have chaos every time you had a lodge meeting." Tr. of Proceedings in Atlantic C. L. R.R. v. Brotherhood of R.R. Trainmen, Civil Action No. 2908-66 (D.D.C. 1966), at 488.

So, too, Mr. George E. Leighty, then Chairman of the Railway Labor Executives Association (which then included the predecessors of the UTU and the non-operating unions) and President of the Transportation-Communication Employees Union, testified before a Congressional Committee three years ago, in response to a question as to whether it was practical for unions and management in the railroad industry to negotiate about industry-wide problems on other than a national basis, that: "I do not consider it practical. You would have to have 200 or 300 separate negotiations in the railroad industry in each movement. I don't believe it would work out." Hearings before the House Committee on Interstate and Foreign Commerce on H.J. Res. 559, 90th Cong., 1st Sess. (1967). According to Mr. Leighty,

> "insofar as national negotiations are concerned, as they have worked out in the past, it has been advantageous to both of us. I think it has helped us materially; it has helped the carriers materially. It has prevented, in my opinion, a great deal of chaos." Id., at 257.

29. The importance of multi-carrier national bargaining in the railroad industry has also been noted by the National Mediation Board, as evidenced by the following statement from page 3 of its Third Annual Report (1937):

> "The faculty of the railroads collectively and the representatives of their employees to hold joint conferences and enter into understandings constructively disposing of problems affecting the industry and its employees as a whole is indicative of the steady basic improvement which has been taking place in recent years in the attitude of railroad managements and railroad labor organizations toward one another. The consummation of such nation-wide understandings is, in the opinion of the National Mediation Board, deserving of all possible encouragement and commendation. Insofar as other problems may arise common to all the railroads, regionally or nationally, it is the hope of the Board that they may likewise be considered in joint conference and disposed of through understandings regional and nation-wide in scope."

And see, e.g., Thirty-Fourth Annual Report (1968), at pp. 10-11; Twenty-Sixth Annual Report (1960), at p. 9. At least one emergency board appointed by the President has expressed similar views:

> "Both parties . . . have repeatedly and consistently recognized national handling as an essential procedure for disposing of national movements on a great diversity of issues covering not merely wages but a wide variety of rule issues covering not merely vacations, hours, starting times, craft lines, the 40-hour week, loss of job on railroad consolidations, and, in 1943, a union-shop proposal. In the face of such a firmly established and recognized pattern of collective bargaining on a national scale a finding that a demand for such a procedure in this case was improper could not be made." Report of Emergency Board No. 98, at 57 (1952).

30. The necessity for national bargaining appears obvious insofar as wages and other fringe benefit elements in the overall wage package are concerned. Labor costs amount to approximately 50% of railroad operating expenses and thus have a highly important bearing upon the ability of a carrier to compete. If wage adjustments were handled on an individual carrier basis, each carrier would fear to settle because of the possibility that a competing carrier might make a better deal, and there would be every incentive to delay a settlement as long as possible short of a strike. This would interfere with the ability of the unions to obtain early agreements, as would the sheer time and manpower demands of separate bargaining throughout the procedures of the Railway Labor Act with each of over 100 carriers. The union officials on a particular railroad also would be forced into intransigent positions for fear that their members would become dissatisifed if other railroads achieved larger wage increases.

31. Destruction of the established multi-carrier bargaining unit and negotiation of individual agreements, rather than a national agreement negotiated nationally, almost inevitably will be the result of whipsaw strikes by the UTU or by any of the non-operating unions, unless such whipsaw tactics are enjoined by the courts. When a union strikes and pickets a

carrier, the carrier's employees represented by other unions almost always refuse to cross the picket lines. This means that the carriers subjected to the whipsaw strikes will be unable to operate, even if the absence of the employees actually on strike did not itself produce that result -- which of course it certainly would in the case of the UTU employees and almost certainly would in the case of the large non-operating unions. It is very difficult, if not impossible, for a single carrier or for a few carriers to stand out alone against the full power of national unions so as to resist capitulation for any considerable period of time when competing railroads as well as other modes of transportation continue to operate. That is demonstrated by the results in the crew consist dispute between most of the nation's railroads and the Brotherhood of Railroad Trainmen, following the decision in Brotherhood of R.R. Trainmen v. Atlantic C. L. R.R., 383 F.2d 225 (D.C. Cir. 1967). After it was held in that case that the crew-consist dispute should be handled locally rather than nationally, because of the local nature of the crew-consist dispute and the past history of local rather than national crew-consist agreements, the Brotherhood of Railroad Trainmen -- through whipsaw strikes and the threat of such strikes -- picked the carriers off one-by-one or a few at a time until today almost all have been forced to agree, in individual carrier negotiations, to restore the great bulk of the crew positions found to be unnecessary under guidelines set by a special arbitration panel established to determine the issue by Public Law 88-108.

32. Not only would the whipsaw strikes threatened by the UTU and the non-operating unions destroy the multi-carrier bargaining unit which has been established for four decades with respect to the issues which are the subject of these disputes -- e.g., basic wages and other elements of the overall wage package -- and force the granting of unjustifiable wage increases to the ultimate injury of the public as well as of the carriers, but they also would result in shutting down the operations of the struck carriers to their obvious and irreparable injury. The proper means to settle the dispute between the carriers and the unions is a national agreement. That is the means

envisaged by the Railway Labor Act, and it would accord with the established practice of many years. By that means, multi-carrier bargaining of national wage demands would be preserved to the ultimate benefit of all concerned, and the entire industry -- both management and labor -- could go forward to serve the public better and obtain the increased traffic and earnings which must be obtained if future wage increases are to be paid.

33. In my judgment, if the UTU or any of the non-operating unions is permitted to whipsaw the carriers in these disputes, every other union with which the carriers deal will resort to the same tactics in disputes over wages and other matters that heretofore have been bargained and agreed upon nationally. For all practical purposes, multi-carrier bargaining will have been destroyed not only insofar as the UTU and the non-operating unions are concerned, but also throughout the entire range of the carriers' labor relations. Furthermore, in my opinion, the carriers and the public will be subject not only to the whipsaw strikes that are now threatened but also to subsequent whipsaw strikes and threats thereof that will continue until all the carriers have been coerced into making individual settlements.

34. The period in which the parties are required by Section 10 of the Railway Labor Act, as extended by agreement, to maintain the status quo expires at 12:01 A.M. on September 15, 1970, in regard to the carriers' disputes with each of the three non-operating unions and in regard to the carriers' dispute with the UTU. See Paragraphs 16 and 23 above. I have been informed by several of the carriers within the last few hours that they have been told by the general chairmen or other officials of one or more of the four unions that three of the carriers will be struck on or about 12:01 A.M. on September 15, 1970 (local times). The three carriers are the Baltimore & Ohio Railroad Company, the Chesapeake & Ohio Railway Company and the Southern Pacific Company. The number of the reports that I have received to that effect has convinced me that this information is true, and that whipsaw strikes of those three railroads will be instituted by the four unions involved in the disputes on or about 12:01 A.M. on September 15, 1970 (local times). Those railroads are among the largest and the threatened whipsaw strikes, if not

restrained, will cause each of them to lose hundreds of thousands of dollars in gross operating revenues each day the strike continues, as well as causing other great and irreparable injuries to those carriers, to their employees, and to the public.

CITY OF WASHINGTON
DISTRICT OF COLUMBIA

John P. Hiltz, Jr.

Sworn to and subscribed before me this 14th day of September, 1970.

Notary Public.

Mr. KUYKENDALL. Mr. Hiltz and Mr. Ailes, I thank you for being here and appreciate your statements.

To carry this a little further, and I think this is something that I have discussed with every witness and shall discuss with our friends from labor when they are here tomorrow or next week, or whenever they are scheduled to be here, but we don't know for sure whether we are going to get any legislation out of this Congress, as Mr. Harvey said and if it is not now, I think it will be, though, in the fairly near future. There are not many things we can say for sure will be in the legislation as it comes out, but I think there are a couple of things we can say for sure that will not be in it.

I think the main thing, continuing as to what Mr. Harvey said, following that up, I don't think the committee is likely to pass legislation that will, under any circumstances, allow either a national strike or this problem will end up back in our laps.

So, I think we kind of should draw some little ground rules here that we might as well accept on the front end. I know I will fight forever against any sort of proposal that if a President of the United States or a secretary or chairman of a panel or a panel or anyone else guesses wrong, then we end up with it back in our laps.

We are not going to tolerate it, as far as I know, and almost anyone on this committee is concerned.

I think two things are equally undesirable, our having to settle it or the national strike.

I think we should realistically recognize that as far as a national strike is concerned, that all of the proposals, except possibly the labor proposal, and I am not quite clear in my own mind what it does when a selective strike passes 40 percent—I am not clear there—but all of the other legislation does take away the right to a national strike.

Now, is it not wise for us to just go ahead and face up to that fact, that all of this legislation, with the possible exception of the labor measure, and I will talk to them about it and won't ask you, does take away the right to a national strike?

I want to carry Mr. Harvey's question a little further, if I may.

Mr. Ailes, I believe I am going to ask you this question, because Mr. Hiltz does not or won't even recognize the fact that there may be a partial strike or selective strike, so I will ask you this question. You see, what we are stuck with here in trying to define a selective strike is, as in Mr. Harvey's words, the threshold that we have to approach. You see, you in the railroad industry do not like this term, but for want of a better term, instead of using single carrier areas or single route areas, I will call them "monopoly areas" and we have them so you might as well just use this term and we know in the monopoly areas that, even though 20 percent of the region may be struck, that in those monopoly areas, if it happens to be that carrier is 100 percent struck, we know this.

The thing we do not know, however, is, for instance, the point that Mr. Hiltz brought up that has not been mentioned in the testimony before—that is, you can have an area serviced by half a dozen carriers, if there were that many, but there are not, and I guess about three is the maximum service in an area, and individual areas which do not have siding for more than one carrier, they are still 100 percent out of business.

So, this is the type of thing that I would like from you, a frank, openminded discussion with full understanding by the committee that you don't approve of a partial strike. We know that, but we need your help here as to how in the world we are going to go about defining this if we go that route. That is with the understanding, I will go on record, you don't approve of this route.

Mr. AILES. Our problem is in national handling and if we can put this aside for a minute, we can address your problem.

Mr. KUYKENDALL. May I say something for the record here. The whipsaw tactic that could be granted with partial strike or selective strike is something I won't have any part of, any legislation that would in any way approve that tactic.

Mr. AILES. Well, the court has ruled it out anyway. Judge Levinthal's opinion said if a strike is called for the purpose of breaking up national handling, it is illegal. So this is the state of the law at the present time.

The problem I have is, of course, the other half of the story. That is, you can strike railroad "A" to make railroad "B" and "C" agree to something, hold them hostage, as the lower court says.

Putting that to one side, I would like to read, if I may, because it is directly relevant to your question, the testimony of the Penn Central trustees here over in the Senate in the Commerce Committee in connection with funding. They were talking about: "Can you liquidate this railroad?" This is directly relevant to the problem of what happens if a railroad is struck.

They said:

> By the most careful possible estimates, over 215 million tons of traffic out of a total of 321 million being handled by Penn Central could not practically be diverted to other transportation means. This varies from commodity to commodity, from 90 percent of the pulp and paper traffic, for instance, to 10 percent of the machinery equipment, and it includes 18 million tons, 350,000 cars which Penn Central moves annually and switching services between plants on its line and other railroads for their road haul and another 22 million tons, 360,000 cars moved and switching services between points in the same industry or the same terminal area, 95 percent of which could not in practical form be moved in any other way.
>
> Only Penn Central provides rail service to 350 large industrial plants, utilities and warehouses, each shipping or receiving more than 1,000 cars per year. So, 160 coal mines shipping 40 million tons a year to 61 defense facilities. Of the 4,000 locations, about two-thirds are scattered throughout the Eastern U.S., and are being served by no other railroad.

Penn Central's liquidation in this form would mean stopping operations on 45 percent of the train-miles now run by Amtrak, and 75 percent of Amtrak's facilities and I cite this as an example, and we were talking about it last night, and several of us remembered the Penn Central people made a calculation and what they say in effect is this:

About two-thirds of their traffic is tied to Penn Central and it goes down if Penn Central goes down.

As I said earlier, Secretary Volpe uses a figure of only 15 percent of total railroad traffic as divertable to other modes. So, this gives you some notion of the dimensions of the problem when you take out a specific railroad.

Mr. KUYKENDALL. May I get into an area, into a different area, something that is just rather a shadow in the background and I think it is one that we need clarification on the record.

It is fairly general knowledge that the labor unions very wisely, through the years, developed what they call strike funds, and the general public is well aware of this.

Mr. AILES. Right.

Mr. KUYKENDALL. All right, what self-protection methods do you have, and what mutual protection methods do you have at the time of strike?

Mr. AILES. The railroad industry has a strike insurance program which is not insurance in the usual sense—you don't pay premiums with the insurer accepting the risk, the insurance company serves as the disbursing-collection agent and the participants in the plan receive payments from this fund, from this insurance company, during a period of strike, payment of two types, depending upon whether the company subscribed to one or both plans. The insurance company then bills the other participants in the plan who put up the money, so it is a mutual aid plan handled by an insurance company. The payments have to do with this.

Mr. KUYKENDALL. You, yourself, are insured by somebody else such as a banker?

Mr. AILES. Somebody else—a disbursing agent is what it is.

Mr. KUYKENDALL. All right.

Is it not true then that the situation, a really serious money losing carrier, such as one of the airlines, might be better off in a strike than operating the way he is?

Mr. AILES. I would think struck indefinitely——

Mr. KUYKENDALL. Well, the airlines that happened to be on strike came out better than the ones operating.

Mr. AILES. You mean struck indefinitely, but I can't believe it is true.

Mr. KUYKENDALL. But temporarily, it showed up in the figures.

Mr. AILES. I have no doubt and we made a lot of calculations that way ourselves, but I guarantee you the Northwestern was very much opposed to being struck, and withdrew their power of attorney to Jack Hiltz as the national bargaining agent and got an injunction requiring Luna to negotiate with them separately, even though in the strike insurance program.

Mr. KUYKENDALL. So, wouldn't you probably credit that to the fact that if—it is just, I think you are probably aware that those of us across the South have been vastly involved with keeping the textile mills from converting to cotton synthetics because once they went to that, it was hard to get them back. When you lose a customer, you cant's always get him back, and that is one of the biggest reasons.

Mr. AILES. You are absolutely right, and the thing the railroads worry about is whether they lose customers permanently. It is a major consideration.

Mr. KUYKENDALL. But the point is, it could lose a customer, a working man loses a job, it is all part of the same pattern. If you lose business and have to cut back, then labor is cut back, too.

Mr. AILES. Of course, but I was addressing myself to the proposition which I thought was your point, or I need to turn it around a bit.

The strike insurance doesn't make anybody want to take a strike as an end in itself, because there are other problems that the strike causes for the companies.

Mr. KUYKENDALL. I want to make it clear, the workingman who

gets a partial paycheck because of the strike fund, it is still less than his regular paycheck.

Mr. AILES. Right.

Mr. KUYKENDALL. So, it is to a degree.

Mr. HILTZ. Not when covered by unemployment insurance.

Mr. KUYKENDALL. I will get to that in a minute. Up to that point, though, there is some balance in the protection back and forth. In each case you protect with your own money, the workers and the union funds, you and the other funds.

Mr. AILES. The union supports its members on the railroads struck. The railroad industry as an industry seeks to support the railroads that are struck.

Mr. KUYKENDALL. That is a balanced situation. How did this unemployment compensation thing ever come about? I think this is something not generally known in the Congress. How did it happen and when?

Mr. HILTZ. I think it was 1938, and I think it is fair to say the union sold a bill of goods to the Congress and they bought it.

Mr. KUYKENDALL. They are pretty good salesmen, it sounds like.

Mr. AILES. The payments amount—it is remarkable, they amount to $12.75 a day, and are not to be included in income taxes. It has been the law since 1940, I believe.

Mr. HILTZ. Congressman Kuykendall, if you pass selective strike legislation, I do not believe it follows that you will never see a railroad dispute again.

Mr. KUYKENDALL. Sir, I am on record, I believe, as already saying that I see very little possibility of a selective strike provision not deteriorating into a national emergency. I believe I am in the record as having said so.

However, I don't think we are going to pass a bill in this committee without it. Do I make myself clear?

Mr. HILTZ. Yes, but I don't think just putting it in the legislation assures that you will never see a railroad dispute again. I would just like to state an example.

Mr. KUYKENDALL. There is one thing I know we have to have, an orderely system of finality. That is the only thing I am sure of in the whole project. Most of it has not gelled at all in hardly anyone's mind, and the best system I can see for arriving at a process of finality that it equally frightening to both sides, not equally agreeable, equally frightening, is the final offer selection method.

That is the only reason I am for it. That is the one I see that is equally frightening to both sides. This is the only thing that is gelled in my mind.

I know some things I think the committee will or will not do. This is why we asked your help.

Mr. Chairman, thank you.

Mr. DINGELL. Thank you, Mr. Kuykendall.

Mr. Murphy?

Mr. MURPHY. No questions.

Mr. DINGELL. Gentlemen, you have suggested a series of options be vested in the President.

Mr. AILES. Three Secretaries, I believe.

Mr. DINGELL. Or the three Secretaries.

First of all, I am curious why you have chosen to do it with regard to the three Secretaries as opposed to the President?

Truman had a sign, "The buck stops here." I am curious why you would choose three Secretaries over the President, all of the other bills vest the power in the President as I understand?

Mr. HILTZ. These three Secretaries we feel will make the decision in the first instance. They transmit their findings to the President under ordinary circumstances, and we feel the "buck" might as well stop with them, rather than pass it on.

Mr. AILES. They are the heads of the departments that are really directly involved from the nature of the problem, I guess it is basically. Well, I would have to say I can't think that this is a distinction that makes a tremendous amount of difference, because you have certain administration policies with respect to this sort of matter anyway.

Mr. DINGELL. Well, can you name another situation which is handled by three Secretaries as opposed to the President, either in legislation before the committee or in law in force now?

Mr. AILES. There are a whole lot of situations where the authority is in one Secretary.

Mr. DINGELL. I am talking about choice of option under labor law. Isn't it the President in the case of the Emergency Board in connection with the strike legislation this committee passed out in recent times? We have always vested the power in the President.

Mr. HILTZ. The Secretaries do have some responsibility in the Cost of Living Council.

Mr. AILES. Basically, as I say, I can't believe there is a tremendous difference involved. This is going to be administration policy.

Mr. DINGELL. That is not really responsive to the question, and I don't see why you don't trust the President rather than give it to the three Secretaries. In the other three alternatives you must have a reason.

Mr. AILES. May I ask one of the draftsmen?

Mr. DINGELL. You can ask anyone, but I am curious to know why.

Mr. AILES. Bill Denton is one of the railroad lawyers working on it from the beginning, and I think it might be helpful to the committees to have him state it with your permission.

Mr. DINGELL. Certainly.

Mr. DENTON. The truth of the matter is the answer has been given already. But in all labor disputes going through the various procedures where the Government is focusing attention on our disputes, these Secretaries, at least the Labor and Transportation, become involved anyway and, as you said, we think it is simple to have the "buck" stop there. There is no magic in the provision as opposed to other proposals before you.

Mr. HILTZ. I don't think the provision is vital to the legislation.

Mr. AILES. I can testify personally on one of the nights in this dispute I sat up all night with two of the Secretaries which were very much involved, the Secretaries of Labor and Transportation, so I think this is why they were selected.

Mr. DINGELL. I am sure you were involved?

Mr. AILES. But they are generally involved in judgments.

Mr. DINGELL. I would like to ask you now: You have listed a series of options in the industry bill. Would you run through them quickly for us?

Mr. HILTZ. The first is do nothing, and the second is emergency board procedure, and the third is compulsory arbitration, and the fourth is final offer selection.

Mr. DINGELL. Do each of the options as a workable tool have the endorsement of the industry groups?

Mr. HILTZ. In the particular situation that they would apply to; yes, sir.

Mr. AILES. We think there are situations in which each would be applicable.

Mr. DINGELL. The final offer selection and the compulsory arbitration very long have been goals of the industry?

Mr. HILTZ. Not the final offer selection. The final offer selection is a relatively new development, but compulsory arbitration has been thier goal for a long time.

Mr. DINGELL. Let's say we have a national strike, which of these will be selected by the President and the panel of Secretaries?

Mr. HILTZ. We wouldn't have a national strike under our bill. You would come to an impasse. The National Mediation Board would advise to the Secretaries there is an impasse.

Mr. DINGELL. Then, which would the Secretaries choose as a practical matter?

Mr. HILTZ. They would appoint a selection panel and the panel, after looking over the circumstances, would pick one of these particular weapons.

Mr. DINGELL. All right.

Is there a probability in your minds that they are going to choose to do nothing?

Mr. HILTZ. Not for a national strike; no. But, you see, Mr. Chairman, there is no threshold on our bill, so you might have Podunk & Western struck and that will not present a problem for anybody, so the transportation panel will probably choose to do nothing.

Mr. DINGELL. But that is obviously not the kind of situation that you are aiming at here; is it?

Mr. HILTZ. Yes, sir; we are aiming at any impasse in the railroad industry over a major railroad labor dispute.

Mr. DINGELL. No; but this bill is really aimed at national strike situations, major confrontations and conflicts over work rules and things such as this, and not aimed at Podunk & Western?

Mr. HILTZ. Yes; it is. It is aimed at every railroad labor dispute of a major category, as distinguished from a minor grievance dispute.

Mr. DINGELL. Let's for the purpose of argument, say the industry, everybody knows we have a national strike coming up, say, what options will realistically be selected by the panel that you have enunciated?

Mr. HILTZ. I would think either the final offer selection or compulsory arbitration.

Mr. DINGELL. And these are ends that have already been endorsed by the industry; am I correct? These are acceptable, industry has generally advocated them over the years; am I correct?

Mr. HILTZ. The final offer selection is, of course, advocated by the administration and Congressman Harvey.

Mr. DINGELL. I would assume these would be generally palatable solutions to industry?

Mr. AILES. Right.

Mr. DINGELL. So, having now gotten that, we come to a situation where these are, I assume from my association over the years with the problem in this committee, matters which are violently opposed by labor?

Mr. HILTZ. Mr. Chairman, I would say these are not always palatable to industry. I have a recollection back to the Morse Board that was not at all palatable.

Mr. DINGELL. That would not be palatable to me, either, but these are options generally agreed to by industry more or less in advance, but labor has traditionally opposed these kinds of approaches as being totally inconsistent with free collective bargaining.

So, don't we come up with the situation of giving industry generally what it wants in terms of meeting strikes and giving labor something that is frankly not prolabor. Isn't that the bill before us?

Mr. HILTZ. Insofar as national strike, yes, sir, I think we have to agree with that, but there are many other types of strikes in the railroad industries, many other impasses reached which could be resolved by the other two steps and the other two steps could be selected.

Mr. DINGELL. I will yield to my friend from Michigan. He wants to comment.

Mr. HARVEY. I want to be fair and state it is certainly not the result of the Harvey bill and it might be of the other bills, but I know you don't want to categorize my bill.

Mr. DINGELL. Let's go to the final offer? This troubles me. We had a point raised yesterday that I think was really good. Supposing in this there was to be a proposal whereby the unions were to suggest that management would, as a result of this, take nonvoting directors on its board, three in number, who would be officers of the labor unions. Is that excluded in any fashion in the bill that you gentlemen have submitted to this committee?

Mr. HILTZ. It would be excluded by the Railway Labor Act.

Mr. DINGELL. On what grounds?

Mr. HILTZ. It does not pertain to wages, rules or working conditions. At least we would so contend that it was not a bargainable subject.

Mr. DINGELL. You say this is not a negotiable item?

Mr. HILTZ. Not a mandatorily negotiable item.

Mr. DINGELL. Well, supposing you folks were to say that labor was to take three of the directors as unsalaried officers and that would be in the final offer selection, what would be the situation then?

Mr. HILTZ. I think the same thing would pertain.

Mr. DINGELL. These would be excluded as not being subject to negotiation?

Mr. HILTZ. Yes.

Mr. DINGELL. Now, gentlemen, we are aware, I think all of us, and we have been together before in this or other rooms to discuss labor-management matters. Is the firemen's dispute settled at this time?

Mr. HILTZ. No, sir.

Mr. DINGELL. And this is something that was the subject of a long series of disputes between labor and management and supposedly was mediated to finality. I would say arbitration, and you can use your term.

Mr. HILTZ. I think it was an arbitration, mediation to finality was not used in that case, but in the Morse Board.

Mr. DINGELL. Many of the issues of the Morse Board are still around to cause mischief.

Mr. HILTZ. We are still paying the wages awarded there.

Mr. DINGELL. And rose to aggravate the situation you find yourselves in in the recent negotiations. We have here then two situations, either where we found that whole numbers of major issues supposedly set to rest are still cursing our day.

I am curious how the bills that we have before us are going to do other than postpone the day of reckoning rather than to actually settle the conflicts and miseries that we have here in collective bargaining. I don't see these bills as creating really meaningful collective bargaining, but they are simply mechanisms to impose programs on a reluctant management or union, a settlement that they would not arrive at in collective bargaining.

Mr. HILTZ. The same things happen in collective bargaining, in other words. No agreement is final from now on and forever.

Mr. DINGELL. In collective bargaining, though, they agree and they freely agree, and they have restrictive strings and lockouts and other things that can be done to create pressures on one or the other.

Mr. AILES. I think the moratorium, it is only until the next section 6 notice.

Mr. DINGELL. That is right, but it is still agreed to.

Mr. AILES. The firemen situation was: It had a 2-year rule on it, and was in effect more than 2 years, and then terminated, so that is all it purported to do.

Mr. DINGELL. And it is still around.

Mr. AILES. Correct.

Mr. DINGELL. So, we didn't solve it with the idea of compulsory arbitration?

Mr. AILES. Just for 2 years.

Mr. DINGELL. But the issue and aggravation still exists.

Now, I am trying to figure out how we are going to justify to ourselves or the people the idea of imposing some mechanism that in two instances at least in my view has failed rather grossly to resolve issues between the parties?

Mr. AILES. There really is not any way you can possibly conceive of that will solve these things for all time.

Mr. DINGELL. There are a lot of issues laid to rest permanently by collective bargaining.

Mr. HILTZ. But everything under the Railway Labor Act is subject to change under the act.

Mr. DINGELL. Yes, but at least the parties arrive at a clear understanding and during the interim periods everybody is more or less happier, at least publicly. It is like marriage, they may not be happy with the other fellow, but are not saying so.

Mr. AILES. Mr. Chairman, we would be the first to say we are all for settling everything by agreement you can possibly settle. Nobody would ever say that a final offer selection or compulsory arbitration was a preferable method to across-the-table bargaining, but we are addressing ourselves to when collective bargaining has not worked.

First, we are trying to stimulate collective bargaining by the horrible alternatives.

Mr. DINGELL. But the labor laws are not really objectionable to you and you agreed to these ideas.

Mr. AILES. I don't see why the railroads have to apologize for saying we are perfectly willing to submit issues to a totally independent group for resolution.

Mr. DINGELL. I don't think you should apologize at all, but these are your selected methods for arriving at a resolution of the problem. Labor says these totally are intolerable to us, and I am trying to see how it is fair.

Mr. AILES. Business said up until last year that the business community was generally violently opposed to settling by compulsory arbitration for labor disputes, and within the last year or two there have been substantial changes, as people began to realize you had to have some method to take care of some of these situations.

Mr. DINGELL. I have observed statements I have seen in this Congress that we think would be great for the railroads to have compulsory arbitration, but "don't give us any of it." I wonder if the rest of the American business community has come to wholeheartedly endorse compulsory arbitration? They seem content to inflict it on you, but not to have any of it themselves.

Mr. AILES. My own observation is there is a steady trend of realization in this country that we cannot continue to put up with disastrous strikes, and more and more people are reaching the conclusion that some mechanism has to be found.

Now, the situation in the rest of the industries is no where near as acute as it is here, and this industry therefore got to this point of view first.

Mr. DINGELL. Well, I suspect you and I won't resolve our respective differences on this particular matter, but let me come over here and ask this: Would we ever in this situation, say, all right, we will have seizure of the railroads if the unions give up their unemployment compensation rights during period of strikes? Would that be a fair tradeoff?

Mr. AILES. I don't see how the two things are remotely related.

Mr. DINGELL. We require the workers to work in such numbers necessary to keep the goods and traffic moving, and the rest of them get no unemployment compensation during that period. Isn't that a fair thing? We impose servitude on unions and servitude on railroads, and we keep essential traffic moving.

In the meantime we say, fellows, you go off in the back room and negotiate your differences away and let's have a meeting of collective bargaining, and we will make life as hard as we can for both as fairly and equally as we can so that during the dependency of your negotiations you have every possible chance to come to resolution of your differences.

Isn't that a fair and equal way of bringing about a conclusion and sharing the misery between both sides, and what we ought to be doing instead of fiddling around with "Mickey Mouse" things that really don't settle our problems at all?

Mr. AILES. Well, in the first place it might make sense to see whether these "Mickey Mouse" things settle problems. Nobody tried final offer.

Mr. DINGELL. Morse did it and we tried it essentially and the other times we did it under the Kennedy administration, we wound up taking pretty much management's suggested offers.

Mr. AILES. I think the point about the final offer selection process is, if it works, it will never be used. The purpose of it really is to bring the parties together voluntarily. The theory is if each improves his offer to make it look most reasonable, pretty soon the offers are so close together that the parties say, why don't we just agree?

Mr. DINGELL. Either that or they get very wild on both sides. Your assumption is you are dealing with reasonable men, and my assumption is that, too, but reasonable men when angry don't necessarily behave that way.

Mr. AILES. If it works that way, I would say it is not good, and if it works the other way, it is good, but nobody really knows how that one will work.

Mr. DINGELL. Is your real goal to have the Government solve your labor disputes, or a real goal to have a mechanism where the parties negotiate matters out fairly and equally?

Mr. AILES. Our real goal is to get out of the situation we are in now.

Mr. DINGELL. That is not the answer.

Mr. AILES. Let me spell it out a little. Within the last year, Congress has granted wage increases twice when the labor disputes came before them, greatly hampering the railroads, greatly increasing labor's bargaining position at the table in pending disputes. They said, we are going to give you what you are asking for and then you go and negotiate the railroad's demands with what you wanted already in your pocket. That happened twice in the past year.

Mr. DINGELL. This is a good argument why you, management and labor should negotiate your own differences.

Mr. AILES. That is a better argument to us than to labor. Labor is content that they will be taken care of when they get back to Congress.

Mr. DINGELL. The question I have, is it Congress function to settle these disputes, or set up bases for settling disputes, or set up a mechanism whereby you folks and labor can settle your disputes, but see to it that the essential freight keeps moving?

I find myself hard put to think I should be up here settling your differences.

Mr. AILES. I agree with you completely.

Mr. DINGELL. I do find myself capable of thinking that it is my responsibility of figuring a way to protect the public interest which I equate to by keeping the freight moving. What goes into your contract with labor is none of my business. I don't want to take sides or be on your side in it or labor's side. I simply want you folks to come to a contract on which you are mutually content.

What is my function as a member? Am I supposed to settle your differences with labor, or keep the freight moving?

Mr. AILES. In view of the fact there is necessity for keeping the freight moving, some device has to be developed other than a strike as an incentive to collective bargaining. We are anxious to settle these things at the table, too. They do last longer and they do come out better that way.

We are up here saying that the present situation, where, because of the importance of the industry, Congress provided ad hoc solutions to the problem is no good, it is no good for you or us.

Mr. DINGELL. I agree. If I were in your industry, I would violently resist, because you had bad actions, and yet you suggest ad hoc.

Mr. AILES. No, we are opposed, and what we want is put aside ad hoc system and have a system which will give incentive to collective bargaining, but provide for finality rather than return to Congress if collective bargaining fails.

Mr. DINGELL. I remember a conference with Senator Morse and I listened to him espouse roughly the same position for days on end, and the miseries he inflicted on your industry are well-known to you. I don't have to tell you what they are.

Mr. AILES. Right.

Mr. DINGELL. And the questions present are still unresolved. I just think that our function would be to see to it that the freight moves. I would be willing to support legislation that would take unemployment compensation away from labor during the time you had a strike, and which would seize the railroads and have them operated at least to the degree that the President finds the public interest so requires.

I think if we do we would impose equal burdens on both sides and you people can retire to a quiet place with our friends in labor and discuss with them your differences and when you find an honest one, you come to agreement.

In the meantime, the freight would move. I find myself hard put to say the function of the Congress is to go beyond that point.

Mr. AILES. May I ask a question?

When you talk about the seizure situation, I understand you talk about taking away the unemployment compensation which never should have been given in the first place.

Mr. DINGELL. I am not going to challenge it because I was not around when it happened. But what happens with respect to wages? Are they retroactive through this period? That would be a matter of negotiations between you and the folks in labor.

Mr. AILES. Actually, what happens in a seizure situation?

Mr. DINGELL. Well, I think if you and I are able to discuss that, I will be happy after we finish here to go into the office and you and I sit down and call some of the folks from labor in to discuss it, as to what happens to wages and everything else.

As far as I am concerned, since we are vesting all of this power in the President we might as well give him power to fix rates and determine the goods that will move, fix wages and working conditions during that period and let you folks and labor go off and fight your differences out.

I think this is a fair way of doing it, and the freight moves in the public interest.

Mr. AILES. I don't want to leave any doubts on the record but we think that the seizure device, as I said earlier, accomplishes nothing. It is not a way of dispute and is basically a highly unfair method to be used.

Mr. DINGELL. I agree it is a miserable way to do it. I wouldn't want to do that under any circumstances, and in your shoes I wouldn't want

that done to me, but the fact of the matter is, you folks in the railroad industry can get confused, between the public interest and getting a contract. I don't confuse those two points.

I say that the public interest is to keep the railroads running and to see to essential service——

Mr. AILES. I agree.

Mr. DINGELL. I don't think the public interest requires that there will be some kind of mechanism for concluding a new contract or for getting rid of long standing differences between management and labor over working conditions, the kinds that have nagged the daylights out of the country for as long as I can recall. I think if we make it miserable enough or both sides to keep the railroads running that then we carry out our responsibility to the public interest.

We go no distance beyond what is required. I am sure you know that running a railroad, negotiating railroad labor difficulties is a matter for experts and not for outsiders.

Any time we go beyond that, you folks are going to wind up with a situation in the future which is going to curse you. You can look at what you have out of the two times we have engaged in the "Mickey Mouse" settlements, misery each time, and you have had problems that have continued to curse you. The firemen's issue is unresolved and the problems before the Morse Board are still around to cause you misery.

I don't see any way that I, sitting here or anybody else in this place, is going to have wisdom or any outside block is going to have wisdom to come in and resolve your problems in a fashion to be resolved for the good of all.

I say the public interest simply requires the railroads to continue to move and the goods continue to move and I say that the fashioning of a contract or the putting together of a contract is not the business of the U.S. Government, not the business of the Congress of the United States. Any time we go beyond that, we are creating additional mischief for you folks.

One of the reasons you have the comic opera work rules you have in the railroad industry is throughout the years the things have been fashioned by a system of compulsory arbitration which is in the Railway Labor Act.

Mr. HILTZ. That is not so.

Mr. DINGELL. Well, I believe it. Everytime you get the questions, they go off to be negotiated and constitute precedents that continue to disturb you. I just can't equate making a contract to the public interest, but equate making the railroads move for the public's interest and I don't think you can go beyond that position I asserted.

Mr. AILES. Let me say we have just had an experience where we made a contract. The notion that the railroads have to be protected from unions by Congress is in error.

Mr. DINGELL. I had the impression from this statement and your statement.

Mr. AILES. Look at history. We just went through an 18-day strike and the lessons from that were, had the union not come around on August 2, this matter would have been back here and you would have been in it.

We simply have to have something to take care of that eventuality.

Mr. DINGELL. All right.

I will yield to my good friend, Mr. Harvey.

Mr. HARVEY. I have two quick questions.

I gathered that your bill, H.R. 9989, seeks to revise the Railway Labor Act, and not the Taft-Hartley Act?

Mr. AILES. Correct.

Mr. HARVEY. I conclude from that you have no desire to see the railroads put under the Taft-Hartley Act?

Mr. AILES. Correct.

Mr. HARVEY. OK. I want to ask Mr. Hiltz one question because I am sure when Mr. Luna comes in next week that he is going to comment on this.

I believe by Mr. Ailes' own statement or admission, that this was the first settlement in 4 years that was reached without legislation by Congress. Did you make that statement?

Mr. AILES. No, sir; I didn't mean to.

Mr. HARVEY. I thought I heard it, or read it somewhere.

Mr. AILES. No. I said there have been seven instances in 4 years where Congress has acted in railroad disputes.

Mr. DINGELL. Will you yield?

I will embrace your point. Page 7, you said undeniably the settlement reached was from our point of view a better agreement than any offered before the strike began.

Mr. AILES. Yes; in this dispute. That does not mean any that you referred to, but it means that we ended up with a better agreement than anything the union had talked about in bargaining in this dispute.

Mr. DINGELL. All right.

If you yield a little further, I think we have it now.

This was accomplished without any legislative intervention by the Congress?

Mr. AILES. Precisely.

Mr. DINGELL. This was free collective bargaining that worked?

Mr. AILES. Right, and we were within a hair of being back before Congress in this dispute.

Mr. DINGELL. That is always the rule of thumb. That is, the shotgun behind the door or razorstrop hanging in the closet is always what keeps the burglar out or child at the knees or always brings bargaining to a successful conclusion.

Mr. AILES. It is not that the railroads were unable to protect themselves in this dispute, but we saw a strike that started on two railroads grow to cover half of the industry. Had the union not come around on August 2, in that situation, we would have been up here before Congress, I am sure, and the administration would have called for intervention and Congress would have been under pressure.

Mr. HARVEY. Right. You would have been here because a selective strike escalated far beyond what a selective strike should be. It escalated beyond what the union said it should be in their bill and far beyond what we have said in the bill I have introduced.

Mr. AILES. Who escalated that strike? You see, the union kept adding railroads to it because the railroad industry didn't cave. When two railroads were struck, the railway industry stood up and they added three more, and another group.

Mr. DINGELL. And will you yield?

At no point did the unions cave.

Mr. AILES. Exactly.

Mr. DINGELL. But the unions caved and you got your point resolved without being bothered by the Congress.

Mr. AILES. But the escalation of that strike meant that sooner or later the national problem there being created would have been before Congress in an ad hoc solution.

Mr. DINGELL. But it was not.

Mr. AILES. I am sure we got out of that one, but what will we get out of the next one?

Mr. DINGELL. I am one that has great faith in human nature and great faith in reformation of the backsliders and we find ourselves here in a position of saying, Well it happened this time but we don't think it will happen again. It never happened before in my service in Congress, and I regard it as a breakthrough of the greatest magnitude.

Here you boys and labor solved your problem in the traditional fashion.

Mr. AILES. As Mr. Hiltz said, he solved literally thousands of problems with labor during the same period. Congress in December called off a strike that had been called by four unions, and Mr. Hiltz settled the matter with three of those four unions. Mr. Hiltz settled that dispute with three of those unions before that March 4 date came around.

Mr. DINGELL. I am in a curious position. I am in the very curious position of feeling a great upswelling of admiration for statesmen on the side of management and labor, and I think you folks, having had a success of this kind, ought very well to say: Well, we have proven it can work and now we intend to go forth and make it work in the future. That is, rather than come in here and say: We made it work but we don't think it will again. It sounds like I am listening to the counsel of the timid.

Mr. HARVEY. Will you permit me to continue?

Mr. DINGELL. I do apologize.

Mr. HARVEY. The country came too close to disaster, I say to my friend from Michigan, in the last event for any of us to take any pride of accomplishment in what took place. I say it in all sincerity and I think it is one of the significant things that the damage was too great to the lettuce industry in California, coal industry, auto in Michigan, and other industries for this Congress to be complacent and say we do nothing at all.

Obviously, something has to be done. There is no question, because we cannot tolerate this sort of thing and the public won't tolerate it within these limits.

I do think, however, it is significant that settlement was reached and that for the first time since I have served on this committee—I have been in Congress for 11 years now—that in circumstances like this, a selective strike caused a settlement to be reached. I wanted your comments on it because I am sure Mr. Luna will come in and attach the same significance to it: that a selective strike took place and a settlement was reached. I think everybody will give selective strikes some importance now.

Once again, I come back to what I started out with, if my friend will listen, and that is that the selective strikes are here with us. How can we define them? How can we define them so they are not going to

escalate beyond limits which are tolerable, so they can result in collective bargaining taking place, but being tolerated at the same time? This is where we need help.

Mr. AILES. It is obviously a difficult question. What you stated is the whole point I tried to make. I don't think the country would put up with five or six instances like this and I don't think they would put up with this one much longer, even though Mr. Luna thinks it works and even though we feel this way about the labor situation, but I think one lesson is that a standard that says there should be intervention only when national health and safety is in danger is too high a threshold.

I think that with this industry, long before that level is reached, you have an intolerable problem, that you then have a great many people being put to inconvenience and expense and real hardship and we face congressional intervention.

Mr. HARVEY. I appreciate that, but I would like to ask, Mr. Chairman, the record be left open to give these gentlemen time to reflect on what I asked and if they would like to submit some comments, to permit them to do so.

Mr. DINGELL. I would ask the record be left open long enough to do that, and direct it to be so.

Mr. AILES. One other thing, I think this problem is a terribly difficult one to put in legislation, and I think it is worth considering whether the philosophy that Congress wants followed here should not be expressed in the legislative history in such a way to give guidance to the people that are supposed to act, because when you try to spell out a standard in terms of percentages or in terms of any specificity, I think you will find that there are cases which should be covered that are not caught by it, and when that happens, you have an ad hoc problem before Congress.

Mr. HARVEY. Not under the bill I introduced. The President could go to another remedy if that is the case. If you escalated the strike, the President could go to another alternative.

Mr. AILES. My problem is whether the limit really covers the situation, all of the situations that might call for action?

Mr. HARVEY. I know it is hard to define, but the problem nevertheless is for us to define it. We have to define it somehow or we will arrive at exactly the situation we arrived at this time. If we leave it undefined, we will have selective strikes causing chaos and disaster in the country, and eventually Congress will have to step right in.

Mr. AILES. I understand.

Mr. DINGELL. I would like to plow a little ground with you, if I may, Mr. Ailes.

Is it your position that the Congress should be resolving the dispute or keeping the railroads moving? What is our duty to the public interest?

Mr. AILES. Entirely the latter.

Mr. DINGELL. Entirely the second?

Mr. AILES. Yes, sir, and I am opposed very much to any scheme which is what the system now really is, where railroad disputes come before Congress to be resolved by Congress.

Mr. DINGELL. All right.

Is it your position that we have a duty to set up a mechanism for these disputes to be solved or simply keep the railroads moving?

Mr. AILES. It is my position, if you set up a mechanism that will fairly resolve disputes and which mechanism is sufficiently unpalatable to both sides, that you will encourage collective bargaining and keep the railroads moving that way, but also have a fallback arrangement, which will resolve disputes in the best known method, when collective bargaining fails, if it does indeed fail.

Mr. DINGELL. Of course, we have already first come to the conclusion that we are dealing here with a series of suggestions that I assume are entirely acceptable to the railroads as mechanisms for resolving these differences, but I think we will find as the matter goes forward that they are not to labor, and I want to find out if it does not place us in a rather unappetizing position of having before us somebody who really just wants a fair advantage over its adversary, not unfair but just a good fair advantage and I think myself hard put to find you folks down there in the railroad business are not trying to have us fish your chestnuts out of the fire and to resolve these disputes which we have found at least in two instances we discussed are irreconcilable through mechanisms generally set forth here.

Mr. AILES. I have a great deal of trouble with the fact of submitting an issue to an impartial tribunal is unfair advantage. Somehow or other it assumes——

Mr. DINGELL. I didn't say "unfair," but fair advantage. It is like games of how you win without actually cheating.

Mr. AILES. Well, that is a different game. No, I think that there ought to be a deeper analysis of this than whether we are for it and the labor unions are against it.

Mr. DINGELL. I am satisfied we are both agreed they can speak for themselves, and I am not satisfied any of my suggestions are too appetizing from their viewpoint either.

Mr. AILES. Let me say the real reason why compulsory arbitration is in our bill is the belief or speculation that there can be indeed these situations that are so complicated that the final offer selection process will not work.

Mr. DINGELL. I am satisfied there is a goodly number of them.

Mr. AILES. And when those come up, perhaps you need to use another method. I notice a lot of the people feel that compulsory arbitration down the road spreads the parties apart in negotiations instead of bringing them together, and we think that probably would not be the case if you had the other alternatives in there. But our goal in life is not compulsory arbitration, but an incentive to collective bargaining, backed up somehow with some way other than ad hoc congressional solutions, at the end of the road.

Mr. HARVEY Will you yield?

Mr. DINGELL. Yes.

Mr. HARVEY. If you sat in the balcony and heard the debate a few years ago about mediation to finality and the debate centered on compulsory arbitration, you would have heard Republicans and Democrats alike speaking for management and labor, denounce compulsory arbitration. How in the world do you expect this Congress to come in here and pass a bill including compulsory arbitration, which is forcing the worker to work under circumstances that he has not approved or, or forcing management to accept a profit less than they want?

So, it is impossible and not realistic.

Mr. DINGELL. If you yield, establishing patterns and precedents in the area of labor management relations entirely foreign and alien to their wishes imposed by persons not expert in the field that are going to constitute precedents in labor management relations for generations or perhaps centuries to come, and I think it is extremely unwise and find myself astounded of anyone coming in from management to ask for this situation to be inflicted on anyone.

Mr. AILES. As I said before, what we have done and in all good faith is to lay out what looks to us to be a system.

Mr. HARVEY. You are to be complimented on that, and for coming in here and giving us some solution to the problem which is a serious one.

Mr. AILES. This is the best judgments of several of us.

Mr. HARVEY. I know my friend from Michigan will agree that we respect your coming in and giving us the benefit of your opinion.

Mr. DINGELL. I would like to say, Mr. Ailes, and also Mr. Hiltz, I strongly echo the comments by my friend and I hope you don't take unkindly to what I said this morning. They were said in the respect that we have honest differences in view and I am trying to develop a fairly balanced record if I even am on the other side from your judgment.

Mr. AILES. I would like to wind up this thing by saying we are not here to fight for H.R. 9989, but are here to urge action which will accomplish the two main goals, give an incentive to collective bargaining and work out some way other than the ad hoc congressional solutions in the hopefully rare case where it fails. We have put our judgments on how to do it, and prepared to talk about any other.

Mr. DINGELL. Isn't fair collective bargaining in the last analysis going to resolve the problem? Isn't that the way the problem is resolved?

Mr. AILES. It is certainly the best way, and the way that works most of the time, but there are instances it has not, and these are the present situations that are disastrous to everybody.

Mr. DINGELL. Isn't the fair way to share collective bargaining, sharing the miseries equally and say, fellows, go off and solve your problems?

Mr. AILES. My way of thinking, it is not going to be very equal.

Mr. DINGELL. I am willing to have it as equal as possible and make the miseries as large and equal as I know how, and that is what I tried to do in the bill I have before the committee.

Gentlemen, we thank you. You were patient and gracious and helpful, and we appreciate your testimony.

The subcommittee is adjourned until tomorrow at 10 o'clock.

(Whereupon, the hearing was adjourned, to reconvene at 10 a.m., Thursday, September 16, 1971.)

SETTLEMENT OF LABOR-MANAGEMENT DISPUTES IN TRANSPORTATION

THURSDAY, SEPTEMBER 16, 1971

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

The committee met at 10 a.m., pursuant to notice, in room 2322, Rayburn House Office Building, Hon. John D. Dingell presiding (Hon. John Jarman, chairman).

Mr. DINGELL. The subcommittee will come to order.

This is a continuation of the hearings of the Subcommittee on Transportation and Aeronautics in legislation related to the settlement of transportation labor disputes.

The Chair notes the presence of a quorum for purposes of taking testimony and the first witness is Henry E. Seyfarth, chairman, Transport Labor Committee, Transportation Association of America, and Mr. John L. Weller and Mr. James E. Isbell.

Gentlemen, we are happy to recognize you and welcome you before the committee for such statements as you choose to give and see that you are identified to our reporter for the purpose of the record and we will be pleased to recognize you for such statements as you choose to give.

STATEMENTS OF HENRY E. SEYFARTH, CHAIRMAN, TRANSPORT LABOR COMMITTEE, TRANSPORTATION ASSOCIATION OF AMERICA; JAMES E. ISBELL, JR., REPRESENTING THE SHIPPER MEMBERS OF TAA; AND JOHN L. WELLER, REPRESENTING THE INVESTOR MEMBERS OF TAA

Mr. SEYFARTH. Mr. Chairman and subcommittee members: My name is Henry E. Seyfarth. I am senior partner in the law firm of Seyfarth, Shaw, Fairweather & Geraldson of Chicago, Ill., and chairman of the Transport Labor Committee of the Transportation Association of America.

Joining me at the witness table are Mr. James E. Isbell, Jr., director of transportation, Foote Mineral Co., Exton, Pa., representing the shipper members of TAA, and Mr. John L. Weller, Paine, Webber, Jackson & Curtis of New York City, N.Y., representing the investor members of TAA.

In appearing here today, Mr. Chairman, we speak for the Transportation Association of America. On behalf of TAA, we thank you and the subcommittee members for granting us the opportunity to ex-

press our views on amendments to the emergency dispute provisions of the Railway Labor Act.

Instead of reading our 11-page statement, which we would request be included in the record, if it is agreeable to you, I will shorten our oral presentation by a summary of the more important points which should not take more than 15 minutes or so.

Initially, I might say a few words about our association which may not be too familiar to some of the subcommittee members.

The Transportation Association of America is a nonprofit national transportation-policymaking organization with the underlying purpose of preserving the best possible transportation system under private ownership. The uniqueness of our organization lies in the broad base of its corporate and individual membership, 50 percent of which is composed of shippers or users of transportation, 20 percent investors, such as banks, insurance companies, and brokerage firms and 30 percent carriers of all forms, air, freight forwarder, oil pipeline, rail, highway, and water.

TAA represents the only established, continuing vehicle through which these diverse interests, in a constructive give-and-take atmosphere can deliberate on major transportation issues, with the objective of developing unified policy positions. The vehicle for developing policy within TAA is our 275-man "National Cooperative Project" composed of eight panels—six carrier, one user, and one investor.

TAA POLICY ON LABOR DISPUTES

With that brief background, Mr. Chairman, and turning to the subject matter under consideration by this subcommittee, the 115-man TAA board of directors, on the recommendation of all of its panelists, at its meeting in January 1971, unanimously adopted the following policy position:

> In order to adequately protect the public interest in uninterrupted, economic, and efficient service by regulated airline, trucking, deep water maritime, railroad and freight forwarder companies, immediate steps should be taken to repair evident deficiencies in the Taft-Hartley and Railway Labor Acts dealing with transportation labor disputes. To this end, provision should be made for a suitable arsenal of weapons, including, where necessary and with appropriate safeguards, final and binding arbitration machinery.

In supporting an arsenal of weapons for the use of the Government as the most appropriate means of averting transportation strikes or lockouts, the Board agreed that such arsenal might include:

(*a*) Do nothing;
(*b*) Fact finding with or without recommendation;
(*c*) Final offer selection;
(*d*) Final and binding arbitration.

In addition, the TAA Board adopted the position that legislation permitting selective strikes or partial operation should be opposed.

As you might expect, Mr. Chairman, many of the transportation issues on which we deliberate in TAA through our policy development processes are exceedingly controversial. Given the diversity of the various groups which comprise TAA and their natural economic conflicts of interest, it is not surprising that many times we are unsuccessful in

That the TAA Board of Directors reached unanimous agreement on an arsenal of weapons including final and binding arbitration for

transport labor disputes serves to underscore the members' deep concern over the deterioration of the collective bargaining process under existing emergency provisions of the Railway Labor Act and the Taft-Hartley Act and the adverse impact of that deterioration on our highly interdependent economy. I say this, Mr. Chairman, because in agreeing to final and binding arbitration, carriers have expressed a willingness, where the public interest requires, to relinquish to a third party the resolution of matters affecting highly important private economic interests.

Congress is being called upon more and more to provide ad hoc interim resolution of transport labor disputes because of a lack of machinery to deal effectively with them. Because transportation is so intimately intertwined with the public interest, Congress, in its wisdom, has subjected it to special economic regulatory controls.

The need for these controls has changed with the passage of time and in the past collective bargaining was not deemed as important a subject of control as others. Today, however, it is perhaps the No. 1 area of concern.

Collective bargaining is no longer a meaningful economic contest, probably more so in the transportation industry than in other industries. The imbalance is so great in favor of organized labor that carrier management finds that it is totally unable to resist by itself demands irrespective of their size, irrespective of their adverse impact on carrier financial health, and the economy generally, all to the ultimate detriment of the transport industry and the public.

One of the main reasons for this unhappy and unanticipated result is expressed well in a quotation set forth on pages 4 and 5 of our written presentation.

In strike situations, carriers cannot stockpile inventory as a defensive measure like many nontransport industries. Work stoppages immediately generate huge capital losses as equipment with high fixed costs lies idle. In addition, the damaging effects of transport strikes on the economy, generally, exert extreme public pressure for settlement, even though economically unsound.

INFLATIONARY IMPACT

Because of the unusually high labor content of carrier costs (between 45 and 65 percent in the major segments of the industry) excessive wage increases require substantial increases in rates and fares, in turn affecting the cost of everything that moves.

Moreover, highly visible transport wage settlements have become the goal to "meet or beat" by other union leaders, both within and outside the transportation industry.

Certainly a most vivid illustration was the unprecedented 1970 Teamster settlement for a 40-percent wage increase which thereafter became the benchmark for increases far exceeding productivity in both industry generally and transportation, a major setback to our struggle to contain inflation.

Further, in respect to productivity, the dominant power of the unions at the transportation bargaining table is concretely illustrated by excess crew requirements and restrictive, archaic work rules which have plagued the industry for years, particularly rail and maritime. I need not detail these "drags" on productivity.

In sum, Mr Chairman, vital public interest considerations demand special legislative machinery to deal effectively with transportation and emergency disputes.

In light of the unique circumstances affecting transportation, we support the arsenal approach. The options we suggest, ranging from a decision of nonintervention to final and binding arbitration, are sufficient, in our opinion, to deal with any type of labor dispute. Because of the uncertainty as to which alternative the Government and labor to reach their own agreement. On the other hand, with the availability of final offer selection or final and binding arbitration, the Government will have been provided the tools to resolve with finality those disputes endangering the national welfare. Moreover, the necessity of these matters ending up in the lap of Congress for ad hoc, interim resolution will be eliminated.

We would also urge that corrective legislation clearly recognize that a dispute in a single industry or region, as well as those of national dimensions, have the potential of affecting the national interest. Certainly, the Government should not be precluded from considering the potential inflationary impact of highly visible transportation settlements that is likely to be created by the unequal adversary processes of transportation collective bargaining. Nor should the Government be required to stand idly by where a dispute, if left to the ordinary bargaining processes, would impair our international position. Our ultimate goal should be settlements not only fair to the parties but also fair to the public.

The railroads and the airlines in their proposal which was introduced by you, Mr. Chairman, as H.R. 9899 suggests that the goal can be best achieved by the elimination of any threshold test for triggering the use of an arsenal. Although TAA has taken no position on that specific approach, I certainly believe it to be one worthy of Congress serious consideration.

H.R. 3985

May I comment briefly on H.R. 3985 which would amend section 10 of the Railway Labor Act by explicity authorizing selective strikes, prohibiting carriers not struck from locking out, and providing for partial operation when deemed essential to the national health and safety, by the Secretary of Transportation.

As I have previously emphasized, Mr. Chairman, there already exists an inequality at the transportation bargaining table which is producing economically unsound settlements contrary to the public interest. To further aggravate that imbalance by authorizing selective strikes and at the same time prohibiting carriers from locking out would reduce collective bargaining to a farce. To deprive carriers of defensive measures available to industry generally under our national transportation policy and further augment the power of labor unions affected would place the carriers in a completely untenable position. We believe legislation along these lines would be a grievous error which Congress should studiously avoid.

As I have previously indicated, Mr. Chairman, TAA opposes partial operation. It would appear that the provisions of H.R. 3595 including partial operation apply only to the railroads.

A study conducted by the Government in 1967 led to the conclusion that partial operation of the railroads was just not feasible. To separate out traffic deemed essential would be a tremendous task. In the end, because of the number of employees, the switching, the amount of time required and the congestion that would result, the cost to the railroads could even be greater than if completely shut down.

The size of trains and, to a considerable extent, the number of trains does not normally affect the number of employees required to man such trains. Under partial operation, the railroads would be required to compensate many, if not most of the employees, supposedly on strike.

In the latter connection, I should point out that railroads are the only industry which, under the law, is required to finance strikes against itself. Under the Railroad Employment Insurance Act, benefits paid not only to striking employees but also employees who refuse to cross picket lines, are financed entirely by railroads. Incidentally, these benefits may begin the day the strike commences and continue for 2 years. During a 16-year period, from 1953 to 1968, the railroads have paid out over $35.5 million in benefits to strikers. Certainly, in all fairness, this anomalous requirement should be eliminated by corrective legislation.

In stating these views, we are not unmindful of the effect of the wage stabilization program instituted on August 15, 1971, by Executive Order No. 11615. If this program is temporary, as some think it will be, then when controls are lifted everyone will be in the same position as before, and the need for suitable means to deal with transport strikes will be the same as before.

If the stabilization program is extended over a long period of time, the need for suitable means to deal with transport strikes will be at least as great or greater than before, even though some of the circumstances change.

It is first important to point out that the current stabilization program places no restriction whatever on the right to strike. Neither were unions restricted in the right to strike during the two previous periods of economic stabilization, that is, 1942 to 1947, and from 1951 to 1953.

Strike statistics show that man-days idle because of strikes in these two previous periods of stabilization were as high or higher than in years immediately before and after stabilization. In fact, during 1946, a year of stabilization, there were many more strikes among employees covered by the Railway Labor Act than in any previous period.

Union strategy shifts during periods of stabilization. The threat of strikes and other pressures are applied as often and as effectively but in different ways. In past periods of stabilization, the strategy was first to force employer agreement to economic increases subject to the approval of the Wage Stabilization Board, and then to force the Board to relax its wage stabilization policies so as to make effective the agreements arrived at under compulsion. We see the same union strategy developing now.

It is urged that tripartite bodies with equal representatives from labor, business, and the public administer the stabilization program. Under similar arrangements during the two previous periods of stabilization, the so-called public representatives were in most instances responsive to the pressures exerted by organized labor.

As a result, the inherent power of organized labor, which exists even to a greater extent today than it did during the last two periods of stabilization, exercised through the tripartite panel system ratcheted up the Nation's wage structure to a very significant extent.

If I may be permitted to quote figures from the Department of Labor, Bureau of Labor Statistics, during the first stabilization program, consisting of 4 years between 1943 and 1947, average straight-time hourly earnings increased about 30 percent; and, in the second stabilization program, consisting of 2 years between 1951 and 1953, they increased about 14 percent.

The lesson to be learned from previous experience, Mr. Chairman, is that a wage-price stabilization program administered according to a structure patterned after the past two programs, is destined for ultimate failure.

A wage-price stabilization program, to be successful, must include stringent penalties for violation, and it must be administered according to the letter of its terms, by honest, objective, and capable people.

For these reasons, we respectively urge that this committee now recommend the adoption of the arsenal of weapons approach, as I have previously stated, for the elimination of transportation strikes so harmful to the Nation, the public, the employees of carriers, and to the carriers themselves. A program for wage and price stabilization will not alter this need.

That concludes my testimony, Mr. Chairman. Again, may I thank the subcommittee for the opportunity to present TAA's views on this critically important subject. Thank you very much.

(Mr. Seyfarth's prepared statement follows:)

STATEMENT OF HENRY E. SEYFARTH, CHAIRMAN, TRANSPORT LABOR COMMITTEE, TRANSPORTATION ASSOCIATION OF AMERICA

Mr. Chairman and subcommittee members, my name is Henry E. Seyfarth. I am senior partner in the law firm of Seyfarth, Shaw, Fairweather & Geraldson of Chicago, Illinois, and Chairman of the Transport Labor Committee of the Transportation Association of America. Joining me at the witness table are Mr. James E. Isbell, Jr., Director of Transportation, Foote Mineral Co., Exton, Pa., representing the shipper members of TAA, and Mr. John L. Weller, Paine, Webber, Jackson & Curtis of New York City, New York, representing the investor members of TAA.

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VITAL IMPORTANCE OF UNINTERRUPTED TRANSPORTATION

The Railway Labor Act over which your Subcommittee has jurisdiction was enacted in 1926 with the objective of encouraging carrier labor and management to reach agreement through collective bargaining and thereby prevent work stoppages. Originally applicable only to railroads, its provisions have also governed labor-management relations in the airline industry since 1936. Its enactment some 45 years ago was a recognition of the importance of uninterrupted transportation. Vast changes occurring over the ensuing years—an explosive population growth, rapid technological advancements, urbanization and alteration of our system of distributing goods and commodities—have all combined to make uninterrupted transportation even more crucial to the economic and social health of our nation.

In more recent years, we have been experiencing mounting criticism of the emergency provisions of the Railway Labor Act—completely justified in our opinion—because of its failure to achieve the purposes for which it was designed. It has discouraged meaningful collective bargaining. With increasing frequency, we are confronted with actual or threatened strikes. More and more, Congress is being called upon to provide ad hoc, interim resolution of transport labor disputes because of the lack of machinery effective to deal with them.

It will be argued, Mr. Chairman, that an arsenal of weapons including final and binding arbitration, as advocated by TAA, is very strong medicine. However, we are convinced that the malady sought to be cured is deep-seated and eating away at our economic vitality.

TRANSPORTATION INDUSTRY UNIQUE

The transportation industry is unique. I need not spell out to members of this Subcommittee the vital importance of transportation, both economically and socially, but will simply say that no other industry is so intimately intertwined

with the public interest. Consequently, Congress, in its wisdom, has subjected the industry to special economic regulatory controls. Moreover, as previously pointed out, Congress, in recognizing the vital importance of uninterrupted transportation, fashioned special legislation dealing with transport labor disputes, which unfortunately has fallen woefully short of achieving its intended purpose.

Collective bargaining in transportation is unique.

Collective bargaining in essence is an economic contest between labor and management wherein labor exerts its economic strength to achieve demands it considers necessary and desirable, while management uses its economic strength to resist those demands it deems excessive or beyond its financial ability to pay.

However, collective bargaining is no longer a meaningful economic contest, probably more so in the transportation industry than in other industries. The imbalance is so great in favor of organized labor that carrier management finds that it is totally unable to resist by itself demands irrespective of their size, irrespective of their adverse impact on carrier financial health and the economy generally, all to the ultimate detriment of employees of the transport industry and the public.

The following assessment of the problem by a leading labor relations expert is particularly apropos to transportation:

". . . (The roots of the problem) lie in the nature of unions as institutions, and the framework—legal, political and social—in which they operate.

"Unions are designed and structured to deal aggressively with employers by marshalling the power to deprive employers of a necessary resource on the premise that their chief mission is to press for "more" for their members against presumably strong employer resistance. Hence, by and large, they lack the institutional capacity for exercising much effective self-restraint if that resistance does not in fact materialize. Union leaders who lose the support of their constituencies cease to be union leaders. The legal framework that our nation has adopted supposedly is aimed at achieving a balance between the power of unions to push and the power of employers to resist that will produce results that are both fair to the parties and economically sound—which means fair to the public as well. Unfortunately, it has fallen short of that aim.

"In many industries today it is clear that unions have become too powerful for employers to resist sufficiently to assure economically sound results in collective bargaining." [1]

In strike situations, carriers cannot stock-pile inventory as a defensive measure like many non-transport industries. Work stoppages immediately generate huge capital losses as equipment with high fixed costs lies idle. In addition, the damaging effects of transport strikes on the economy, generally, exert extreme public pressure for settlement, even though economically unsound.

INFLATIONARY IMPACT

Because of the unusually high labor content of carrier costs (between 45 and 65% in the major segments of the industry) excessive wage increases require substantial increases in rates and fares, in turn, affecting the cost of everything that moves.

Moreover, highly visible transport wage settlements have become the goal to "meet or beat" by other union leaders, both within and outside the transportation industry.

Certainly a most vivid illustration was the unprecedented 1970 Teamster settlement for a 40% wage increase which thereafter became the bench mark for increases far exceeding productivity in both industry generally and transportation—a major set-back to our struggle to contain inflation.

Further, in respect to productivity, the dominant power of the unions at the transportation bargaining table is concretely illustrated by excess crew requirements and restrictive, archaic work rules which have plagued the industry for years, particularly rail and maritime.

In the railroad industry, the issue of firemen and outmoded work rules which had their origin in the steam engine era have been studied and reviewed for more than a decade by a series of independent presidential commissions and boards. Without exception, these fact-finding bodies concluded that firemen on diesel

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[1] (Malcolm L. Denise, Vice President, Labor Relations, Ford Motor Co., before the Business Council, May 8, 1971).

locomotives were not necessary and that work revisions were required for more efficient rail operations.

And yet the fireman issue continues unresolved with the union free to strike at any time. Although some progress has finally been achieved on the work rule issue by virtue of recent settlements with the Brotherhood of Locomotive Engineers and the United Transportation Union, years of difficult negotiation sessions lie ahead before any meaningful improved efficiency or cost savings will be accomplished.

We find it incomprehensible that after more than a decade railroads still are unable to obtain relief from union demands for excess crews and counterproductive work rules entailing unnecessary costs of hundreds of millions of dollars.

Labor-management relations developments in the maritime industry demonstrate the disastrous results that can flow from imbalance at the bargaining table. Huge capital losses occur when ships are tied to the docks, earning no income have forced capitulation to excessive and, in our opinions, even absurd union demands. I refer to not only wage increases far exceeding productivity but also make-work provisions that actually reduce productivity in hamstringing industry efforts to improve efficiency through reasonable exploitation of containerization.

That imbalance has created a financially weak shipping industry and eroded its ability to compete with foreign operations, thus contributing to a loss of overseas markets and set-backs in our balance of payments program. That imbalance has skyrocketed dollar costs and diminished productivity, which, as we have seen, are proving so harmful to the nation and all segments of its society.

In sum, Mr. Chairman, vital public interest considerations demand special legislative machinery to deal effectively with transportation and emergency disputes. Devising machinery which will achieve the objectives we all seek—the restoration of free collective bargaining as a constructive process and the protection of the public from the damaging effects of transportation strikes—admittedly will be a difficult task for Congress.

In light of the unique circumstances affecting transportation, we support the arsenal approach. The options we suggest, ranging from a decision of non-intervention to final and binding arbitration, are sufficient, in our opinion, to deal with any type of labor dispute. Because of the uncertainty as to which alternative the government might pursue, there will be an incentive for both management and labor to reach their own agreement. On the other hand, with the availability of final offer selection or final and binding arbitration, the government will have been provided the tools to resolve with finality those disputes endangering the national welfare. Moreover, the necessity of these matters ending up in the lap of Congress for ad hoc, interim resolution will be eliminated.

We would also urge that corrective legislation clearly recognize that a dispute in a single industry or region, as well as those of nationwide dimensions, have the potential of affecting the national interest. Certainly, the government should not be precluded from considering the potential inflationary impact of highly visible transportation settlements that is likely to be created by the unequal adversary processes of transportation collective bargaining. Nor should the government be required to stand idly by where a dispute, if left to the ordinary bargaining processes, would impair our international position. Our ultimate goal should be settlements not only fair to the parties but also fair to the public.

The railroads and the airlines in their proposal which was introduced by you, Mr. Chairman, as H.R. 9989, suggest that that goal can best be achieved by the elimination of any threshold test for triggering the use of an arsenal. Although TAA has taken no position on that specific approach, I certainly believe it to be one worthy of Congress' serious consideration.

H.R. 3985

May I comment briefly on H.R. 3985 which would amend Section 10 of the Railway Labor Act by explicitly authorizing selective strikes, prohibiting carriers not struck from locking out, and providing for partial operation when deemed essential to the national health and safety, by the Secretary of Transportation.

As I have previously emphasized, Mr. Chairman, there already exists an inequality at the transportation bargaining table which is producing economically unsound settlements contrary to the public interest. To further aggravate that imbalance by authorizing selective strikes and at the same time prohibiting

carriers from locking out would reduce collective bargaining to a farce. To deprive carriers of defensive measures available to industry generally under our national transportation policy and further augment the power of labor unions affected would place the carriers in a completely untenable position. We believe legislation along these lines would be a grievous error which Congress should studiously avoid.

As I have previously indicated, Mr. Chairman, TAA opposes partial operation. It would appear that the provisions of H.R. 3595 including partial operation apply only to the railroads.

A study conducted by the government in 1967 led to the conclusion that partial operation of the railroads was just not feasible. To separate out traffic deemed essential would be a tremendous task. In the end, because of the number of employees, the switching, the amount of time required and the congestion that would result, the cost to the railroads could even be greater than if completely shut down.

The size of trains and, to a considerable extent, the number of trains does not normally affect the number of employees required to man such trains. Under partial operation, the railroads would be required to compensate many, if not most of the employees, supposedly on strike.

In the latter connection, I should point out that railroads are the only industry which, under the law, is required to finance strikes against itself. Under the Railroad Employment Insurance Act, benefits paid not only to striking employees but also employees who refuse to cross picket lines, are financed entirely by railroads. Incidentally, these benefits may begin the day the strike commences and continue for two years. During a sixteen-year period—from 1953 to 1968—the railroads have paid out over $35½ million in benefits to strikers. Certainly, in all fairness, this anomalous requirement should be eliminated by corrective legislation.

In stating these views, we are not unmindful of the effect of the wage stabilization program instituted on August 15, 1971, by Executive Order No. 11615. If this program is temporary, as some think it will be, then when controls are lifted everyone will be in the same position as before, and the need for suitable means to deal with transport strikes will be the same as before.

If the stabilization program is extended over a long period of time, the need for suitable means to deal with transport strikes will be at least as great or greater than before, even though some of the circumstances change.

It is first important to point out that the current stabilization program places no restriction whatever on the right to strike. Neither were unions restricted in the right to strike during the two previous periods of economic stabilization, i.e., 1942 to 1947, and from 1951 to 1953.

Strike statistics show that man days idle because of strikes in these two previous periods of stabilization were as high or higher than in years immediately before and after stabilization. In fact, during 1946, a year of stabilization, there were many more strikes among employees covered by the Railway Labor Act than in any previous period.

Union strategy shifts during periods of stabilization. The threat of strikes and other pressures are applied as often and as effectively but in different ways. In past periods of stabilization, the strategy was first to force employer agreement to economic increases subject to the approval of the Stabilization Board, and then to force the Board to relax its wage stabilization policies so as to make effective the agreements arrived at under compulsion. We see the same union strategy developing now.

It is urged that tripartite bodies with equal representatives from labor, business and the public administer the stabilization program. Under similar arrangements during the two previous periods of stabilization, the so-called public representatives were in most instances responsive to the pressures exerted by organized labor.

As a result, the inherent power of organized labor, which exists even to a greater extent today than it did during the last two periods of stabilization, exercised through the tripartite panel system ratcheted up the nation's wage structure to a very significant extent.

If I may be permitted to quote figures from the Department of Labor, Bureau of Labor Statistics, during the first stabilization program, consisting of four years between 1943 and 1947, average straight time hourly earnings increased about 30%; and in the second stabilization program, consisting of two years between 1951 and 1953, they increased about 14%.

The lesson to be learned from previous experience, Mr. Chairman, is that a wage-price stabilization program administered according to a structure patterned after the past two programs, is destined for ultimate failure.

A wage-price stabilization program, to be successful, must include stringent penalities for violation, and it must be administered according to the letter of its terms, by honest, objective, and capable people.

For these reasons we respectfully urge that this Committee now recommend the adoption of the arsenal of weapons approach for the elimination of transportation strikes so harmful to the nation, the public, the employees of carriers, and to the carriers themselves.

That concludes my testimony, Mr. Chairman. Again, may I thank the Subcommittee for the opportunity to present TAA's views on this critically important subject.

Mr. DINGELL. Thank you, Mr. Seyfarth.

May I ask if Mr. Isbell proposes to offer testimony?

Mr. ISBELL. Yes.

Mr. DINGELL. Very well, we will recognize you, Mr. Isbell, at this time and the other gentleman, Mr. Weller, do you have a statement?

Mr. WELLER. A brief statement.

Mr. DINGELL. We will recognize each of you in turn and then the Chair will recognize members for questions after you conclude your statements.

Mr. Isbell, you are recognized.

STATEMENT OF JAMES F. ISBELL, JR.

Mr. ISBELL. Thank you, Mr. Chairman. My name is James F. Isbell, Jr., I am director of transportation, Foote Mineral Co., with executive offices at Exton, Pa., and a member of the user panel of the Transportation Association of America.

I am grateful for the opportunity to speak briefly on behalf of the shipper members of TAA, who represent a cross section of just about every type and size of industry in the United States. We support TAA's policy position on transportation emergency disputes described by Mr. Seyfarth in his testimony as the most effective and equitable means of protecting the public against the damaging effects of transportation strikes. I might emphasize that although we are convinced that final and binding arbitration should be one of the tools available to the Government to achieve finality in transportation labor disputes, we are not suggesting that it be applied to industry generally.

The goal of the Nation's shippers, whose total freight bill now exceeds $90 billion, is not only efficient transportation at the lowest reasonable cost, but also with the least amount of interruption to the flow of commerce. Although it might well be said the achievement of those goals is in our selfish interest, more importantly, of course, it is in the broad public interest.

Recognition by Congress of the disastrous effects of transportation strikes is evidenced by the number of times you have deemed it necessary, in the public interest, to accept the heavy burden of intervening in those disputes to avert or bring an end to work stoppages.

Mr. Seyfarth has outlined the unique attributes of transportation along with those unusual circumstances affecting collective bargaining in transportation, which differentiate that industry from business generally and justify special legislation.

As our economy becomes more interdependent, it is increasingly imperiled by cessation of transportation. Transportation is an integral part of the industrial production process. That process, nationwide in dimension, involves a closely integrated, but delicately balanced distribution system highly vulnerable to transportation strikes even of short duration and even where confined to regions geographically.

We need only to look to the most recent railroad strike for a concrete illustration. Although applied selectively, it soon produced serious and far-reaching damaging effects on our economy, already deep in trouble.

The results were predictable since the individual railroads of the United States comprise an integrated system. Where only a limited number cease operations, the harmful effects expand in multiplier fashion within a short time.

Agriculture felt the impact quickly. Losses in California alone reached the multimillion dollar level per day. Crops rotted and were plowed under. In the Midwest, as storage facilities soon became filled, huge quantities of grain were left on the ground. In the South, interruptions to the movement of feed grain threatened to destroy the poultry industry.

In the Northwest, the forest products industry, the Nation's largest rail shipper, was fearful lasting damage to their industry would result particularly from the selective strike on one key railroad, the Southern Pacific, upon which Eastern markets depended for products originating in the West.

Mr. Carl E. Bagge, president of the National Coal Association, in his testimony last month, outlined the potentially disastrous impact on the Nation that can flow from the strike of just one or two railroads, through disruption of critical coal movements to electric utility generating plants.

Further, as he pointed out, railroad strikes seriously affect coal exports, which contributed more than 40 percent of the Nation's trade surplus of $2.7 billion in 1970.

The strike of one railroad put over 20,000 miners out of work in six States; 225 coal mines were closed down on one line.

Had not the strike been discontinued, General Motors Corp., would have been forced to discontinue all automobile production.

The chairman of the Council of Economic Advisers stated that if the selective strikes had continued through the month of August, they would have cost the economy $50 billion.

And, of course, the impact of a strike continues long after the strike ends because of congestion, terminals clogged with cars held for struck railroads, delays, and disruptions to the normal complex transportation order.

In my own company, of our 13 plants, which generate about $13 million per year freight revenue, one was closed because of the lack of rail service and five others totally without rail service and some very near complete shutdown at the time the strike was settled.

The cost of operation of these, as well as the other seven plants, was greatly increased during the strike because of the necessity of using premium forms of transportation for materials critically needed by ourselves and customers.

The shutdown of our facilities would have in turn threatened our customers, in the main, the automotive, steel, aluminum, and glass industries.

With the large number of unions involved in the transportation industry, there is one critical strike deadline after another. While we may always have to face the ultimate possibility of a strike we should not have to live under such a constant threat. This constant threat makes it necessary for industry to carry larger inventories of both finished materials and raw materials than would otherwise be necessary, in turn resulting in substantially increased costs of production. The financial people in my company have determined the cost of carrying inventories is about 25 percent of the total cost of the materials.

These increased costs are reflected in either or both higher price of goods to the consumer and lower profits, and higher costs of goods fan the fires of inflation in our country and limit our ability to compete with foreign goods both here and abroad. Lower profits result in less capital and less ability to attract capital and therefore restrains investment and reduces employment.

In short, we are convinced that the complex social and economic structure of this Nation cannot tolerate transportation disruptions and we must have a reasonable expectation of uninterrupted transportation service.

While a strike should be an economic struggle between the two parties involved, it has become quite apparent in the transportation industry the greatest economic loss is not to the primary parties but to others adversely affecting the economy of the Nation and therefore the general public, thus the public interest is overriding.

Fair and equitable legislation must be enacted that preserve the basic rights of the parties to the struggle and yet protect the public interest. We do not believe that it should be necessary to make a finding that a national emergency does or would exist before invoking an arsenal of weapons to bring about a solution.

We believe because of the inherent nature of the transportation industry being interdependent, a strike against a few or all carriers of one mode is itself clearly a threat to the Nation's economy.

Furthermore, we are opposed to selective strikes in national bargaining situations. It is patently unfair that one manufacturer be able to produce and supply the market while another manufacturer, through no fault of his own, is a victim of a selective strike against the carrier serving him that prevents him from competing in the marketplace.

Congress has a number of bills before it concerning management-labor relations in the industry and we urge your committee as leaders in the field to accept the foregoing as essential elements in legislation designed to remedy this serious problem.

Thank you, sir, that is the end of my statement.

Mr. DINGELL. Mr. Weller?

STATEMENT OF JOHN L. WELLER

Mr. WELLER. Mr. Chairman, my statement is brief, but if it may go into the record I can abbreviate it more, if you will permit me.

Mr. DINGELL. Without objection, your whole statement will appear and we will recognize you at this time for such statement as you care to give.

Mr. WELLER. Mr. Chairman, my name is John L. Weller. I am associated with Paine, Webber, Jackson & Curtis in New York as vice president, research, and my principal function involves research and advice to investors concerning transportation investments. I am a member of the investor panel of Transportation Association of America and appear this morning on behalf of the investor members of TAA, who represent the major banks, insurance companies and investment houses. We, the investor group, also support the TAA policy on transport labor disputes as stated by Mr. Seyfarth in his principal testimony.

The members of the investor panel, of course, do not consider themselves experts on labor relations, but they are knowledgeable on transportation finance, both from debt and equity points of view. The panel has frequently discussed the matter of transport labor disputes, it has a meeting, incidentally, scheduled for next Monday and will discuss the subject again and believes that some better means of resolving such disputes is crucial to solution of the financial problems facing the railroad and airline industries particularly.

The financial condition of some of our major railroads and some of the major airlines is so serious that a service interruption resulting from a labor dispute could very well precipitate a bankruptcy.

Certainly the key to a restoration of the financial health of transportation companies, and therefore to the health of our economy generally, is a large infusion of capital for plant addition and modernization, and acquisition of equipment required to meet the increased demands which will be imposed on transportation for the balance of this decade.

I think you gentlemen know that present investor confidence in transportation is very low. The airlines are having to pay over 11 percent for their equipment trust obligations and railroad freightcar financing in some instances is practically impossible. The labor problem is not the only problem, but we believe that changes in the laws governing transport labor disputes are an important key to the improved health and efficiency of your privately owned transportation systems.

Such chnges also would do much to restore the confidence of investors in the outlook for transportation. Thank you, sir.

(Mr. Weller's prepared statement follows:)

STATEMENT OF JOHN L. WELLER, IN BEHALF OF INVESTOR MEMBERS OF TAA

My name is John L. Weller. I am associated with Paine, Webber, Jackson & Curtis in New York as Vice President—Research, and my principal function involves research and advice to investors concerning transportation investments. I am a member of the Investor Panel of Transportation Association of America and appear this morning on behalf of the investor members of TAA, who represent the major banks, insurance companies and investment houses. We, the investor group, also support the TAA policy on transport labor disputes as stated by Mr. Seyfarth in his principal testimony.

The members of the Investor Panel, of course, do not consider themselves experts on labor relations, but they are knowledgeable on transportation finance, both from debt and equity points of view. The Panel has frequently discussed the matter of transport labor disputes and believes that some better means of resolving such disputes is crucial to solution of the financial problems facing the railroad and airline industries particularly.

The members of this Subcommittee are as well aware as the Investor Panel that major segments of our transportation system are in serious financial trouble. In addition to Penn Central, three other railroads are in reorganization, and the majority of the Class I railroads of the country have virtually no working capital.

Return on investments for the Class I carriers approximated 1.7% in 1970. Less than three weeks ago, the Air Transport Association reported a net loss of over $132 million incurred by the scheduled airline industry in the first six months of 1971. This enormous loss in one-half year compares with earnings of $428 million in 1966. So precarious is the condition of some of the major companies that a service interruption resulting from a labor dispute could very well precipitate bankruptcy.

Certainly the key to a restoration of the financial health of transportation companies, and therefore to the health of our economy generally, is a large infusion of capital for plant addition and modernization, and acquisition of equipment required to meet the increased demands which will be imposed on transportation for the balance of this decade.

Because of below average earnings and a vulnerability to cyclical fluctuations in our economy, most segments of the transportation industry have not enjoyed a high rating by investors. With recent developments this situation has become most aggravated. You have been reading and hearing more and more of the industry's inability to raise capital through normal private channels. This is simply because investors have lost their confidence in transportation companies as a reasonable risk. If this trend continues, the danger of eventual bankruptcies and government ownership are obvious.

Now, I would hope that my appearance here today does not suggest we have the notion that changes in labor laws will solve all our transportation problems. Those problems are many and complex demanding a multi-pronged attack. Nevertheless, we strongly feel that transport labor disputes constitute a major contributing factor, and if left unresolved, meaningful overall progress is highly doubtful, irrespective of what action is taken in other areas.

Mr. Seyfarth and other witnesses during the course of these hearings have detailed the peculiar conditions affecting transportation—the imbalance in collective bargaining, the inability to resist wage increases far exceeding productivity, the high labor content of transport costs, and the workrule roadblock to improved efficiency. It seems clear to us that all of this contributes to a steady erosion of carrier financial strength.

Changes in the laws governing transport labor disputes, we believe, are the key to the improved health and efficiency of our privately owned transportation system. Such changes also would do much to restore the confidence of investors in the outlook for transportation.

Mr. DINGELL. Thank you very much.

Mr. Harvey?

Mr. HARVEY. Thank you, Mr. Chairman. Gentlemen, I notice that the recommendations of the Transportation Association are identical to those submitted to the committee by the American Association of Railroads and also by the Airport Transport Association.

I assume that you are quite close to those two organizations and that you have or are aware of the comments made when they testified before this committee. I have expressed to them, first of all, my appreciation for coming in with those recommendations, and, second, the reasons why I have felt that those recommendations are not realistic and will not likely be approved as submitted to this committee.

On the other hand, I want you to know that I do appreciate the fact that you have come in, I do share your view that some sort of an arsenal of weapons approach is necessary in this instance.

I think I would rather see the executive branch, whether it is a panel, as suggested, or the President, be given authority to use any of the alternatives in sequence, rather than be limited to one, but these are minor criticisms, really.

I gather from what you have said that what you favor is a change in the Railway Labor Act, not a change in the Taft-Hartley Act. You are not asking that your industry come under Taft-Hartley but that the railroads and airlines remain, as they are right now, under the Railway Labor Act. Is that correct?

Mr. SEYFARTH. We have not taken a position on that subject. We do have some differences, Mr. Harvey, with respect to the railroad and airline recommendations.

Mr. HARVEY. Pardon?

Mr. SEYFARTH. Our recommendations are not totally the same as those.

Mr. HARVEY. I thought on page 2 of your statement that they were identical with, I forget what page it was, those of the American Association of Railroads' statement we heard yesterday and the Air Transport Association.

Mr. SEYFARTH. As I understand their presentation, they would limit the selection of a means of resolving a labor dispute to one selection, which thereafter could not be changed. TAA has reached no agreement on that question, on the question of the use of only one weapon, which some of us feel rather strongly it would have the effect, perhaps, of putting the dispute back into the hands of Congress as the posture of it is stated presently.

As I stated, however, we sometimes have difficulty in TAA in arriving at conclusions, so I think it is fair to say in some respects our presentation does not stand on all fours with the presentation of the rails and the airlines, but in fundamentals I would say that we are pretty much the same, sir.

Mr. HARVEY. Let me ask this question. Is there no strike in the railroad industry, for example, that you think should be permitted in this country?

Mr. SEYFARTH. I am glad that you asked that question, Mr. Harvey. I think the events of the past month, and I refer to wage-price stabilization, have changed the climate considerably. I think we are starting out from an entirely different base.

These events have been brought out into the open and are properly causing considerable public debate of an issue that has been brewing for some years and I refer to your loss of position in world productivity and credit.

Just as a plain citizen, rather than as a spokesman here this morning, the development which concerns me greatly is that in 1969 to 1970, the indicator labeled "percentage change in industrial output," the United States stood 12th out of 12 industrial nations of the globe. We were minus 2.7.

Mr. HARVEY. I appreciate that, but I wish you would answer the question because time is limited.

Mr. SEYFARTH. I am getting to it. Japan was plus 16 and little Finland was 8.8 plus and in a comparable period statistics show for man days idle due to strikes, we head the list with 737 per 1,000 employees. Japan was second with 91.

Mr. HARVEY. I appreciate all of that.

Mr. SEYFARTH. Well, strikes have become a tool of destruction, sir.

Mr. HARVEY. I appreciate that, but my question is this: Is there no railroad in the United States that you think should be permitted to be struck?

Mr. SEYFARTH. I think that strikes have to give way, as a means of achieving economic justice.

Mr. HARVEY. Let me just say this——

Mr. SEYFARTH. That is to some other means of settling disputes.

Mr. HARVEY (continuing). In my district, there is a railroad, very short, but one of the most profitable in the country, that runs for about 100 miles. Now, how can I, as a Congressman, say to the employees of that railroad that they can't go on strike, just as the employees of XYZ Corp. down the street can go on strike if they want to.

Mr. SEYFARTH. The employees on that railroad, sir, established a high settlement which was used as a pattern by others which brought about an unstabilized economy and inflation and I would say there is a duty for them not to strike and their dispute should be resolved by compulsory arbitration.

Mr. HARVEY. Mr. Seyfarth, I guess that is where I disagree. I would say this again, as I said to others, if you expect this Congress to solve this problem by compulsory arbitration, then you are just very unrealistic in your views and I state it with great admiration for your coming in, that you are truly unrealistic because I don't believe that any member on this panel indicated to you that he believed there was any possibility that this Congress would pass such a bill.

Mr. SEYFARTH. We urge it, sir. We think it is in the offing.

Mr. HARVEY. Well, I won't go through all of the rest of the questioning that I have done with the other witnesses because your positions are very substantially the same.

Thank you, Mr. Chairman.

Mr. DINGELL. Thank you, Mr. Harvey. Mr. Adams?

Mr. ADAMS. Thank you, Mr. Chairman.

On page 8 of your testimony, Mr. Seyfarth, you indicate that you do not believe that selective strikes should be authorized. I know you are aware that they presently are authorized by the courts. Are you suggesting that the committee outlaw them?

Mr. SEYFARTH. I am suggesting, sir, that compulsory arbitration be available to the executive branch as an alternative in the solving of strikes.

Mr. ADAMS. Well, now, I am sure you are aware of the fact that neither the executive branch nor the Congress has authority to interfere with a strike unless it becomes a national emergency, don't you agree with that?

Mr. SEYFARTH. Yes, of course, that is the present status of the law.

Mr. ADAMS. So what you really require from your program is that we would roll back the situation from where it presently exists and outlaw strikes in the transportation industry. That would take a positive act on our part to do that, would it not?

Mr. SEYFARTH. Well, it could be accomplished by the arsenal of weapons approach, which is going to compulsory arbitration.

Mr. ADAMS. Under the administration bill and Mr. Harvey's and others we have considered, you can not approach the problem with an arsenal of weapons until you have first passed the selective strike situation and gone to national emergency, don't you agree?

Mr. SEYFARTH. Yes.

Mr. ADAMS. So that the fact you have compulsory arbitration in as part of your arsenal of weapons does not solve the problem of the selective strike.

Mr. SEYFARTH. Well, I should say, sir, mechanically it would probably have to have amendment of other laws to make them comparable with the approach we are suggesting here.

Mr. ADAMS. On page 8 you indicate that it would further aggravate that imbalance by authorizing such selective strikes, and the same time prohibiting carriers from locking out would reduce collective bargaining to a farce.

I don't know of anyone that has suggested prohibiting a lockout by a carrier that is on strike.

Now, is what you are saying here that you think that we should, in the selective strike situation, allow the un-affected carriers to lock out, which, in effect, converts the selective strike into a national emergency?

Mr. SEYFARTH. We do not believe that either selective strikes or lockouts are appropriate, sir.

Mr. ADAMS. Well, then we would have to prohibit a lockout on a selected line also, would we not?

Mr. SEYFARTH. Yes, you would.

Mr. ADAMS. That is by a positive action by the statute.

Mr. SEYFARTH. Yes; if that was the theory that ultimately emerges from your deliberations, yes.

Mr. ADAMS. Mr. Weller, turning to your paper, on page 2, and if you other gentlemen want to comment, I will be happy to receive your comments. You indicate there has been a loss of investor confidence in transportation companies and a low return on earnings and so on. Are you aware of the bill that some of us have introduced, to establish a reconstruction finance corporation and to do something about direct financial assistance to the transportation industry?

Mr. WELLER. Yes, sir; we are aware of it. I might say to you, sir, I have been a member of a committee which has been reviewing that. I would like to take the opportunity to thank you for introducing it. Our panel with regard to the specific item you mentioned, the investor panel, will meet on Monday to consider specifically that area of the bill, be it the government loan program or whatnot.

Mr. ADAMS. You see, what I am getting at, is as to agreement of the investor capital problem being in the transportation industry and thinking that a direct approach should be taken, either through government loan guarantees or low-interest loans through reconstruction finance type of corporation. The reason, and I want your comment, is partly due, as you indicate, to a low capital problem.

The big problem we have is strikes, and the reason for the severity of them in the railroad industry, is that in this member's opinion wages in the railroad industry are greatly depressed vis-a-vis everyone else in the transportation industry. So you approach the situation of having two men working on the sail dock, one unloading supplies from a truck at one end and one loading them onto a railroad car at the other end and a great disparity in wage levels.

So that the appropriate unions that are involved as I remember, and the other members can correct me, it was BRAC versus the teamster wage levels that were involved, and that these unions, or the leadership of these unions really had no choice but to make economic demands of the level that they did, or face the fact of having other unions come in and say, "Well, we have done this for our membership and you have not been able to do that for yours, so you are out."

Now, isn't that the fundamental problem where you mentioned depression of earnings, isn't the same depression true in the wage levels?

Mr. WELLER. Mr. Adams, I hope you will permit me to answer that

one as an individual and not as a representative of my panel. My panel will be discussing this loan program on Monday and as investors I think you will understand they have a little more problem with it than many others might have. (See letter dated October 8, 1971, p. 511, this hearing.)

Mr. ADAMS. I am sure of that.

Mr. WELLER. Back to the question I think you asked. I would have to give you my personal opinion, which is that I think to a substantial degree you are correct, that one of the problems we have is that, in regard to the railroads, that over the years, the railroads—well, I started out my life in the railroad industry, incidentally, at 38 cents an hour about 40-some years ago, and the railroads once had generally the highest pay scales or pretty generally the highest pay scales in the industry and they no longer have.

I think that is part of the problem. Over the years, and this is just a personal opinion again, over the years the railroads have tended to trade work rules against wages, so that today they have very inefficient work rules and relatively low wages. One of their problems is that, that their employees want the same wages as people such as mechanics in the airlines get, and so on, or the teamsters. The railroads I think, with some justice, ask the employees, "Well, if we are to give you that we would like the productivity that is gotten out of the teamsters."

Now, the teamsters, for example, demand high wages, as Mr. Seyfarth just said. They have pretty big increases built into their contracts. But if you want them to do it, a couple of truck drivers will take a truck all the way across the country.

Railroad labor won't do that. It insists on going 100 miles and having two railroad employees doing, or even three doing one man's work. That is part of the problem and I think you put your finger on it. But it is not all wages.

I would like to go a little further and say that my opinion has been for many years as a man in business that it is not the level of wages that counts but it is what you get for those wages that counts. The cost per ton produced or something. When you try to compare railroads, airlines, and trucking companies in that respect, you are not comparing the same things.

Mr. ADAMS. You feel the railroad industry's productivity is way below the others; is that right?

Mr. WELLER. Yes.

Mr. ADAMS. Now, and this is my last question.

Mr. WELLER. I am answering your question by saying that part of the problem is, if you can get the railroad industry and its labor around to the point where they could agree on work rules and so forth, that we would be getting maximum efficiency, they might be better off giving higher wages along with that.

Mr. ADAMS. But what you suggest is this.

Mr. WELLER. Part of the problem, though, is leap-frogging from industry to industry.

Mr. ADAMS. What I suggest, you are proposing, you, the panel, and others, is that what we do now is we authorize somebody outside of the industry to come in and solve this for the industry and for labor by drawing them a contract. In other words, that is what compulsory

arbitration is. It says, "All right, we will tell you what you can get and tell you the work conditions under which you are going to work."

Now, the testimony we have had before this committee indicates that the complexity of the work rules, as balanced off against this, would take the wisdom of somebody who does not exist, that we know of, to do this, and that both parties would end up incredibly unhappy.

But, apparently, from what your testimony is, as Mr. Harvey mentioned, and that of the railroads and others is, it is that industry is ready for someone to come in and tell them how to run their workmen.

Mr. WELLER. May I comment on that again?

Mr. ADAMS. There is a nod from Mr. Seyfarth and Mr. Isbell and Mr. Weller, you want to comment?

Mr. WELLER. Yes. I would like to comment that I am here testifying for the position we have and we try to resolve disputes between us so that we hope we are going to get somewhere. Not each one of us probably would exactly think that refinement. But the situation we have in many other things is, if I have a dispute with you over any other matter, the price of a piece of property, the price of a piece of goods, we don't settle this with brickbats. We go to a court.

This is expensive. This court may—well, I spent yesterday incidentally, all of yesterday afternoon as an alleged expert witness in a Federal court involving a bankruptcy of a trucking company. The questions are very complex. The judge, to make the parallel of what you are talking about, the judge will have to settle these and he is not a trucking man.

Mr. ADAMS. Wait a minute. That is the fundamental we keep coming back to again and again. I have tried many law suits and in each case the judge is deciding on what the two parties have already agreed to or are now in disagreement about it. He does not come in and tell you and I as two individuals, "All right, I am going to draw this contract between you and both of you are going to have to live with it."

Mr. WELLER. I don't think we should do it here either. We should have bargaining first, but if we can not be successful with bargaining, the judge has to get in there somewhere.

Mr. DINGELL. Will you yield? How is it different? You mentioned a sale of a piece of property, if you are going to sell me a piece of property or I sell you one, if you are not minded to sell you just say, "I am not going to sell."

What do you do then, do I go to the judge and say, "All right, you draw a contract between my good friend and me for the sale of that property."

You are going to say, "That is my property, I don't want to sell or my price is what I want and failing to get that price I won't sell."

Now, labor here has a right to sell. They have a right to sell their labor at a price they think proper. It is just like you would have a right to sell this tract of property. You are not going to rush into it. As Mr. Adams points out, the question before the court when the question comes into the hands of the court is "How is the contract to be construed as it exists between the parties", not to rush to the court and say, "Court write us a contract on the sale of the property or for hours and wages."

Mr. WELLER. I understand your point and may I dissertate just a little longer on it.

Mr. DINGELL. Sure.

Mr. WELLER. You are quite right. The individual has the right to sell or not sell his services. I work for Messrs. Paine, Webber, Jackson & Curtis, and if I don't like the way they treat me I have a right to quit. That would be that.

I would withhold my services. I do not have the right to stand outside of the door and insist they can not hire a replacement. I don't have the right to organize with everybody else on Wall Street and see that they don't hire a replacement.

Mr. ADAMS. You don't have that right?

Mr. WELLER. No.

Mr. ADAMS. I find that to be a very unusual statement. I think you have every right. You may not want to and you may not have done it, but you certainly could join together in a labor union, if you wanted to. There is no prohibition against people doing that and in fact professional people for many years have joined not only into associations such as the bar association, but have also told their members what they can and can't do. I guess in some areas they do it with wages, too.

Mr. WELLER. The point I am trying to make is this.

Mr. DINGELL. Well, before you proceed, Mr. Weller, you cited a most extraordinary premise and I would appreciate a case citation in support of that premise.

Mr. WELLER. Very good. I can't give you the statute, I am not a lawyer, but perhaps Mr. Seyfarth can. I think you will agree with me on this, that Congress over the years and various State bodies, too, have given unions rights to act concertedly, which, if you study that matter, individuals do not have.

Mr. DINGELL. We give individuals the right to form unions to do these things.

Mr. WELLER. Which, as individuals, they could not do.

Mr. DINGELL. I am not going to argue that point.

Mr. WELLER. As individuals they have a perfect right to withhold their labor and get a job somewhere else, but don't have a right to insist their employer cannot hire replacements and if you examine the laws generally you will find that the situation is that with regard to unions, that unions have the right collectively to refuse to labor and see to it that management does not hire replacements.

All I am saying is, Congress, having given the unions those powers, also has an obligation. The bargaining is not equal between management and unions and if it were there would not be need for public intercession. I would favor an economic struggle, if it were a struggle, but the fact is that transportation could in most instances, but cannot within a strike.

Mr. SEYFARTH. Mr. Adams, may I interject a thought here. The employer-employee relationship is totally unlike others. We would not suggest that a third party come in and determine every business issue that may exist between two people.

However, the employer-employee relationship, the two parties are unable to agree and there is a strike and a lot of people are then out of work and there are certain human elements that enter into the situation as people have to live, which soon becomes charges on the Government in one form or another, so the Government has an interest in it in a very, very deep way, so that there must be ways found to

prevent the destruction that is going on, destruction of values, "drags" upon our productivity as a nation.

So we say that we don't want to turn our business over to a third party any more than a union would want to turn its business and international affairs over to a third party. But when the time comes, when an issue or group of issues is not susceptible to agreement by the parties, then the public interest requires that it be solved by outside expertise and the transportation industry is perfectly willing to assume that risk.

It has been quite an amazing development but I think it demonstrates very conclusively the utter frustration existing within the industry and I might say the same thing goes with varying degrees in most American industry.

Mr. ADAMS. You say that our problem, and I agree with Mr. Harvey on this, is that when you talk about compulsory arbitration, which all of the various groups have come in and said, and when you are in a regulated transportation industry, you are going to place the Government in the position soon of setting your rates, setting how much you are going to pay your men, setting under what conditions the men are going to work, and, probably, in the course of setting your rates, regulating your returns.

Now, by the time we have finished doing that, I don't know what you are going to be left managing and we might just as well take them over and run them.

Now, that is, the problem and why we have tried to develop alternatives in the questioning of all of these witnesses of an artificial strike or a selective strike, in other words, to leave within the hands of the parties involved the collective bargaining system without it moving imemdiately into a national emergency.

We have not had a single witness before us that can tell us whether there are alternative modes of transportation within the industry so that we could allow a strike to go on without either paralyzing a section of the Nation.

Now, people have said they will give us that information. We don't have it. But your approach, and what concerns me is directed to that point in the paper, it is that you would say that we should pass a law to say no selective strikes, no selective lockouts, and that we would prohibit all activity in the collective bargaining agency other than negotiations, other than their talking back and forth and if anybody got to the point they could not agree, then we would have compulsory arbitration. That is as I understand your proposal; is that correct?

I am finished, Mr. Chairman.

Mr. SEYFARTH. I might say, Mr. Adams, that there is another approach. That probably I could talk about for the rest of the day and that is this, which consists of ways and means of injecting equality at the bargaining table. That becomes very technical. But it is another approach, but I am afraid the present posture of things makes it impossible to get agreement between business and labor on that sort of a program.

I think business of course would welcome it but organized labor would not. The fact of the matter is that collective bargaining is truly a farce because the hurt has been taken out of the concept. Only the employer can get hurt. The other side does not get hurt in this day

and age in the railroad industry, because the industry finances strikes against itself.

In many other industries, in many other jurisdictions and States, by the use of food stamps and welfare payments of one kind or another, an employee who goes out on strike does not get hurt this day and age.

Mr. ADAMS. Thank you, Mr. Chairman.

Mr. DINGELL. Mr. Kuykendall?

Mr. KUYKENDALL Gentlemen, it is good to have you here. Yesterday we had one of the witnesses bring up the point of unemployment compensation which is $12.75 a day, paid to strikers on the railroads. Not a single witness would say they think it is equitable for only one industry either to pay strikers if the rest of them do not.

However, I hardly see how you can say that the working man does not get hurt, because if he does not get his full paycheck he is getting hurt. I don't think you or anybody else can say during the strike he gets a full paycheck. He may not get hurt as much as sombody would like to see him get hurt. But let's remember, too, that every railroad and every airline has a strike fund.

Do you remember last year when the 6 month's statement came out for the airlines, the only ones making money, as far as employees, were the ones out on strike.

This is true and it was an artificial thing, but it was their strike fund. But it seems to me to say that a man getting his paycheck, when it is cut even by 30 percent, is not getting hurt is a misnomer.

Mr. SEYFARTH. I would like a chance to submit statistics on that subject.

Mr. KUYKENDALL. Does he or does he not get his paycheck cut at all?

Mr. SEYFARTH. He does not get his full paycheck, but he gets various forms.

Mr. KUYKENDALL. How much total does he get compared to his paycheck?

Mr. SEYFARTH. I think the break-even point is somewhere around 80 percent of it and in some jurisdictions it goes up as high as 108 percent, and I should like to have the privilege of supplying you with information on that subject. It was compiled by John Northrup of the Wharton School of Finance. (See letter dated Oct. 8, 1971, p. 511, this hearing.)

Mr. KUYKENDALL. Does his paycheck account for what percent, the average worker?

Mr. SEYFARTH. I wish I could give it to you now, but it is alarmingly close to the amount of his paycheck and in some instances, with your lower paid people, exceeds what he was getting from his paycheck.

Mr. KUYKENDALL. You see, we, in this committee, are primarily concerned about neither labor or management in this case, but concerned about the fact that the general public gets hurt a long time before either party in this thing gets hurt.

Now, as far as the situation that the gentleman representing the investor groups had pointed out very well, there is no one culprit in this bit. The railroad management is guilty and railroad labor is guilty because I don't know of a single contract that was not signed by both parties and we know why. It is because the railroad management has traded away the right to manage for a mess of pottage.

Today, interestingly enough, the industries in this country in trouble are not the ones paying the highest wages but the ones paying the lowest wages because the ones paying the highest wages have invariably maintained their right to manage, but the ones paying the lowest wages traded away their rights to manage.

Ths is one of the things we are facing, it is that the industries that have sold their rights to manage to the unions instead of money having wound up with unhappy working men and unhappy managers and this is the case of the railroads today.

I don't have sympathy really for either side of the case, but we are thinking of the welfare of the general public. In fact, if we could somehow isolate both of these parties on an island and let them fight, we would do that. I don't think anybody on this committee would stop that for 1 minute.

Let's talk about the general subject, and this is why you are here, too. Over on one side we have the ALAR, ATA, TAA, and some others that really, for all practical purposes are saying, "No strike, period." Putting it bluntly, isn't that what you say?

Mr. SEYFARTH. Yes.

Mr. KUYKENDALL. Over on the other side we have one bit of legislation introduced by Mr. Staggers and Mr. Eckhardt, primarily called the labor bill, which does not really have any finality in it. So you say over there, there is no strike ban because even in their limitation of their selective strike at the 40-percent level, if you go past that level there is still no area for finality, absolute finality.

So this committee, sir, is involved in that inbetween area, completely compulsory arbitration and total strike ban on one side and no finality at all on the other.

Now, it is awfully easy in a legislative body, since every one of us is a politician, you know there are 434 politicians and one statesman in the House of Representatives.

Mr. DINGELL. There might be disagreement on that.

Mr. KUYKENDALL. So every one of us is tempted to put forth charades.

Let me give you an example of a legislative charade. We just went through one the last term; that was this popular vote method of electing the President of the United States. Everybody that could do their arithmetic knew it was doomed to failure on the front end, because there are exactly enough States in the Union that would lose up to two-thirds of their power in electing a President. There are exactly that number of States to prevent that amendment from ever passing.

So we went through the charade, knowing we were absolutely doomed on the far end and there was not a person for it that couldn't do his arithmetic enough to know there were 13 States that could never vote the straight popular vote. This was a charade.

This committee has no intention of doing that. We need your help in that inbetween area of trying to work out something inbetween. We know what you would like to have and we expect you to tell it, but let's go further and try to help this committee in working out the in-between area.

We are not going to. I don't think, ever pass, because I think, for instance, Mr. Harvey and I would be inclined to vote your way, if anybody is, and we are not going to vote that way, for compulsory arbitration.

The final offer selection we are inclined, and Mr. Harvey is so inclined and I am.

Why because it is not the work of the outsider that is selective. You see the difference. In the final offer selection, it is not the work of an outsider. Can you buy the difference in the final offer selection method compared to compulsory arbitration?

Mr. ISBELL. Yes; certainly, there is a difference and you put your finger on it. If I can speak personally, I lean a little more in that direction also. On the other hand, I think the whole idea here of an arsenal of weapons is that the administrators of this arsenal of weapons will soon learn the most effective means in a particular situation, where particular issues are involved, that might, let's say if work rules are involved, possibly the final offer selection would be too bitter a pill for the opposition side to swallow either way regardless of which one they select, so, in that case possibly arbitration might be the answer there.

I don't know if you ever examined any of the evidence in the testimony in this committee. It is precisely work rules that have caused organized labor to reject any panel. The gentlemen from organized labor have said, "I won't accept a panel if I could choose it myself."

In some cases, the panels have been practically all labor panels because of work rules. In other words, organized labor does not feel that any outside party can understand work rules.

Mr. DINGELL. Will you yield at that point? I am curious why labor would be vigorous in preserving its ability to negotiate work rules while management would be so anxious to shed its ability to manage its own affairs and come to a conclusion with regard to its work rules by empaneling outsiders to write their work rules.

Mr. ISBELL. I think it points up the hopelessness of the situation today.

Mr. DINGELL. I don't think so. I think it points up the inadequacy of performance. The railroads probably, throughout the years of their negotiations, and everybody is in agreement, have come up with perhaps the worst set of work rules according to public renown anyway, of any industry in society.

You can check it, if you wish, but they have done it themselves and everybody agreed they traded off wages for work rules over the years and now they rush in and say, "We want somebody to take over management of our business."

Now, we control their prices, we control their routes, we control almost every aspect about them excepting work rules and wages they pay. Now they want to rush in and give up those rights. I am wondering if we wouldn't be better just to take the whole thing over and run it, since they apparently are reluctant or incapable or some combination of the two, to take care of the last responsibility which they have under the law.

Mr. ISBELL. I would like to take issue with several things you said. First, I don't believe railway management has had, over the years, opportunity to accept these trade-offs as you suggest. You recall in 1948?

Mr. DINGELL. They did it by collective bargaining.

Mr. ISBELL. You recall they made an issue over the firemen and the Government took over the railroads, made a contract, and handed the railroads back to them under those conditions.

Mr. DINGELL. Just a minute. We legislated them out of business, and it was not 1948 but 1962 we did it.

Mr. ISBELL. Yes, for 3 years.

Mr. DINGELL. We just legislated them out. The issue is still before us and not resolved yet.

Mr. ISBELL. The other issue, I take it, is that the Government does not control the railroad's pricing. They regulate it, but do not control it. Most pricing never comes before a Government regulatory body.

Mr. DINGELL. You are making a statement at variance from what we hear from the railroads and papers. I am glad you do it. Go ahead.

Mr. ISBELL. There is possibly more control than those of us would usually like to see and management as well. It is not totally controlled by Government. Most rates are not reviewed by the ICC.

However, there are guidelines which do define a zone of reasonableness, which I think many of us would like to see widened to give management a little more discretion. But I don't believe that we can say, at least to my knowledge, that railroads have purposely traded over the years their work rules changes for lower wages.

I think they were saddled with work rules that came about through the nature of their businesses—you see, they were one of the early industries, steam engine industries in the country, and developed these rules when you had the old steam engines and slow cars and so forth and small cars and they were saddled with them and have not been able to shed them and, as a result, had to maintain wages at a low level in order to keep from going bankrupt.

Mr. KUYKENDALL. The question we face here, of course, is trying to get a workable piece of legislation out of the Congress of the United States. We really face only one problem. That is, a tenable, fair, method of finality. That is the only issue before us now, a method of finality. Isn't that really what we are talking about?

Then it is understood that what we are after is a method of finality. It has taken me 5 years to come around to realizing that nothing we do here is going to be very agreeable to both sides as far as a method of finality is concerned. So I have come to the conclusion and I am on record about a dozen times in the last 90 days, that we are not looking for a method of finality that is agreeable to both sides. We are looking for one just right and equally frightening to both sides.

It is necessary that it be equally frightening to both sides to preserve collective bargaining, isn't it? It has to be something that they will shy away from, if we are to preserve collective bargaining. They are scared as heck of it.

Now, the only system I have seen that would equally frighten both sides is final offer selection and the only reason is because they always face the possibility of having the other man's package accepted in toto.

Do any of you want to comment on it?

Mr. SEYFARTH. I might say that compulsory arbitration is not entirely palatable to any employer.

Mr. ISBELL. Sir, let me explain this. Every time this thing has come before this committee, every single time, and I have had five of them in 5 years, every time one side has been willing to accept compulsory arbitration and the other has not.

Mr. DINGELL. It has been the same side, too.

Mr. KUYKENDALL. Yes, it was the same side every time. I know there are deep-seated reasons for that, but we have to accept some reasons. Whether we think the reasons are right or wrong, in our own logic, I can assure you they are real and right in the person that has the reasons and we have to accept that, too.

So we simply feel we have to come to a new idea that, maybe, is not tainted by the past. You know in politics when somebody says, "I have to find a new candidate that does not have any scares," well, I am sorry to say this panel idea has too many scars. That is really what is wrong as much as anything else. It has too many scars.

Mr. SEYFARTH. We deeply appreciate the situation of this committee, which is dealing with some very complex concepts. The whole concept of collective bargaining is intertwined with your problem, the concept that, of course, we all agree with, we can't disagree with the fact that people should sit down and compose their disputes. Of course the concept has become so popular that even convicts have adopted our rules.

Mr. KUYKENDALL. This has been a nice day up to now.

Mr. SEYFARTH. And I think with a degree of success perhaps. But some of these basic concepts, collective bargaining is one and mixed with it, of course, is the matter of strikes and inflation and we feel they must be taken apart and dissected and we have to put something back together again which is an improvement over what we have.

Mr. KUYKENDALL. You will get 100 percent agreement of this committee on that. Thank you very much.

Mr. DINGELL. Mr. Metcalfe?

Mr. METCALFE. Thank you, Mr. Chairman. I have listened to all of this argument since I have been present. I might say of the meetings I have attended, I don't know of any that have been more direct and more provocative than these, and my distinguished colleagues have asked some of the questions that I would have asked and being cognizant of the fact that we have other witnesses I waive any right to further interrogate you very distinguished gentlemen and express my thanks for your coming and being so candid in your expressions, because your candor is what we appreciate, at least we know then how you feel.

Thank you, Mr. Chairman.

Mr. DINGELL. Thank you, Mr. Metcalfe. I would like to echo the comments of our very able and respected colleague, Mr. Metcalfe, who, in a very brief time, has become one of the very valuable and contributing members of this committee.

Now, I would like to ask you this one question. What is really the function of the Congress? Is it to write the contract for the parties or simply to see to it the railroads are kept operating in the public interest? Are we to settle the questions that exist between the parties to finality or are we simply to see to it the railroads continue to serve and that the national economy is not jeopardized?

Mr. WELLER. May I say, Mr. Chairman, what you just said last is obviously what you should be doing and there is no doubt about it. May I also interject that whatever your committee does, I admire very much the courage that your committee is demonstrating in even holding hearings on the subject. Certainly, the point is keep the railroads

and airlines operating in the public interest without the public being hurt.

If your can do it without financial settlement of contracts or anything, we would prefer it. We think it has gotten to the point where you can't. That is our problem.

Mr. DINGELL. Can't this be accomplished by the simple mechanism of saying this, "All right, Mr. Striker, there is going to be no unemployment compensation for your during the period of the strike" and saying to the railroad, "You are going to continue to serve and the two of you will go off into a separate room and suffering roughly equal penalties, no profits, no dividends, no wages, and the railroad is run."

Or saying that the Government will fix wages, rates, charges, and amount of carriage that will go forward. We will essentially take over and run everything while you fellows go to the back room and get your differences settled.

Dosen't that take care of the public interest and the problem?

Mr. WELLER. I think it does not, Mr. Chairman, because of a number of reasons. I think one of the problems you would have would be that, in effect, if Congress takes the property over and operates it, that is, Congress will have the job of settling the labor contract.

Mr. DINGELL. We will write a temporary contract, work rules, and work conditions during the period. It is obvious that somebody has to do it.

Mr. WELLER. The last couple of times Congress has done it, it was not encouraging.

Mr. DINGELL. Well, it is my recollection that every time we tried to settle these strikes, either through the Morse panel, which I violently oppose, or through the Kennedy proposal in the early sixties with regard to the firemen, which I didn't have sense enough to oppose, we wound up with problems remaining with us. They still curse us.

The firemen issue is still with us, as you are aware, and the questions inherent in the Morse panel were not mediated to finality.

We tried what we denominated as mediation finality and it is not. And we tried compulsory arbitration under Kennedy and the issues are still there and still phlegmatic. Maybe we ought to say, "You go on off to a room and come to a resolution of your problems and come back to us when you are done and in the meantime we will keep the railroads going.

We tried in every other contract to have outsiders write the contracts and our efforts simply failed.

Now, am I not really talking in a fundamental sense here, "We will run the railroads and you fellows negotiate; not we will negotiate for you and are not going to appoint outside panels."

Mr. WELLER. I think while you operate railroads by the Government you have to deal with employees still in organized labor and it would be transferring to you a set of headaches.

Mr. DINGELL. We will. The question is who is going to get the headache and how much and what kind. Are we going to have a headache over the question of the operation of the railroads or are we going to have a headache over the question of what the work rules and conditions are and who is going to write these darn things.

Mr. KUYKENDALL. Will you yield? You know, John, the biggest problems I have with the seizure is who is going to pay Penn Central's loss on the seizure?

Mr. DINGELL. That, by the way, is a good example of some of the problems.

Mr. KUYKENDALL. You talk about taking profits while in seizure, but I want to know who is going to take them over?

Mr. SEYFARTH. You know, years ago one railroad was taken over in the railroad dispute in World War II and the experience of the Government running the railroad is not a happy one. When the railroad was finally turned back to the management, there was chaos which ended with the president of the railroad being murdered on the streets of Peoria, so there is an aftermath to many of these things.

Mr. KUYKENDALL. One of the things that was spoken of by the chairman, everything that was done in the past had a hangover effect and not settlement. Let me repeat we need some fresh thinking, totally original thinking.

I think one of the reasons I had only one idea, it is the only new idea I heard in 5 years. If you can come up with something original, we would like to know about it.

Thank you, Mr. Chairman.

Mr. DINGELL. Gentlemen, we thank you.

Mr. SEYFARTH. Thank you.

Mr. DINGELL. You were generous with your time and responded to the committee's questions and we appreciate that.

(The following letter and attachments were subsequently received for the record:)

TRANSPORTATION ASSOCIATION OF AMERICA,
Washington, D.C., October 8, 1971.

Hon. JOHN JARMAN,
Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, Rayburn House Office Building, Washington, D.C.

DEAR MR. JARMAN: It is respectfully requested that this letter, along with the enclosures, be included in the record of hearings before your Subcommittee on "Emergency Labor Dispute Legislation" as supplementing oral testimony given on September 16, 1971 by Mr. James E. Isbell, Jr., John L. Weller and myself on behalf of the Transportation Association of America.

In response to Mr. Adams' question of Mr. Weller (page 574 of the typewritten transcript) as to whether the problem in the railroad industry was not only "depression of earnings" but also "depression" in the "wage Levels", I am enclosing the following data:

(1) Average annual compensation per employee of railroads and other industry groups for the year 1970 (Exhibit I).

(2) Estimated earnings of railroad employees which the recommendations of Emergency Board No. 178 would produce (Exhibit II). (Prepared by the National Railway Labor Conference, using ICC hours of service reports for January–March, 1970 and wage schedules of the Emergency Board).

As will be observed from these exhibits, railroad wage levels hardly can be considered as "depressed" either from the standpoint of transportation or business generally.

As disclosed by Exhibit II (based on a Department of Commerce survey), annual railroad wages and salaries for the year 1970 average $9,774 as compared to $9,981 for other transportation and $8,897 for communications and utilities, $8,150 for manufacturing, and $9,262 for mining. When supplemental benefits are added, compensation for railroad employees exceed all other groups.

Moreover, as seen in Exhibit II, under the recommendations of Emergency Board No. 178, by 1972 annual compensation for railroad employees will increase substantially over 1970 levels.

As reflected on page 585 of the typewritten transcript, in response to a question from Mr. Kuykendall, I asked for the privilege of supplying information developed by Mr. John Northrup of the Wharton School of Finance on financial aid to strikers. In that connection, I enclose certain results of Mr. Northrup's study as Exhibit III.

Sincerely,

HENRY E. SEYFARTH,
Chairman, TAA Transport Labor Committee.

EXHIBIT I.—AVERAGE ANNUAL COMPENSATION PER EMPLOYEE, RAILROADS AND OTHER INDUSTRY GROUPS, YEAR 1970

Industry	Wages and salaries	Supplements	Total
1. Railroads	$9,774	$1,518	$11,292
2. Other transportation	9,981	1,094	11,075
3. Communications and utilities	8,897	1,464	10,361
4. Manufacturing	8,150	1,202	9,352
5. Mining	9,262	1,140	10,402

Source: Survey of Current Business (Department of Commerce).

EXHIBIT II

ESTIMATED EARNINGS OF RAILROAD EMPLOYEES WHICH THE RECOMMENDATIONS OF EMERGENCY BOARD 178 WOULD PRODUCE

No.	ICC reporting division description	Number of employees	Actual 1st quarter 1970	Average straight-time hourly earnings, estimated, effective as of— Jan. 1, 1970 (5 percent increase)	Nov. 1, 1970 (32 cent per hour increase)	Apr. 1, 1971 (4 percent increase)	Oct. 1, 1971 (5 percent increase)	Apr. 1, 1972 (5 percent increase)	Oct. 1, 1972 (5 percent increase)	Full-time earnings Based on Oct. 1, 1972 rates [1] Weekly	Annual	Full-time annual earnings and benefits based on Oct. 1, 1972 rates [1]
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
	GROUP 1—CLERICAL AND STATION EMPLOYEES (BRAC)											
5	Chief clerks (minor departments) etc.	8,970	$4.27	$4.48	$4.80	$4.99	$5.24	$5.50	$5.78	$231	$12,069	$13,655
6	Clerks and clerical specialists (A)	8,910	4.17	4.38	4.70	4.89	5.13	5.39	5.66	226	11,818	13,404
7	Clerks (B and C)	54,242	3.59	3.77	4.09	4.25	4.46	4.68	4.91	196	10,252	11,838
8	Mechanical device operators (office)	5,825	3.57	3.75	4.07	4.23	4.44	4.66	4.89	196	10,210	11,796
9	Stenographers and secretaries (A)	3,403	4.00	4.20	4.52	4.70	4.94	5.19	5.45	218	11,380	12,966
10	Stenographers and typists (B)	6,806	3.52	3.70	4.02	4.18	4.39	4.61	4.84	194	10,106	11,692
12	Ticket agents and assistant ticket agents	395	3.80	3.99	4.31	4.48	4.70	4.94	5.19	208	10,837	12,423
14	Telephone switchboard operators and office assistants	1,480	3.19	3.35	3.67	3.82	4.01	4.21	4.42	177	9,229	10,815
15	Messengers and office boys	973	3.10	3.26	3.58	3.72	3.91	4.11	4.32	173	9,020	10,606
16	Elevator operators and other office attendants	220	3.17	3.33	3.65	3.80	3.99	4.19	4.40	176	9,187	10,773
18	Patrolmen and watchmen	1,954	3.79	3.98	4.30	4.47	4.69	4.92	5.17	207	10,795	12,381
24	Motor vehicle and motor car operators	5,031	3.25	3.41	3.73	3.88	4.07	4.27	4.48	179	9,354	10,940
26	Janitors and cleaners	2,698	3.11	3.27	3.59	3.73	3.92	4.12	4.33	173	9,041	10,627
51	General and assistant general foremen (stores)	198	4.21	4.42	4.74	4.93	5.18	5.44	5.71	228	11,922	13,508
87	Baggage parcel room and station attendants	2,451	3.47	3.64	3.96	4.12	4.33	4.55	4.78	191	9,981	11,567
88	General foremen (freight stations etc.)	165	4.34	4.56	4.88	5.08	5.33	5.60	5.88	235	12,277	13,863

See footnotes at end of table.

EXHIBIT II—Continued

ESTIMATED EARNINGS OF RAILROAD EMPLOYEES WHICH THE RECOMMENDATIONS OF EMERGENCY BOARD 178 WOULD PRODUCE—Continued

No.	ICC reporting division description	Number of employees	Actual 1st quarter 1970	Average straight-time hourly earnings, estimated, effective as of—						Full-time earnings Based on Oct. 1, 1972 rates[1]		Full-time annual earnings and benefits based on Oct. 1, 1972 rates[1]
				Jan. 1, 1970 (5 percent increase)	Nov. 1, 1970 (32 cent per hour increase)	Apr. 1, 1971 (4 percent increase)	Oct. 1, 1971 (5 percent increase)	Apr. 1, 1972 (5 percent increase)	Oct. 1, 1972 (5 percent increase)	Weekly	Annual	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	10)	(11)	(12)	(13)
89	Assistant general foremen (freight stations, etc.)	65	$4.33	$4.55	$4.87	$5.06	$5.31	$5.58	$5.86	$234	$12,236	$13,822
90	Gang foremen (freight stations, etc.)	806	3.72	3.91	4.23	4.40	4.62	4.85	5.09	204	10,628	12,214
91	Callers, loaders, scalers, sealers, etc	2,040	3.22	3.38	3.70	3.85	4.04	4.24	4.45	178	9,292	10,878
92	Truckers (stations, warehouses and platforms)	1,600	3.19	3.35	3.67	3.82	4.01	4.21	4.42	177	9,229	10,815
93	Laborers (coal and ore docks, and grain elevators)	536	3.57	3.75	4.07	4.23	4.44	4.66	4.89	196	10,210	11,796
94	Common laborers (stations, etc.)	1,475	3.15	3.31	3.63	3.78	3.97	4.17	4.38	175	9,145	10,731
	Total, clerical and station employees group (22 classes)	110,243	3.66	3.84	4.16	4.33	4.55	4.78	5.02	201	10,482	12,068
	GROUP 6—TELEGRAPHER AND STATION EMPLOYEES (BRAC)											
78	Station agents (supervisory, etc.)	1,545	4.75	4.99	5.31	5.52	5.80	6.09	6.39	256	13,342	14,928
79	Station agents (smaller stations, etc.)	1,884	3.97	4.17	4.49	4.67	4.90	5.15	5.41	216	11,296	12,882
80	Station agents (telegraphers and telephoners)	6,189	3.55	3.73	4.05	4.21	4.42	4.64	4.87	195	10,169	11,755
81	Chief telegraphers and telephoners or wire chiefs	978	3.95	4.15	4.47	4.65	4.88	5.12	5.38	215	11,233	12,819
82	Clerk-telegraphers and clerk-telephoners	3,768	3.46	3.63	3.95	4.11	4.32	4.54	4.77	191	9,960	11,546
83	Telegraphers, telephoners, and towermen	7,229	3.58	3.76	4.08	4.24	4.45	4.67	4.90	196	10,231	11,817
	Total, telegrapher and station employees (6 classes)	21,593	3.69	3.87	4.19	4.36	4.58	4.81	5.05	202	10,544	12,130
	Total, clerical, telegrapher, and station employees (28 classes)	131,836	3.66	3.84	4.16	4.33	4.55	4.78	5.02	201	10,482	12,068

	GROUP 2—MAINTENANCE OF WAY EMPLOYES (BMWE)											
29	Bridge and building gang foremen (skilled labor)	2,112	3.96	4.16	4.48	4.66	4.89	5.13	5.39	216	11,254	12,840
30	Bridge and building carpenters	4,768	3.47	3.64	3.96	4.12	4.33	4.55	4.78	191	9,981	11,567
31	Bridge and building ironworkers	375	3 70	3.89	4.21	3.38	4.60	4.83	5.07	203	10,586	12,172
32	Bridge and building painters	505	3.50	3.68	4.00	4.16	4.37	4.59	4.82	193	10,064	11,650
33	Masons bricklayers plasterers and plumbers	2,758	3.69	3.87	4.19	4.36	4.58	4.81	5.05	202	10,544	12,130
34	Maintenance of way and structures helpers and apprentices	2,396	3.14	3.30	3.62	3.76	3.95	4.15	4.36	174	9,104	10,690
35	Portable steam equipment operators	8,001	3.56	3.74	4.06	4.22	4.43	4.65	4.88	195	10,189	11,775
36	Portable steam equipment operators helpers	297	3.11	3.27	3.59	3.73	3.92	4.12	4.33	173	9,041	10,627
37	Pumping equipment operators	64	3.11	3.27	3.59	3.73	3.92	4.12	4.33	173	9,041	10,627
38	Gang foremen (extra gang, etc.)	3,205	3.84	4.03	4.35	4.52	4.75	4.99	5.24	210	10,941	12,527
40	Gang or section foremen	6,898	3.64	3.82	4.14	4.31	4.53	4.76	5.00	200	10,440	12,016
41	Extra gang men	12,383	3.00	3.15	3.47	3.61	3.79	3.98	4.18	167	8,728	10,314
42	Sectionmen	21,753	2.95	3.10	3.42	3.56	3.74	3.93	4.13	165	8,623	10,209
43	Maintenance of way laborers (other than track and roadway)	607	2.97	3.12	3.44	3.58	3.76	3.95	4.15	166	8,665	10,251
102	Bridge operators and helpers	662	3.17	3.33	3.65	3.80	3.99	4.19	4.40	176	9,187	10,773
103	Crossing and bridge flagmen and gatemen	1,409	2.98	3.13	3.45	3.59	3.77	3.96	4.16	166	8,686	10,272
	Total maintenance of way employees (16 classes)	68,193	3.27	3.43	3.75	3.09	4.10	4.31	4.53	181	9,459	11,045
	GROUP 8—DINING ROOM CAR EMPLOYEES (H. & R. E.)											
96	Chefs and cooks restaurants or dining cars	766	3.45	3.62	3.94	4.10	4.31	4.53	4.76	190	9,939	11,525
97	Waiters, camp cooks, kitchen helpers, etc	2,057	3.22	3.38	3.70	3.85	4.04	4.23	4.45	178	9,292	10,878
	Total dining car employees (2 classes)	2,823	3.29	3.45	3.77	3.92	4.12	4.33	4.55	182	9,500	11,986
	Total nonoperating employees (46 classes)	202,852	3.53	3.71	4.03	4.19	4.40	4.62	4.85	194	10,127	11,713

See footnotes at end of table.

ESTIMATED HOURLY EQUIVALENT OF AVERAGE BASIC DAILY RATES,[2] OPERATING EMPLOYEES—CLASS I RAILROADS

No.	ICC reporting division description	Number of employees	Actual 1st quarter, 1970	Hourly equivalent of average basic daily rates, estimated, effective as of— Jan. 1, 1970 (5 percent increase)	Nov. 1, 1970 (32 cent per hour increase)	Apr. 1, 1971 (4 percent increase)	Oct. 1, 1971 (5 percent increase)	Apr. 1, 1972 (5 percent increase)	Oct. 1, 1972 (5 percent increase)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
111	Road passenger conductors	2,158	$3.53	$3.71	$4.03	$4.19	$4.40	$4.62	$4.85
112	Assistant road passenger and ticket collectors	1,964	3.61	3.71	4.11	4.27	4.48	4.70	4.94
115	Road passenger baggagemen	631	2.90	3.05	3.37	3.50	3.68	3.86	4.05
116	Road passenger brakemen	1,831	2.86	3.00	3.32	3.45	3.62	3.80	3.99
	Total—Passenger conductor and train (4 classes)	6,584	3.28	3.44	3.76	3.91	4.11	4.32	4.54
121	Road passenger engineers and motormen	2,488	3.34	3.51	3.83	3.98	4.18	4.39	4.61
125	Road passenger firemen and helpers	1,890	2.89	3.03	3.35	3.48	3.65	3.83	4.02
	Total—Passenger engineers and firemen (2 classes)	4,378	3.14	3.30	3.62	3.76	3.95	4.15	4.36
	Total—Passengers (6 classes)	10,962	3.22	3.38	3.70	3.85	4.04	4.24	4.45
113	Road freight conductors (through freight)	8,242	3.32	3.49	3.81	3.96	4.16	4.37	4.59
114	Road freight conductors (local freight)	6,353	3.50	3.68	4.00	4.16	4.37	4.59	4.82
117	Road freight brakemen (through freight)	19,040	2.98	3.13	3.45	3.59	3.77	3.96	4.16
118	Road freight brakemen (local freight)	13,475	3.12	3.28	3.60	3.74	3.93	4.13	4.34
122	Road freight engineers (through freight)	9,683	4.15	4.35	4.67	4.85	5.08	5.32	5.58
123	Road freight engineers (local freight)	6,418	4.17	4.36	4.68	4.86	5.09	5.33	5.58
126	Road freight firemen (through freight)	5,681	3.34	3.51	3.83	3.98	4.18	4.39	4.61
127	Road freight firemen (local freight)	2,974	3.29	3.55	3.77	3.92	4.12	4.33	4.55
	Total—Freight (8 classes)	71,866	3.40	3.57	3.89	4.05	4.24	4.45	4.67
	Total—Passenger and freight (14 classes)	82,828	3.37	3.54	3.86	4.01	4.20	4.41	4.63
107	Switch tenders	671	3.63	3.81	4.13	4.30	4.52	4.75	4.99
108	Outside hostlers	1,393	3.71	3.90	4.22	4.39	4.61	4.84	5.08
109	Inside hostlers	1,066	3.55	3.73	4.05	4.21	4.42	4.64	4.87
110	Outside hostler helpers	703	3.43	3.60	3.92	4.08	4.28	4.49	4.71
119	Yard conductors and yard foremen	18,597	4.08	4.28	4.60	4.78	5.02	5.27	5.53
120	Yard brakemen and yard helpers	38,857	3.77	3.96	4.28	4.45	4.67	4.90	5.15
124	Yard engineers and motormen	15,702	4.44	4.65	4.97	5.16	5.40	5.65	5.92
128	Yard firemen and helpers	6,802	3.78	3.97	4.29	4.46	4.68	4.91	5.16
	Total yard (8 classes)	83,791	3.97	4.17	4.49	4.67	4.89	5.14	5.39
	Total operators (22 classes)	166,619	3.62	3.80	4.12	4.28	4.48	4.70	4.93
	Total operators (excluding engineers) (18 classes)	132,328	3.46	3.63	3.95	4.11	4.32	4.54	4.77

See footnotes at end of table.

No.	ICC reporting division description	Number of employees	Actual 1st quarter 1970	Average straight-time hourly earnings, estimated, effective as of— Jan. 1, 1970 (5 percent increase)	Nov. 1, 1970 (32 cent per hour increase)	Apr. 1, 1971 (4 percent increase)	Oct. 1, 1971 (5 percent increase)	Apr. 1, 1972 (5 percent increase)	Oct. 1, 1972 (5 percent increase)	Full-time earnings based on Oct. 1, 1972 rates [1] Weekly	Annual	Full-time annual earnings and benefits based on Oct. 1, 1972 rates [1]
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
	OPERATING EMPLOYEES											
	Passenger service:											
111	Road passenger conductors	2,158	$6.59	$6.92	$7.52	$7.82	$8.21	$8.62	$9.05	$341	$17,548	$19,134
112	Assistant road passenger conductors and ticket collectors	1,964	6.32	6.64	7.20	7.49	7.86	8.25	8.66	311	15,970	17,556
115	Road passenger baggagemen	631	5.98	6.28	6.94	7.22	7.58	7.96	8.36	289	12,041	13,627
116	Road passenger brakemen	1,831	5.93	6.23	6.89	7.17	7.53	7.91	8.31	280	14,420	16,006
121	Road passenger engineers and motormen	2,488	8.29	8.70	9.49	9.87	10.36	10.88	11.42	381	19,593	21,179
125	Road passenger firemen and helpers	1,890	7.68	8.06	8.91	9.27	9.73	10.22	10.73	329	16,936	18,522
	Total passenger service (6 classes)	10,962	6.94	7.29	7.98	8.30	8.72	9.16	9.62	330	16,983	18,569
	Freight service:											
113	Road freight conductors (through freight)	8,242	5.81	6.10	6.66	6.93	7.28	7.64	8.02	340	17,511	19,097
114	Road freight conductors (local freight)	6,353	4.11	4.32	4.70	4.89	5.13	5.39	5.66	370	19,048	20,634
117	Road freight brakemen (through freight)	19,040	5.19	5.45	6.01	6.25	6.56	6.89	7.23	282	14,518	16,104
118	Road freight brakemen (local freight)	13,475	3.72	3.91	4.29	4.46	4.68	4.91	5.16	323	16,630	18,216
122	Road freight engineers (through freight)	9,683	7.07	7.41	7.95	8.25	8.64	9.05	9.48	372	19,124	20,710
123	Road freight engineers (local freight)	6,418	4.85	5.08	5.45	5.65	5.92	6.20	6.49	426	21,908	23,494
126	Road freight firemen (through freight)	5,681	5.68	5.96	6.50	6.76	7.10	7.46	7.83	304	15,803	17,389
127	Road freight firemen (local freight)	2,974	3.94	4.14	4.53	4.71	4.95	5.20	5.46	327	16,842	18,428
	Total freight service (8 classes)	71,866	4.96	5.21	5.68	5.90	6.20	6.51	6.83	334	17,170	18,756

See footnotes at end of table.

ESTIMATED HOURLY EQUIVALENT OF AVERAGE BASIC DAILY RATES,[2] OPERATING EMPLOYEES—CLASS I RAILROADS—Continued

No.	ICC reporting division description	Number of employees	Actual 1st quarter 1970	Average straight-time hourly earnings, estimated, effective as of— Jan. 1, 1970 (5 percent increase)	Nov. 1, 1970 (32 cent per hour increase)	Apr. 1, 1971 (4 percent increase)	Oct. 1, 1971 (5 percent increase)	Apr. 1, 1972 (5 percent increase)	Oct. 1, 1972 (5 percent increase)	Full-time earnings based on Oct. 1, 1972 rates[1] Weekly	Annual	Full-time annual earnings and benefits based on Oct. 1, 1972 rates[1]
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
	Yard service:											
107	Switch tenders	671	3.63	3.81	4.13	4.30	4.52	4.75	4.99	232	11,942	13,528
108	Outside hostlers	1,393	3.71	3.90	4.22	4.39	4.61	4.84	5.08	278	14,286	15,873
109	Inside hostlers	1,066	3.55	3.73	4.05	4.21	4.42	4.64	4.87	263	13,516	15,102
110	Outside hostler helpers	703	3.43	3.60	3.92	4.08	4.28	4.49	4.71	236	12,160	13,746
119	Yard conductors and yard foremen	18,597	4.23	4.44	4.76	4.95	5.20	5.46	5.73	279	14,372	15,958
120	Yard brakemen and yard helpers	38,857	3.90	4.10	4.42	4.60	4.83	5.07	5.32	240	12,356	13,942
124	Yard engineers and motormen	15,702	4.59	4.80	5.12	5.31	5.56	5.82	6.10	326	16,507	18,093
128	Yard firemen and helpers	6,802	3.89	4.08	4.40	4.58	4.81	5.05	5.30	258	13,271	14,857
	Total yard service (8 classes)	83,791	4.10	4.31	4.63	4.81	5.05	5.29	5.56	268	13,764	15,350
	Grand total passenger freight and yard service (22 classes)	166,619	4.62	4.85	5.26	5.46	5.73	6.02	6.31	300	15,418	17,004
	Grand total operating and nonoperating (68 classes)	369,471	4.02	4.22	4.58	4.76	5.00	5.25	5.51	242	12,513	14,099

[1] Notes to cols. 11, 12, 13:

Data shown for nonoperating employees represent full-time earnings, without overtime—40 hours per week. Cols. 12 and 13 include pay for 8 holidays per year, and on the average between 2 and 3 weeks vacation per year, not actually worked.

Data for operating employees represent hours actually worked during the first quarter of 1970, including overtime. The averages were as follows: Passenger service—32 hours 45 minutes per week; freight service (through freight—31 hours 48 minutes per week, Local and converted—52 hours 50 minutes per week) 40 hours 20 minutes per week; Yard service—40 hours 1 minute per week.

The average number of hours which could be worked per week, and accordingly the average weekly and annual earnings, will be somewhat reduced in 1971 and 1972 by reason of the amendment to the Hours of Service Act (Public Law 91–169), but it is not likely that the effect on earnings will be sufficient to reduce them to the through freight levels. Cols. 12 and 13 include pay for, on the average, between 2 and 3 weeks vacation per year, and for yard and many local freight employees pay for 8 holidays per year, not actually worked.

Col. 13 includes the following per employee: Paroll taxes, Railroad Retirement—Regular, $776 per year, supplemental, $125 per year; Railroad unemployment insurance, $192 per year; Health and welfare plan (premium cost only), $493 per year; Total, $1,586 per year.

[2] Estimated rates for engineers in freight and yard service reflect preservation of the $400 per basic day differential for working without a fireman.

Source: Interstate Commerce Commission, statements M–300 for January, February, and March 1970; report of Emergency Board 178.

EXHIBIT III

NORTHRUP STUDY ON AID TO STRIKING WORKERS

Dr. Herbert R. Northrup, Professor of Industry, Wharton School of Finance and Commerce, University of Pennsylvania, with an extensive labor-management relations background not only as an academician but also in government and industry, has been conducting an in-depth study for approximately a year of various forms of financial aid to striking workers. Certain results of that study, as of August, 1971, are attached.

The 1970 General Motors Strike

The 1970 General Motors strike was the first big national strike to involve thousands of strikers participating in welfare since the General Electric strike in 1969. Michigan experienced the greatest impact of having strikers on public relief. According to Michigan's Department of Social Services, about 75,000 General Motors strikers (representing approximately 46 percent of Michigan's General Motors strikers) were certified for food stamps. Enclosure (1) displays the number of persons participating in the food stamp program and the dollar value of food stamps issued, before, during and after the strike. Note that by October the number of participants in the program and the total value of food stamps issued had nearly doubled since September. In November, total persons and cost had more than doubled. Of special interest is the fact that both the "percent of bonus value to total value" and "average bonus per person" were highest during the eight month period which was the heaviest part of the strike. What this means is that recipients were receiving stamps at a lower personal cost. This situation is common during a strike. This situation occurs when strikers receive such a small amount in strike benefits that they qualify for large stamp bonuses. Obviously, this results in a higher cost to the government.

Enclosure (2) illustrates the effect of the strike on the Food Stamp Program. It is evident from the graph that striking workers began accepting food stamp assistance soon after the strike began and many were still receiving stamps after the strike was settled. The rise and fall of persons on public assistance who were issued food stamps during the period October 31, 1970 - December 31, 1971 demonstrates striker participation in Public Assistance programs.

Enclosure (3) exhibits the number of strikers participating in the Aid to Dependent Children Program (a Public Assistance program) during October, November and December 1970. The effect this had on the Aid to Dependent Children program is pictured in Enclosure (4).

The impact of the strike on all of Michigan's money payment programs is best portrayed in a graph provided by the Michigan Department of Social Services in Enclosure (5).

Our investigation of the situation in California has not been completed at this time. However, the following information provided by the Chief Administrative Officer of Los Angeles County might be of interest and value. He said, "a total of 309 employees on strike from General Motors received financial assistance in the Aid to Families with Dependent Children program. Financial assistance afforded these recipients totaled $222,848." This represents an average payment of $721.19 per family. Considering the strike lasted 71 days, this means that each family received about $10 a day in Public Assistance benefits. In addition, these same families also were provided strike benefits of approximately $40 per week. As public assistance households they were also eligible for food stamps. My findings show that, using a family of four as an example, the striker would be able to purchase $106 in food stamps for about $50. Adding the above sources of income together, a General Motors striker in Los Angeles County could have received more than $120 per week.

The 1970 - 1971 Westinghouse Steam Division Strike

On August 29, 1970, 5,132 United Electrical, Radio and Machine Workers of America struck the Westinghouse Steam Division, Lester, Pennsylvania. The strike lasted 160 days.

This strike exemplifies a union's capability to sustain, with public assistance, a prolonged strike without paying strike benefits. It is against the UE constitution to pay benefits to members while they are on strike.

The greatest impact of the strike was felt at the Delaware County Board of Assistance, Chester, Pennsylvania. Approximately 40 percent, or 2200, of the Westinghouse strikers live in Delaware County. One week after the strike began, over 150 of these strikers were certified for food stamps. The Executive Director of the Delaware County Welfare Office estimated that about 2000 Lester plant (Westinghouse) strikers were certified for food stamps before the strike was settled. Enclosure (6) portrays the situation in Delaware County, Pennsylvania. There was such a large number of strikers seeking assistance in the form of food stamps and cash payments that the Delaware County Welfare Office was forced to close its doors to welfare applications by 10:00 a.m. each day during the early part of the strike.

The Delaware County Welfare Department does not use any special codes or accounting procedures to distinguish striker from non-striker clients. Therefore, a request was made to the Delaware County Board of Assistance and the Department of Public Welfare, Commonwealth of Pennsylvania for statistical data on the number of persons participating in Public Assistance Programs during the period of the strike. Enclosure (7) illustrates the data received.

As delineated in Enclosure (7), during the time of the strike there was a significant climb in the number of persons participating in both the General Assistance (GA) and Aid to Dependent Children (ADC) Programs. Mention should also be made of the differences depicted as to the effects of the strike on the GA and ADC Programs.

The General Assistance program functions as sort of a catch-all for the Public Assistance Programs. For example, when a striker experiences a need for emergency cash aid, he is placed on the General Assistance Program. If the client intends to continue receiving cash grants, an attempt is made to transfer him to one of the other Public Assistance Programs. This is done because programs such as ADC are supported by federally matched funds while GA is a state funded program. Therefore, as the strike progressed and more striking workers sought and received cash aid, those who were eligible for ADC but who were on the GA Program were transferred. When the strike was settled on January 25, 1971, most of the strikers participating in Public Assistance were no longer receiving cash aid under the General Assistance Program. This explains the small decline in GA participants after the strike as compared to ADC participants.

One additional point should be made regarding Enclosure (7). The graph representing participation in the ADC Program shows that following the strike, the reduction in the number of ADC clients was gradual rather than a

sharp decline. The Executive Director of the Delaware County Board of Assistance explained that during the strike a number of strikers discovered they were eligible before the strike for various forms of income supplements under Public Assistance. When given the option to withdraw from or to remain on welfare when the strike had ended, many decided to continue receiving supplemental aid.

California Example

The average California worker earns $150.48 per week or $3.80 an hour (in nondurable goods the average is $138.62 or $3.61 an hour and in durable goods the average is $156.78 or $3.90 an hour). It is estimated that a wage earner, with a family of four, in the aforementioned categories (average, nondurable and durable) would net $125.88, $118.46 and $131.74 per week respectively (net wages were computed assuming the following deductions: federal taxes, social security, disability insurance, and union dues).

An individual on strike in California could expect to receive about $40 per week in strike benefits if the striker's union provides strike aid comparable to that paid United Auto Worker members during the General Motors strike. Eligible strikers could also expect to receive (still using a family of four as an example) $106 in food stamps for about $50. After all income adjustments are made, the Aid to Dependent Children Program can contribute up to $178 per month to those who are eligible.

A summation of the various benefits available reveals that a California striker could have a weekly disposable income of $94.89. When compared to the wage categories mentioned above (average, nondurable and durable), it is surprising to discover that a striking worker could possibly receive approximately 75 percent of the average California worker's net wage, 80 percent of what the nondurable worker nets, and 72 percent of a durable worker's net wage.

STATE OF MICHIGAN

Enclosure (1)

Food Stamps: Number of Persons and Value of Food Stamps Issued by Type of Household, July 1970 - December 1970

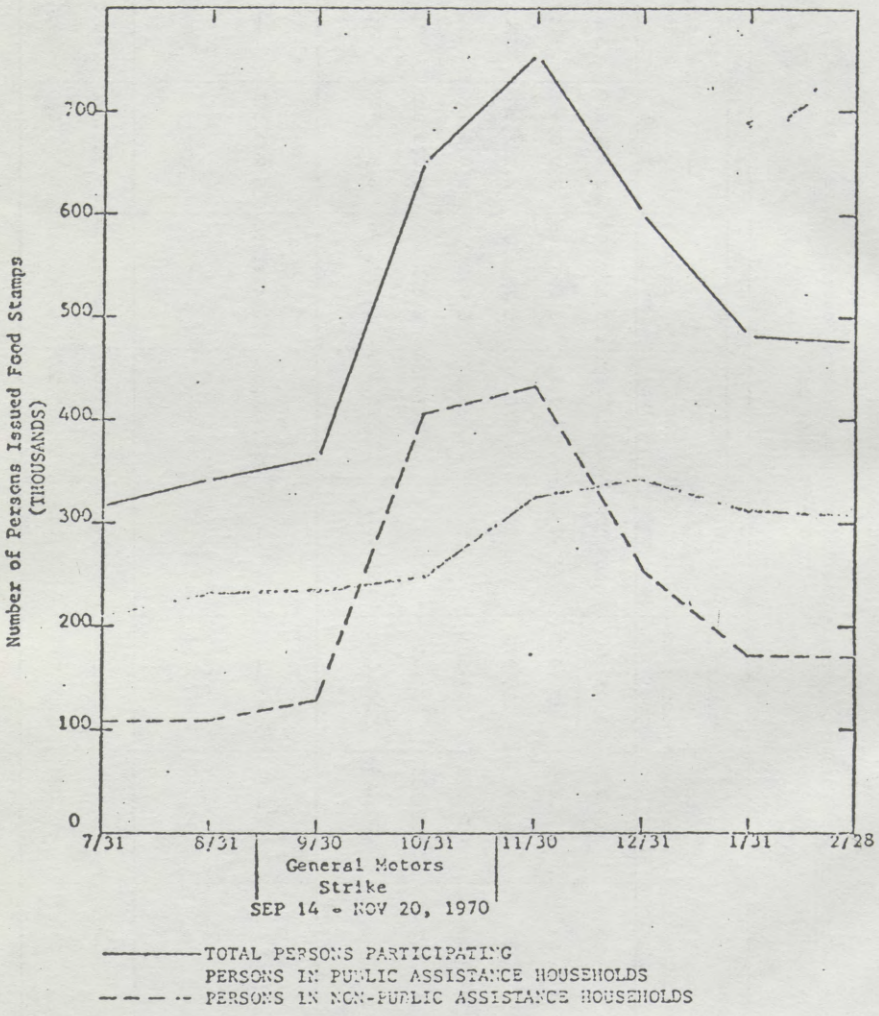
Month	Total participating counties	Total number of persons	Persons in public assistance households	Persons in non-public assistance households	Value of food stamps issued				
					Total value	Purchase value	Bonus value (free)	Percent of bonus value to total value	Average bonus per person
July, 1970	57	314,775	207,566	107,209	$ 7,487,642	$ 3,514,004	$ 3,973,638	53.1	$12.62
August	57	340,635	231,061	108,774	7,670,843	3,700,245	3,970,598	51.8	11.66
September	58	363,760	234,975	128,785	8,019,023	3,766,102	4,252,921	52.8	11.68
October	59	652,078	247,544	404,534	14,712,634	5,641,918	9,070,716	61.7	13.91
November	62	755,189	324,639	430,550	16,867,354	6,821,543	10,045,811	59.6	13.30
December	63	600,805	342,138	258,667	12,959,165	6,030,778	6,928,387	53.5	11.53
6-month total		--	--	--	$67,716,661	$29,474,590	$38,242,071	--	--
Monthly average		504,540	264,787	239,753	--	--	--	56.5	$12.63
January, 1971	63	482,961	312,506	170,455	$10,871,642	$ 5,482,168	$ 5,389,474	49.6	$11.16
February	63	478,054	307,911	170,143	11,156,057	5,645,017	5,511,040	49.4	11.53

Source: State of Michigan, Department of Social Services.

Enclosure (2)

- FOOD STAMP PROGRAM -

STATE OF MICHIGAN
JULY 1970 - FEBRUARY 1971



Source: State of Michigan, Department of Social Services

Enclosure (3)

STATE OF MICHIGAN
AID TO DEPENDENT CHILDREN
GENERAL MOTORS STRIKER FAMILIES, BY COUNTY
OCTOBER, NOVEMBER AND DECEMBER 1970

County	Number of Families		
	October 1970	November 1970	December 1970
Entire State	2,851	22,797	18,817
Alcona	1	4	2
Alger	12	36	39
Allegan	1	11	21
Alpena	2	2	3
Antrim	1	3	4
Arenac	—	14	10
Barry	1	28	27
Bay	148	767	605
Berrien	3	9	7
Branch	1	1	—
Calhoun	1	31	46
Charlevoix	—	1	—
Clinton	1	46	62
Eaton	33	222	142
Emmet	—	2	4
Genesee	1,445	8,829	6,879
Gladwin	—	1	2
Grand Traverse	—	—	2
Gratiot	6	139	111
Houghton	—	2	2
Huron	—	9	11
Ingham	118	660	687
Ionia	—	87	60
Iosco	—	1	1
Isabella	2	16	18
Jackson	—	2	2
Kalamazoo	—	3	5
Kent	14	127	159
Lapeer	35	299	327
Lenawee	1	5	11
Livingston	—	12	20
Macomb	9	107	119
Manistee	—	—	2
Masonic	—	2	3
Midland	8	120	150

County	Number of Families		
	October 1970	November 1970	December 1970
Monroe	5	90	67
Montcalm	—	5	3
Montmorency	1	2	1
Muskegon	—	3	4
Newaygo	—	8	9
Oakland	165	3,261	2,599
Ogemaw	—	6	7
Oscoda	—	1	1
Ottawa	--	9	14
Roscommon	—	4	3
Saginaw	385	3,016	2,399
St. Clair	9	23	27
St. Joseph	--	4	3
Shiawassee	78	501	487
Tuscola	2	184	169
Van Buren	—	9	15
Washtenaw	2	194	170
Wayne	361	3,877	3,294
Wexford	—	2	2

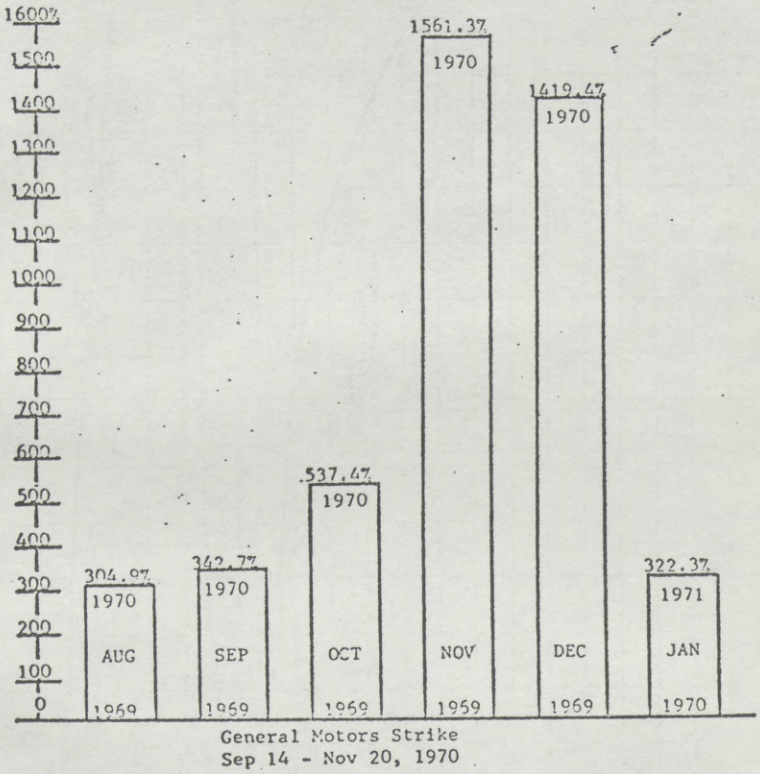
Source of Data: State of Michigan, Department of Social Services

Enclosure (4)

AID TO DEPENDENT CHILDREN PROGRAM
(Unemployed-Parent Segment)

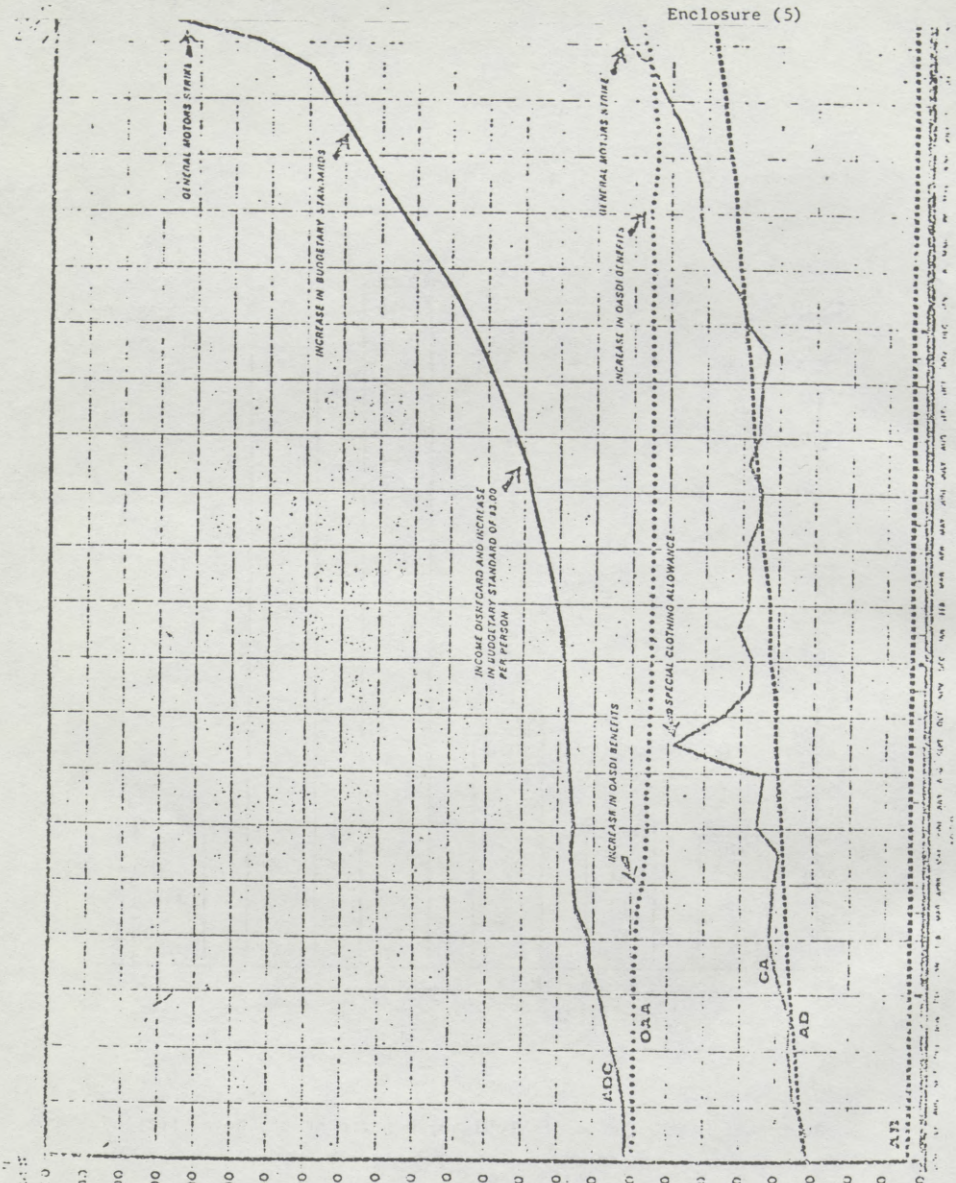
State of Michigan

Percentage of Change Over the Same Month in the Previous Year



Source of Data: State of Michigan, Department of Social Services

Enclosure (5)


GENERAL MOTORS STRIKE
INCREASE IN BUDGETARY STANDARDS
INCOME DISREGARD AND INCREASE IN BUDGETARY STANDARD OF $3.00 PER PERSON
INCREASE IN OASDI BENEFITS
GENERAL MOTORS STRIKE
INCREASE IN OASDI BENEFITS
$ SPECIAL CLOTHING ALLOWANCE
INCREASE IN OASDI BENEFITS
ADC
OAA
GA
AD
AB
120,000
115,000
110,000
105,000
100,000
95,000
90,000
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80,000
75,000
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55,000
50,000
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40,000
35,000
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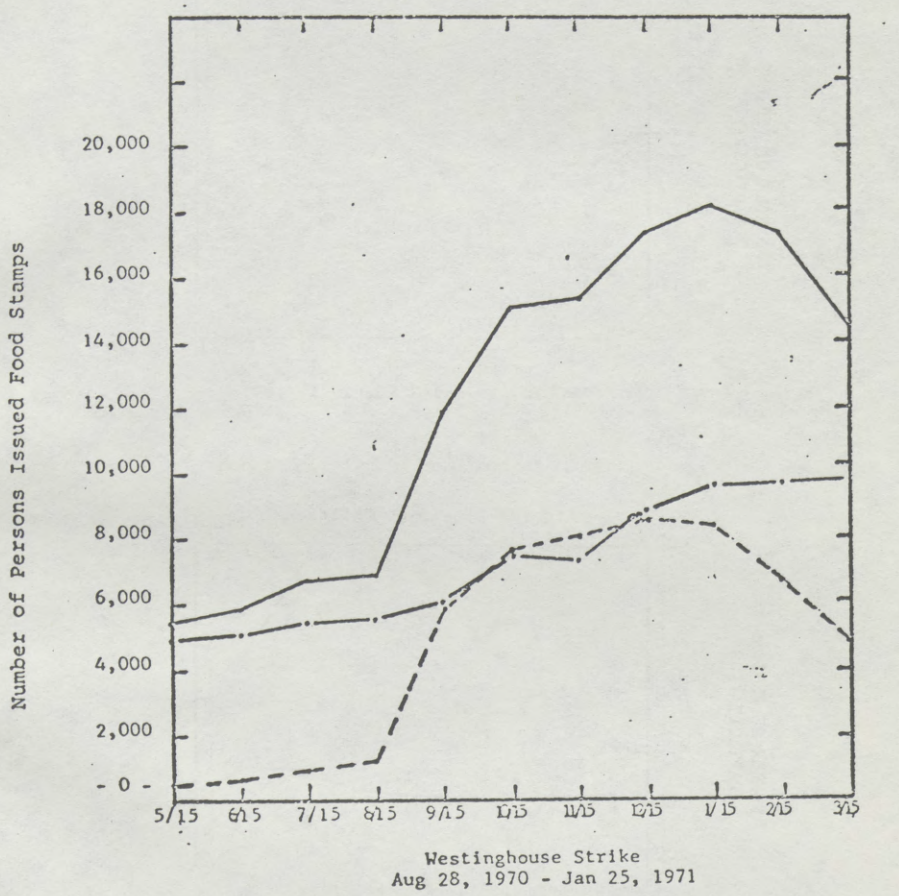
Enclosure (6)

FOOD STAMP PROGRAM

Delaware County, Pennsylvania
May 1970 - March 1971

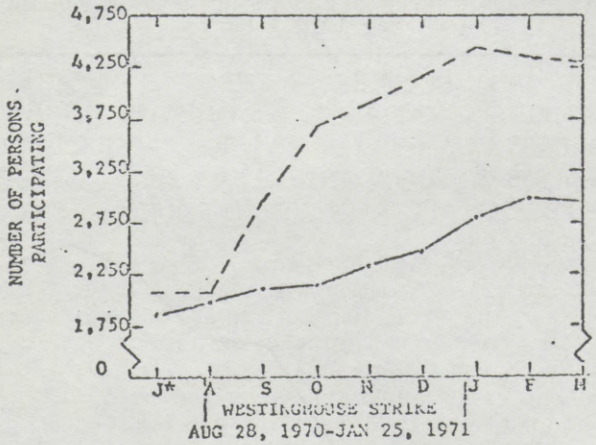


Source of Data: Commonwealth of Pennsylvania, Department of Public Welfare

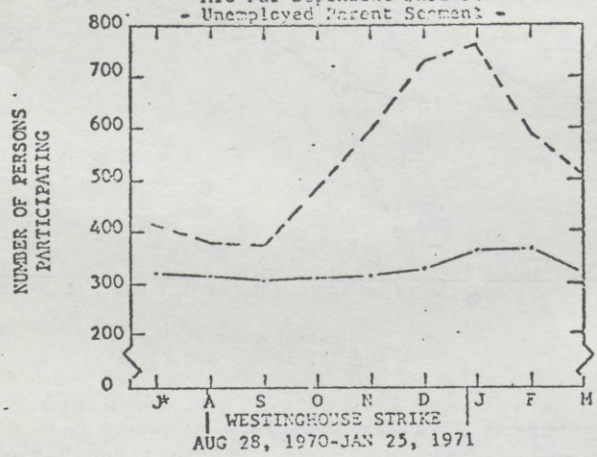
Enclosure (7)

DELAWARE COUNTY, PENNSYLVANIA

General Assistance Program



Aid For Dependent Children
- Unemployed Parent Segment -



1969 - 1970
1970 - 1971

*NOTE: DATA REPRESENT AVERAGE NUMBER OF PARTICIPANTS REPORTED ON LAST DAY OF MONTH.

Source of Data: Commonwealth of Pennsylvania, Department of Public Welfare and the Delaware County, Pa., Board of Assistance

Mr. DINGELL. The next witness is Lyle Fisher, vice president of public affairs and personnel relations of 3M Company. We are happy to welcome you, and our friend and colleague, Mr. Quie of Minnesota, requested he be able to introduce you but he has informed the committee he is tied up in pressing business on his committee and is not able to be with us. He expresses high regard and that you are among the highly important men in business and asked that every possible courtesy be extended.

STATEMENT OF LYLE H. FISHER, MEMBER, INDUSTRIAL RELATIONS COMMITTEE, NATIONAL ASSOCIATION OF MANUFACTURERS; ACCOMPANIED BY J. P. MATTURRO, DIRECTOR, LABOR-MANAGEMENT RELATIONS, AND RANDOLPH M. HALE, WASHINGTON REPRESENTATIVE, INDUSTRIAL RELATIONS

Mr. FISHER. Thank you, Mr. Chairman.

Mr. DINGELL. Mr. Fisher, if you will identify the gentlemen with you for purposes of the record and see you are fully identified yourself, then we will recognize you for your statement.

Mr. FISHER. Thank you, Congressman.

My name is Lyle Fisher and I am, as you indicated, vice-president, public affairs and personnel relations of the 3M Co.

On my left is Randolph Hale, Washington representative, Industrial Relations of the National Association of Manufacturers and on my right is J. P. Matturro, who is director of labor management relations for the National Association of Manufacturers.

Mr. DINGELL. Proceed.

Mr. FISHER. It is our intention to paraphrase the actual testimony we have submitted to you and reduce it to an oral statement briefer than that which we have presented.

Mr. DINGELL. That will be most helpful and without objection, Mr. Fisher, we will see to it your full statement is inserted in the record following your verbal summary.

We are more than pleased to recognize you for such comments as you wish to make.

Mr. FISHER. We, of course, welcome and appreciate this opportunity to appear before your subcommittee and we are appearing, as you understand I am sure, in behalf of the National Association of Manufacturers, on whose Industrial Relations Committee I serve as a member.

Practically all members of this association are subject to the Labor Management Relations Act, 1947, as amended, and many would come under the purview of the emergency disputes provisions of title II of that act.

In addition, since the manufacturing industry is directly affected by disruptions of service in the transportation industry caused by labor strife, we have an immediate interest in legislation involving the resolution of these labor disputes.

This interest also stems from our concern about the potential spillover effects on the manufacturing industry of labor conditions and legislation affecting other industries, such as transportation.

This subcommittee has before it a number of bills that would amend either or both title II of the Labor Management Relations Act, as amended, and the Railway Labor Act. Without discussing the details of each of these legislative proposals, we believe that none is directed at resolving the basic cause of the problem of emergency disputes, and that some would, in fact, aggravate the problem.

My oral testimony will be a review of the major points of the statement. It will be a broad review of the industry's position on the entire subject of emergency disputes and its relation to the current state of labor-management relations and I will refer to the pending bills where appropriate.

Initially, I wish to emphasize to this distinguished subcommittee that industry considers this subject as being related to far broader issues involving the total labor-management relationship than the need for only emergency strike legislation.

Since the problem is substantially more profound, it requires considerably more attention and action than legislation designed to deal with merely one facet of it.

The urgency of directing such attention has been magnified by the current economic state of our Nation in which a dangerous inflation and its severe consequences necessitated the very recent action of the President to freeze temporarily wages, salaries, prices and rents.

We support this action and firmly believe that to a large degree, it was required because the awesome power of organized labor to extract huge wage settlements unrelated to productivity increases has accelegrated the inflation our Nation has been experiencing these past several years.

The crises, which collective bargaining ever more increasingly has experienced of late and inflationary settlements that follow such strikes or threat of such strikes have attracted increasing attention on the American scene.

At stake are the free collective bargaining process and the economic system which has scaled heights unmatched in history, but whose supremacy is, for the first time, being successfully challenged by other nations.

The concern shared by labor and management alike is that agitation over strikes and inflationary settlements may provoke misdirected measures addressed to symptoms, not causes.

The approaches to the fundamental problem that are described hereafter are intended to restore a measure of balance in the bargaining process, and thereby preserve and promote free collective bargaining which includes the right to strike.

The current concern over strikes and inflationary settlements is largely a manifestation of a deeper, more significant concern over the tremendous growth in union power during the period following World War II.

Although a basic purpose of the Wagner Act in 1935 was to encourage trade unions, the growth of union power in recent years has gone far beyond anything which the 1935 Congress could have foreseen or intended.

Congressional recognition of how far the balance of power has shifted is strikingly evidenced by its two major attempts in the postwar

period to reestablish a measure of control over the burgeoning trade union movement—in 1947 in the Taft-Hartley Act and again in 1959 in the Landrum-Griffin Act.

Therefore, if such strikes do occur are bigger and longer and more critical now, and if bargaining setlements are becoming outsized, it is basically because the excessive and constantly growing power of the trade union movement has acquired a position of dominance over American industry and the American economy.

H.R. 3595 and a provision in H.R. 10433, in our opinion, would merely expand union power and further aggravate the imbalance between labor and management.

There appear to have been at least two major causes for this startling growth of union power: First, the unquestionable indeed, frank, prounion bias of the NLRB: and second, the concentration of union representation for entire industries in one union or, in recent years, in coalitions of unions operating as one.

The prounion bias of the NLRB includes decisions such as the following:

Subordinate and subvert the rights of individual employees to the organized power of unions;

Encroach upon management's authority to operate efficiently and thus compete effectively in a free economy;

Expand union power to apply coercive pressures on individuals, on employers, and upon the Government itself;

Cede to unions special privileges not enjoyed by any other segment of society;

Fail to provide proper protection of the public interest.

The basic goal of the Wagner Act was to allow the employees in a plant to meet and bargain with their employer as a group, instead of as individuals. This is how it started, plant by plant, toolroom by toolroom, shop by shop. But over the last 35 years, two things have been happening.

In many of our leading industries, the plant by plant and company by company organization of employees has been accomplished by a single union, which thus moved into a dominant position vis-a-vis the employers in the industry, often resulting in industrywide or areawide bargaining.

Even in industries where a number of unions have obtained representation rights, the unions have adopted a strategy of "coordinated" or "coalition" bargaining, designed to parallel the strength of the industrywide unions in the single union industries.

Plainly stated this results in union monopoly, even to the extent that the union members themselves have little, if any, chance to determine their own economic fate.

The current public concern over big strikes and big settlements is actually a concern over the most irritating aspect of a deeper, more basic concern; that is, that unions are too big and too overpowering.

Consequently, it seems only appropriate that Congress should address itself primarily to the root cause of the whole problem. We do not believe that the bills before this subcommittee address this problem. A piecemeal approach, focusing only on certain aspects, will not remedy this critical situation in labor-management relations today.

It would appear most appropriate, therefore, for Congress to address itself without delay to both the short-range and the long-range aspects of restoring a proper balance between the bargaining strength of employers and unions.

This should include immediate attention to legislation which would restore a balance in law, among other things, by reversing the effect of the many prounion areas described previously.

If American employers are ever to be able to regain a position of bargaining equality with unions, they must be relieved of these extra legal and inequitable restrictions imposed on them in the legal area.

Congress should consider how best the problem of union monopoly resulting from industrywide unions and other forms of multiplant bargaining should be met. To this end, it would seem most appropriate that a congressional joint study committee be established to study all aspects of this problem, including the volunimous evidence developed to date.

There are three categories of employers where strike experiences have caused concern among the general public:

The Federal, State, and local governments, as employers, which is certainly not the scope of this hearing.

Industry in general, where emergency strike situations are covered by title II of the Taft-Hartley Act.

Employers covered by the Railway Labor Act (railroads and airlines).

Let's look briefly at Taft-Hartley, title II. The "emergency strike" provisions of title II of Taft-Hartley (sections 206–210) represent a carefully worked out solution to a tremendously difficult problem. The problem, simply stated, is how do you accommodate two fundamentally desirable objectives. I think this is the point you made earlier, Congressman—to protect the national health and safety when threatened by a labor dispute; and to protect the free collective bargaining in American industry, in that order, incidentally.

This problem arises from the generally accepted fact that where the parties to a dispute believe that Federal intervention is clearly available at the end of the bargaining road, bargaining usually disappears.

Consequently, any statutory procedure which encourages Government intervention (other than traditional, legally established voluntary mediation procedures) stultifies bargaining. We feel certain features of the bills under consideration by this subcommittee are deficient in this sense.

On the other hand, no President can allow his country's basic strength to disintegrate because of a labor dispute. The conflict is clear, the issue is difficult, the ultimate congressional choice is important.

Congress achieved a workable and time-tested balance of those two objectives in Taft-Hartley's title II. The occasion for Federal intervention is limited to strike situations determined by the President to imperil the national health or safety.

The extent of Federal intervention is limited to an 80-day injunction against a strike or lockout, during which the parties are required to continue bargaining, a last-offer vote of employees shortly before the injunction terminates; and a report by a board of inquiry concerning the issues involved in the dispute, but with no power to make recommendations or findings concerning the merits of those issues.

The terminal point of Federal intervention in the absence of settlement of the dispute by collective bargaining during the period of the injunction is the submission by the President of the matter to Congress for last-ditch action as appropriate. This last procedure is highly significant; Congress always has the power to enter as final judge at the end of the line.

This long debated and carefully considered procedure has preserved collective bargaining with only a needed minimum of Federal interference, and represents a workable melding of the country's basic labor-management needs with the preservation of a free economy.

Over 20-years' experience under title II has shown that on balance, Congress decided wisely in 1947. In the 29 emergency situations in which its provisions have been invoked, all but six strikes have been settled within a few days thereafter.

And even these exceptions resulted primarily from confused representation situations which could well have been resolved earlier through more adept NLRB action.

Hence, in actual practice and through sparing use, title II has attained its basic objectives; i.e., preserving the Nation from work stoppages of a calamitous character without undercutting the basis for the collective bargaining process.

It is apparent that the "open end" nature of title II is the major feature of the statute that has in practice proved a deterrent to strikes imperiling the national health or safety.

The absence of Federal power to pass judgment has tended to induce industries and unions to recognize that governmental intervention, preempting the traditional mediation services, is not helpful to either side, and that their best interests lie in settling their differences at the bargaining table, under the pressures of bargaining and without access to the escape hatch of the third-party decisionmaking.

The binding arbitration features of many of the legislative proposals under consideration here do not meet this standard which is necessary to encourage responsible and free collective bargaining.

Therefore, a major recommendation is that the emergency dispute provisions of Taft-Hartley, title II, having worked well, should be left as is. However, we recognize the risk that even these provisions of the act could lose much of their efficacy if excessively invoked, or where its boards of inquiry presumed to make extra legal "recommendations."

Section 10 of the Railway Labor Act provides that if, in the judgment of the National Mediation Board, a dispute between a carrier and its employees "threaten(s) 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 a dispute."

In fact, in practically every case the unions have refused to accept the Board's recommendations and have simply used them as a floor from which to negotiate higher settlements.

In such situations, the railroads and airlines are at a distinct disadvantage because they have been told by Government officials that it would be "unthinkable" for them not to accept an emergency board's recommendations; and they are enterprises broadly regulated by agencies of the Federal Government.

The interstate Commerce Commission and Department of Transportation have broad regulatory powers over most aspects of railroad operation including tariffs, safety regulations, operating rules, et cetera. In the case of the railroads the balance of power is further tilted in favor of unions by the requirements of the railroad unemployment insurance laws that force railroads to actually finance a strike against themeslves.

It seems readily apparent that H.R. 3595, particularly, is designed to continue and even enhance this enormous and intolerable power which the unions have over the railroad industry.

Many of the employers who are subject to the Railway Labor Act feel that in the long run their interests are better served by having some form of finality in the disputes procedures.

We recognize that these industries are unique because of their quasi-public character, and for other reasons, not the least of which is an imbalance of power in favor of the unions, and that they have special labor dispute problems.

This testimony does not recommend any specific solutions to those problems, but we recognize their position that special measures may be warranted. However, we do recommend that the solution to this special problem should be one that encourages free collective bargaining by emphasizing to the parties that the Government will not intervene in their behalf.

The views of the transportation interests should be thoroughly aired and considered, as you are certainly doing.

Nevertheless, everyone should be cognizant that there is a danger, in fashioning solutions to special problems in special industries, of creating an atmosphere conducive to third-party intervention in other industries.

To avoid the possibility of such a reaction taking place, we reaffirm our belief in the fundamental soundness of free collective bargaining as the best and most practical vehicle for reaching mutually satisfactory settlements in industry generally.

We reiterate our opposition to third-party intervention for industry generally in any form, except as is currently provided under title II of the Taft-Hartley Act, or as provided by the Federal Mediation and Conciliation Service.

What steps should Congress avoid in the area of emergency strikes? As with almost any critical problem with which Congress must wrestle, the problem of crisis strikes has produced a number of suggested "fail-safe" solutions.

Some of the suggested remedies, again as in all fields of congressional concern, have specious surface appeal of efficiency, simplicity, and logic. But on careful examination, most of these suggestions can be shown to be damaging to free collective bargaining and our economic system.

The most frequently proposed solution to threatened or actual strikes which are creating either an emotional or a real crisis is compulsory arbitration of the issues involved while employees remain at work during and after the arbitration proceedings. There are three basic and fatal defects which inhere in this proposal.

First, it is our belief that compulsory arbitration and free collective bargaining are incompatible bedfellows. In situations where a union and employer know that compulsory arbitration lies at the end of the

road, history dictates that they will devote their energies to "making a case" for arbitration rather than bargaining seriously under the normal pressures to make decisions which otherwise would not be made.

Second, the fond belief that compulsory arbitration will limit or eliminate strikes and other concerted union pressures is not borne out by the experiences of other countries as well as our own and several of our States.

Strikes in such countries have been occurring in greater number and severity over the years despite—and maybe because of—the existence of compulsory, third-party determination of the issues in bargaining disputes.

Our own experience with the War Labor Board in World War II and the Wage Stabilization Board during the Korean hostilities are two examples which come readily to mind.

Moreover, the inability of the Government to enforce compulsory arbitration awards in the face of concerted union and employee efforts to undercut them through stoppages (wildcat or otherwise), slowdowns, overtime refusals and, indeed, the entire gamut of work interference, can be documented.

Political forces in aid of either side become even more polarized under such a system and the marshalling of power combines tends to result in nationwide confrontations, with the public caught in the crossfire.

Third, compulsory arbitration puts the power of determining labor costs and conditions on the shoulders of third parties who usually have little or no familiarity with the industry and its employees, and no responsibility for the practical impact of the employment conditions imposed. I think that point was well made in the discussions earlier this morning.

A significant spillover of this factor is that many employees on whom an allegedly overgenerous wage settlement has been thus forced, may feel the need for offsetting price increases. Inevitably, such compulsory arbitration of wage settlements will lead to pressures on prices, and then to clamor for Government price fixing.

No matter what additives are included, or what forms a compulsory arbitration procedure takes, a solution in this direction suffers these defects.

Now, another step Congress should avoid in encouraging strikes is Government seizures. In reality this proposal is but another form of compulsory arbitration with all of its defects and dangers, but it is also more totalitarian in concept. It is completely inconsistent not only with the principle of free collective bargaining but also with the principles upon which our form of government is based.

A perennial proposal is that boards of inquiry provided for under title II of Taft-Hartley be granted additional authority to make recommendations for the resolution of issues in a labor dispute which would be publicly released but which would not be binding upon the parties.

On the basis of prior experience, Congress explicitly rejected this approach in Taft-Hartley. A ready answer to this proposal lies in a comparison of the experience under Taft-Hartley boards, which do

not make recommendations, with that under the Railway Labor Act, whose emergency boards have always exercised the power to recommend.

As we have seen, after decades of experience under these two dissimilar laws, it is apparent that collective bargaining under Taft-Hartley is still alive while under the Railway Labor Act it shows few visible signs of life.

Some commentators have suggested that Congress explicitly authorize the President to utilize a broad choice of modes of intervention at his discretion. This carte blanche technique, usually called the "arsenal of weapons" approach, is often supported as one which will encourage bargaining settlements because "the parties won't know what's coming."

With the exception of H.R. 3595, most of the bills before this subcommittee appear to adopt this approach in varying degrees.

Such a solution and its supporting rationale are, I believe, products of wishful thinking. The range of executive choice of weapons is not only limited, but, as most union officials would be willing to bet, predictable.

In effect, the "arsenal of weapons" approach tends to encourage the temptation on the part of negotiations to sit tight at negotiations, and take their chances on doing better under whatever mode or modes of intervention the President will come up with, to the detriment of collective bargaining.

Areas of potential aid can be separated into two categories: (*a*) those which appear to have general management acceptability, and (*b*) those on which there is less unanimity but which may warrant experimentation.

It would be appropriate for employers generally to increase employee and public knowledge in the area of basic economic education, and through appropriate publications, disseminate educational economic information covering wage and benefit guidelines, labor relations aspects of foreign competition, and so forth.

The expertise and skill of FMCS is an essential bulwark of free collective bargaining. It is important that Congress assure the high quality of the service by providing ample funds for full staffing with men of experience and stature, and for periodic professional training; and reasserting in unmistakable language the independent status of the service as a separate Federal agency, with exclusive responsibility for governmental intervention.

Communications and rapport between top union leadership and its members must be improved to facilitate the acceptance of settlements arrived at in good faith through collective bargaining, thereby reducing the alarming rate of rank and file rejection of such settlements.

One major branch of American industry, construction, has been a prime example of the national waste inherent in excessive union power and the erosion of the collective bargaining process. Unions in the construction field have acquired so dominant a position that our vaunted American technology is largely nullified, primitive construction techniques are perpetuated, to the tune of billions of production dollars lost each year to homeowners, tenants, and industrial concerns.

Wage and benefit costs are spiralling out of control again at the expense of the citizen and business who want to buy, rent, modernize, or expand.

The very work force in the construction industry is artificially restricted because of the shortsighted attitudes of the union officials who control the industry.

The current administration has been moving on a number of parallel fronts to grapple with this critical situation, as are many conscientious construction and manufacturing employers and some union leadership.

We recognize and applaud the limited successes which have been achieved to date by the administration. However, the efforts of the administration, the Congress, and employers must be pursued vigorously to deal effectively with these problems in terms of their root causes. The threat to America arising from the volcanic explosion of construction costs is clear, the need to counter and control it is imperative.

In a number of industries, critical strikes, brought on by failure of either or both parties to understand fully the others position, have been reduced by the establishment of informal discussion committees or subcommittees which operate during periods well in advance of regular negotiations.

Committees of this nature permit unpressured research and discussion of mutual problems, particularly of the sometimes complicated benefits issues which can become confused if introduced only during the crisis stages of the bargaining period.

To be effective, these committees should operate informally, without commitments being made or negotiations taking place. More widespread and conscientious use of the informal prenegotiations committees could be helpful in limiting the number and severity of crisis strikes.

In a few instances, labor leaders and management themselves have decided to forgo the use of strikes or lockouts (economic force) as the terminal point of collective bargaining disputes.

As a substitute terminal point, the parties themselves have agreed in advance that, if their impending collective bargaining should produce an impasse on certain issues, such issues would be submitted for final and binding decision by a panel of arbitrators voluntarily established and named by the parties for that purpose.

Thus, through the process of collective bargaining, the parties themselves have protected the employees, the companies, the union, and the public generally against the damages caused by strikes or lockouts.

This procedure should not be confused with compulsory arbitration. Instead of the parties having arbitration forced upon them, they have collectively bargained to use arbitrators of their own choosing.

Instead of destroying collective bargaining as does compulsory arbitration, evidence to date generally indicates that, where voluntary arbitration has been planned by the parties, it may be used by them to enhance their negotiations and arrive at settlements without ever reaching the point of arbitration.

For emphasis, we reiterate, the problem before us is not one of emergency strike legislation, and for that reason we have not limited our remarks merely to the bills before this subcommittee.

It is a far deeper problem, a problem of undue concentrations of collective bargaining power, power of two kinds: namely, strategic union power to cut off essential production and services, thus to create national emergencies and force Government intervention; and, more

importantly, in the long-range union bargaining power to enforce inflationary wage and benefit increases.

The need is not for new measures or an arsenal of measures to deal with national emergency disputes. The real need is for a thorough examination of these concentrations of labor power, examination of their roots and consequences and the establishment of a legislative framework which will create a proper relationship of bargaining strength among employees, their employers, and unions and, as aforementioned, at a power level which our economy can tolerate so as to enable and foster meaningful and free collective bargaining.

Pending such investigation and legislative formulation, we believe the national interest will be served by a program wherein the national emergency provisions of the Taft-Hartley Act would remain unchanged. Where used, they have generally worked out.

Also, administrative agencies and the executive branch of Government will not intervene in any labor-management controversy unless required to in accordance with statutory requirements and such intervention must be confined strictly to statutory procedures.

The need is not for more uncertainty, it is for absolute certainty that the Government will not intervene unless absolutely and finally required to in the national interest.

Finally, the Congress forthwith should address itself, in depth, to the question of the dangerous and damaging effects of the current imbalance of power in labor-management relations and the means of remedying that imbalance in the public interest.

Thank you for your attention and this opportunity to present the views of the National Association of Manufacturers on this vital subject.

(Mr. Fisher's prepared statement follows:)

STATEMENT OF LYLE H. FISHER ON BEHALF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS

My name is Lyle H. Fisher and I am Vice President, Public Affairs & Personnel Relations, of the 3M Company.

I welcome and appreciate this opportunity to appear before your Subcommittee on behalf of the National Association of Manufacturers, on whose Industrial Relations Committee I serve as a member.

The membership of the National Association of Manufacturers, a voluntary, non-profit business organization, includes employers of all sizes—large, medium and small—whose products account for a major portion of all manufactured goods in the United States, and who employ a substantial percentage of the nation's total work force. Practically all members of this Association are subject to the Labor Management Relations Act, 1947, as amended, and many would come under the purview of the emergency disputes provisions of Title II of that Act.

In addition, since the manufacturing industry is directly affected by disruptions of service in the transportation industry caused by labor strife, we have an immediate interest in legislation involving the resolution of these labor disputes. This interest also stems from our concern about the potential spillover effects on the manufacturing industry of labor conditions and legislation affecting other industries, such as transportation.

Accordingly, our members are vitally concerned with the administration and application of Title II, as well as labor legislation directed at the transportation industry, and therefore, recognize the importance of making their views known to members of Congress on legislation designed to amend procedures for settling emergency disputes.

This Subcommittee has before it a number of bills that would amend either or both Title II of the Labor Management Relations Act, as amended, and the Railway Labor Act. Without discussing the details of each of these legislative proposals, we believe that none is directed at resolving the basic cause of the problem of emergency disputes, and that some would, in fact, aggravate the problem.

During my testimony, which will be a broad review of industry's position on the entire subject of emergency disputes and its relation to the current state of labor-management relations, I will refer to these bills where appropriate.

Initially, I wish to emphasize to this distinguished Subcommittee that industry considers this subject as being related to far broader issues involving the total labor-management relationship than the need for only emergency strike legislation. Since the problem is substantially more profound, it requires considerably more attention and action than legislation designed to deal with merely one facet of it. The urgency of directing such attention has been magnified by the current economic state of our nation in which a dangerous inflation and its severe consequences necessitate the very recent action of the President to freeze temporarily wages, salaries, prices and rents. We support this action and firmly believe that to a large degree, it was required because the awesome power of organized labor to extract huge wage settlements unrelated to productivity increases has accelerated the inflation our nation has been experiencing these past several years.

I. THE SCOPE OF THE PROBLEM

In America, we live in an advanced civilization whose technological wizardry continuously eases the physical burdens of life. But our success in the technological field sometimes tends to create a dangerous comparison; namely, it engenders wishful thinking that the same kind of technological approach in the area of human relations can produce a continuous easing of human conflict.

One such area is the field of collective bargaining and the crises it creates, or more specifically the strikes which collective bargaining ever more frequently spawns of late[1] and the inflationary settlements which so often follow such strikes or the threat of such strikes.

These crises have attracted increasing attention on the American scene. This growing concern is symptomatic of deep-seated problems that must be identified in order that remedial efforts may be responsive to those problems and not calculated to impair or destroy our free institutions. At stake are the free collective bargaining process and the economic system which has scaled heights unmatched in history, but whose supremacy is, for the first time, being successfully challenged by other nations.

Although strikes have dramatically increased in recent years, an even more disturbing aspect of the problem is the increasingly critical impact of certain types of strikes upon the American economy. At the same time, the economic boom of the sixties, as well as the demands of the Vietnam crisis, have tended to raise the visibility of all strikes during this period. And, in addition, in the past few years, we have experienced an upsurge of strikes by government employees which have notably decreased the strike tolerance of the American public.

The concern (shared by labor and management alike) is that agitation over strikes and inflationary settlements may provoke misdirected measures addressed to symptoms, not causes; and that such measures will ramify far beyond any legitimate concern of government in the process of private decision-making.

There is growing awareness that the infirmities afflicting collective bargaining today have as their root cause the aggregation of union power.[2] This power has tended to subvert the free interplay of economic and market forces. Legislation of a long past era directed to circumstances that no longer exist has led to union power far beyond Congressional intent. Congress intended to permit employees to organize in order that their bargaining strength might be commensurate with their numbers and their importance to the employers' business.

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[1] Recent Department of Labor statistics disclose that practically all measures of strike activity rose to near-record levels for the post World War II period during 1970. There were 5,600 reported strikes, involving 3.3 million workers and 62.0 million man-days lost.

[2] Although the phrase "union power" has become almost a cliche, it is employed because no substitute language is expressive of this phenomenon.

Today, a dispute that once might have been regarded as a normal incident of employer-employee relations may be escalated at the whim of a vast union enterprise into a criss of national dimensions.

The approaches to the fundamental problem that are described hereafter are intended to restore a measure of balance in the bargaining process, and thereby preserve and promote free collective bargaining which includes the right to strike. While collective bargaining as practiced in this country has its imperfections, it is infinitely superior to any alternative system.

In this light, the specific focus of Congress' approach to this subject should be: how to curb the *abuse* of strike power, while preserving collective bargaining—which is an integral part of our free economy and democratic way of life.

II. BASIC CAUSE OF CONCERN: UNION POWER

The current concern over strikes and inflationary settlements is largely a manifestation of a deeper, more significant concern over the tremendous growth in union power during the period following World War II.

Although a basic purpose of the Wagner Act in 1935 was to encourage trade unions, the growth of union power in recent years has gone far beyond anything which the 1935 Congress could have foreseen or intended.

Congressional recognition of how far the balance of power has shifted is strikingly evidenced by its two major attempts in the postwar period to reestablish a measure of control over the burgeoning trade union movement—in 1947 in the Taft-Hartley Act and again in 1959 in the Landrum-Griffin Act.

Therefore, if such strikes as do occur are bigger and longer and more critical now, and if bargaining settlements are becoming outsized, it is basically because the excessive—and constantly growing—power of the trade union movement has acquired a position of dominance over American Industry and the American Economy.

Examples of current laws which are having a deleterious effect in this area are those which permit food stamp and welfare payments to strikers, thereby subsidizing one side in a labor-management dispute and directly affecting the duration and scope of the strike and the final settlement. This type of unfair and unwarranted interference subverts free collective bargaining and increases pressure for compulsory type procedures to settle these disputes.

H.R. 3595 and a provision in H.R. 10433, in our opinion, would merely expand union power and further aggravate the imbalance between labor and management.

There appear to have been at least two major causes for this startling growth of union power: First, the unquestionable—indeed, frank—pro-union bias of the NLRB; and second, the concentration of union representation for entire industries in one union or, in recent years, in coalitions of unions operating as one. In addition, the political influence and activity of the union-official hierarchy is also a basic source of union power. The extent and true political strength of unions is overestimated by many, and this very misjudgment is itself a source of additional union influence. However, analysis of political forces is outside the scope of this testimony.

A. Pro-union decisions of NLRB and the courts

Over the years the Board and the courts have substantially helped unions to attain positions of dominance over the economy by decisions which:

Subordinate and subvert the rights of individual employees to the organized power of unions;

Encroach upon management's authority to operate efficiently and thus compete effectively in a free economy;

Expand union power to apply coercive pressures on individuals, on employers, and upon the Government itself;

Cede to unions special privileges not enjoyed by any other segment of society; and

Fail to provide proper protection of the public interest.

B. Concentrated nature of trade union: the Wagner Act outgrown

The basic goal of the Wagner Act was to allow the employees in a plant to meet and bargain with their employer as a group, instead of as individuals. This is how it started—plant-by-plant, toolroom-by-toolroom, shop-by-shop. But over the last 35 years, two things have been happening:

1. In many of our leading industries, the plant-by-plant and company-by-company organization of employees has been accomplished by a single union, which thus moved into a dominant position vis-a-vis the employers in the industry, often resulting in industrywide or areawide bargaining.

2. Even in industries where a number of unions have obtained representation rights, the unions have adopted a strategy of "coordinated" or "coalition" bargaining, designed to parallel the strength of the industrywide unions in the single-union industries.

Thus the original idea of the Wagner Act—which was to achieve a balance of bargaining strength for individual employees by allowing them to come together for mutual protection—has been "overachieved." Now a single union or coalition, confronting a particular company or industry, completely upsets this intended balance of power. Plainly stated, this results in union monopoly, even to the extent that the union members themselves have little, if any, chance to determine their own economic fate.

III. WHAT SHOULD CONGRESS DO ABOUT BIG UNIONS AND BIG STRIKES

The current public concern over big strikes and big settlements is actually a concern over the most irritating aspect of a deeper, more basic concern; that is, that unions are too big and too overpowering. Consequently, it seems only appropriate that Congress should address itself primarily to the root cause of the whole problem. We do not believe that the bills before this Subcommittee address this problem. A piece-meal approach, focusing only on certain aspects, will not remedy this critical situation in labor-management relations today.

A. Basic labor law reform

It would appear most appropriate, therefore, for Congress to address itself without delay to both the short-range and the long-range aspects of restoring a proper balance between the bargaining strength of employers and unions.

1. Short-range

This should include immediate attention to legislation which would restore a balance in law—among other things, by reversing the effect of the many pro-union areas described above. If American employers are ever to be able to regain a position of bargaining equality with unions, they must be relieved of these extra-legal and inequitable restrictions imposed on them in the legal area.

2. Long-range

Congress should consider how best the problem of union monopoly resulting from industrywise unions and other forms of multiple bargaining should be met. To this end, it would seem most appropriate that a Congressional joint study committee be established to study all aspects of this problem, including voluminous evidence developed to date. Paramount in the considerations of this committee should, of course, be the unavoidable fact that the basic intent underlying one of Congress' most significant twentieth century statutes—the Wagner Act—has been, to say the least, substantially disregarded. The present monopoly power of industry-company area-wide unions itself pales before the down-the-road prospect of a single, centrally-controlled union for all American employees, or at least a power structure closely approximating such a monolithic unit. In fact, trends are apparent which indicate attempts to expand the area of bargaining to the international arena.

B. Existing legislative procedures for dealing with "emergency" strikes

There are three categories of employers where strike experiences have caused concern among the general public:

The Federal, state and local governments, as employers.

Industry in general, where emergency strike situations are covered by Title II of the Taft-Hartley Act.

Employers covered by the Railway Labor Act (railroads and airlines).

1. Government Employee Strikes

The increasing frequency of government employee strikes unquestionably has given rise to much of the public concern and irritation over "emergency strikes. The principle that there can be no right to strike against government must be clearly reaffirmed in all areas of government—federal, state, and local. That strikes by government employees, in violation of existing laws, take place with

increasing frequency strongly suggests the need for establishment or improvement of procedures through which such employees or their representatives may process their complaints for resolution within the framework of applicable law. However, the breadth of this subject is beyond the scope of this testimony.

2. Taft-Hartley Act, Title II

The "Emergency Strike" provisions of Title II of Taft-Hartley (Sections 206–210) represent a carefully worked-out solution to a tremendously difficult problem. The problem, simply stated, is—how do you accommodate two fundamentally desirable objectives:

To protect the national health and safety when threatened by a labor dispute; and

To protect the free collective bargaining in American industry.

This problem arises from the generally accepted fact that where the parties to a dispute believe that Federal intervention is clearly available at the end of the bargaining road, *bargaining usually disappears.* Consequently, any statutory procedure which encourages government intervention (other than traditional, legally established voluntary mediation procedures) stultifies bargaining. We feel certain features of the bills under consideration by this Subcommittee are deficient in this sense. And, as noted elsewhere, H.R. 3595 is particularly deficient in that it would grant the already powerful railroad unions an additional weapon with which to bludgeon an already troubled industry. It is noteworthy that nearly all Presidential Emergency Boards, which have been established in recent years to handle disputes in that industry, have recognized the obvious consequence of unbridled union power; i.e., the proliferation of costly and arbitrary work rules which impede the introduction of new technology and prevent efficient operations.

On the other hand, no President can allow his country's basic strength to disintegrate because of a labor dispute. The conflict is clear—the issue is difficult—the ultimate Congressional choice is important.

Congress achieved a workable and time-tested balance of those two objectives in Taft-Hartley's Title II:

The *occasion* for Federal intervention is limited to strike situations determined by the President to "imperil" the national health or safety.

The *extent* of Federal intervention is limited to:

(i) an eighty-day injunction against a strike or lockout, during which the parties are required to continue bargaining;

(ii) a "last-offer" vote of employees shortly before the injunction terminates; and

(iii) a report by a Board of Inquiry concerning the issues involved in the dispute, but with *no* power to make *recommendations or findings* concerning the *merits* of those issues.

The terminal point of Federal intervention—in the absence of settlement of the dispute by collective bargaining during the period of the injunction—is the submission by the President of the matter to Congress for "last-ditch" action as appropriate. This last procedure is highly significant: Congress *always* has the power to enter as final judge at the end of the line.

This long debated and carefully considered procedure has preserved collective bargaining with only a needed minimum of Federal interposition, and represents a workable melding of the country's basic labor-management needs with the preservation of a free economy.

Over 20 years' experience under Title II has shown that, on balance, Congress decided wisely in 1947. In the 29 emergency situations in which its provisions have been invoked, all but six strikes have been settled within the eighty-day injunction period and of the remaining six, half were settled within a few days thereafter. And even these exceptions resulted primarily from confused representation situations which could well have been resolved earlier through more adept NLRB action. Hence, in actual practice and through sparing use, Title II has attained its basic objectives; i.e., preserving the nation from work stoppages of a calamitious character without undercutting the basis for the collective bargaining process.

It is apparent that the "open end" nature of Title II is the major feature of the statute that has in practice proved a deterrent to strikes imperiling the national health or safety. The absence of Federal power to pass judgment has tended to induce industries and unions to recognize that governmental intervention—preempting the traditional mediation services—is not helpful to either side, and that

their best interests lie in settling their differences at the bargaining table, under the pressures of bargaining and without access to the escape hatch of the third-party decision-making. The binding arbitration features of many of the legislative proposals under consideration here do not meet this standard which is necessary to encourage responsible and free collective bargaining.

Three comparatively recent applications of the statute (General Electric-Evendale; Union Carbide-Kokomo; and Avco Lycoming-Stratford) have, indeed, reflected the power of the President under Title II to reach even into single-plant strikes so as to allow the parties to achieve successful resolution of bargaining disputes that imperiled the national health and safety.

Therefore, a major recommendation is that the emergency dispute provisions of Taft-Hartley, Title II, having worked well, should be left as is. However, we recognize the risk that even these provisions of the Act could lose much of their efficacy if excessively invoked, or where its Boards of Inquiry presume to extra-legal "recommendations."

One further point is perhaps worth noting: Although labor is often heard to scoff at and condemn the Taft-Hartley Act and its emergency procedures, many union leaders privately admit the value of those procedures and, on occasion, have welcomed their invocation in the face of a particular bargaining dilemma. Realistic union leaders recognize that the present law does as well as fallible mortals can do in reconciling the needs for preservation of free collective bargaining (including the right to strike) on the one hand, and the national welfare, on the other.

3. Railway Labor Act

Section 10 of the Railway Labor Act provides that if, in the judgment of the National Mediation Board, a dispute between a carrier and its employees "threaten(s) 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 a dispute." Under this language the President is empowered to use his judgment or discretion as to the creation of an Emergency Board which, if created, will have the power to make non-binding recommendations for settlement of the dispute.

Because the creation of a board is based upon discretion and judgment, transportation industry management has experienced that the unions, in an effort to influence a decision, have in many cases denounced the creation as being unnecessary, thus downgrading their importance before they are appointed. In practically every case the unions have refused to accept the board's recommendations and have simply used them as a floor from which to negotiate higher settlements. Thus, while in some cases they denounce a board as being unnecessary in order to downgrade its importance, experience indicates that the unions are perfectly willing and anxious to use a board's recommendations to obtain further concessions.

In such situations, the railroads and airlines are at a distinct disadvantage because (1) they have been told by government officials that it would be "unthinkable" for them not to accept an Emergency Board's recommendations; and (2) they are enterprises broadly regulated by agencies of the Federal Government. The Interstate Commerce Commission and Department of Transportation have broad regulatory powers over most aspects of railroad operation including tariffs, safety regulations, operating rules, etc., and the airlines are regulated in these areas not only by the Transportation Department but by the Civil Aeronautics Board and the Federal Aviation Agency. In the case of the railroads, the Congress had tilted the balance of power in favor of the unions by requiring the railroads to help finance strikes. The Railroad Unemployment Insurance Law provides that strikers and those railroad employees who refuse to cross picket lines shall be paid tax-free unemployment benefits from the first day a strike commences up to a period which could be as long as two years. The fund from which this money is paid is financed entirely by the railroads. The result of all of the above is that for these carriers regulations control revenues and operations but labor costs—the major portion of expense—are left open to exploitation by union monopoly.

It seems readily apparent that H.R. 3595, particularly, is designed to continue and even enhance this enormous and intolerable power which the unions have over the railroad industry.

Many of the employers who are subject to the Railway Labor Act feel that in the long run their interests are better served by having some form of finality in the disputes procedures—a mechanism whereby, in the event of failure of collective bargaining and all other statutory processes, a binding determination of the dispute would be made. We recognize that these industries are unique because of their quasi-public character, and for other reasons (not the least of which is an imbalance of power in favor of the unions), and that they have special labor dispute problems. This testimony does not recommend any specific solutions to those problems, but we recognize their position that special measures may be warranted. However, we do recommend that the solution to this special problem should be one that encourages free collective bargaining by emphasizing to the parties that the government will not intervene in their behalf.

The views of the transportation interests should be thoroughly aired and considered. We urge the appropriate Congressional committees to hold in-depth hearings on this subject so that the problems of collective bargaining under the Railway Labor Act can be given greater attention than has as yet occurred. Nevertheless, everyone should be cognizant that there is a danger, in fashioning solutions to special problems in special industries, of creating an atmosphere conducive to third-party intervention in other industries. To avoid the possibility of such a reaction taking place, we reaffirm our belief in the fundamental soundness of free collective bargaining as the best and most practical vehicle for reaching mutually satisfactory settlements in industry generally.

We reiterate our opposition to third-party intervention for industry generally in any form, except as is currently provided under Title II of the Taft-Hartley Act, or as provided by the Federal Mediation and Conciliation Service.

To prevent the over-use of Title II and to make more effective the procedures of the Railway Labor Act, a redress of union power is required. Balance of power between labor and management is not enough; e.g., a lineup of all unions against all employers is not a balance of power with which our economy can live. Current trends toward such aggregations of multiple bargaining strength must be reversed to a reasonable and practical level. But the attempt at reversal should not incorporate the elements suggested in some of the bills that are before this Subcommittee which would, in fact, enhance union power. A more thorough and balanced approach must be taken.

C. Assumption by the executive branch of extra-legal authority for dealing with crisis bargaining

Over the years since the 1940's, disputes usually involving defense industries have prompted the creation by Presidential executive order, or simply by Presidential appointment, of specialized, extra-legal bodies to handle critical labor disputes in these and other industries. Intervention of this kind has taken a variety of forms. In some cases, the parties have been "invited" to Washington to confer with the President and/or certain Cabinet members. In other cases, political and academic figures have been asked by the President to mediate the dispute.

But in general, regardless of the form of intervention, they have all been designed to increase the amount of high-level governmental "arm-twisting" on the parties to the negotiations—all having effects detrimental to free collective bargaining. Examples of such intervention include: the Atomic Energy Labor-Management Panel; the Secretary of Labor's intervention in the 1961 New York City Opera dispute; a panel of Cabinet members in the 1966 Electrical Industry dispute; a Senator in the 1965 waterfront strike; and a variety of Executive Department interventions in numerous steel industry disputes—to name but a few.

Although a number of labor disputes have been "settled" under the aegis of such panel and similar interventions, there is serious suspicion that these "settlements" sometimes cost the country more in the long-run than would have been experienced in the absence of these ad hoc bodies. And there is no evidence that the crises that develop could not have been satisfactorily handled under the provisions of Title II of Taft-Hartley where the seriousness of the crises warranted intervention.

Even less critical industries have experienced the oft-untimely and unwanted intervention of these ad hoc bodies, which have played havoc with the normal processes of collective bargaining.

In light of the above, Congress should:

Reemphasize in the strongest terms that Congress has established FMCS as the exclusive mechanism for mediation, and Title II as the exclusive mechanism for emergency strike situations; and

Express the sense of Congress that the creation of such extra-legal panels and their extra-legal "recommendations" is highly undesirable.

IV. WHAT STEPS SHOULD CONGRESS AVOID IN THE AREA OF EMERGENCY STRIKES?

As with almost any critical problem with which Congress must wrestle, the problem of crisis strikes has produced a number of suggested "fail-safe" solutions. Some of the suggested remedies—again as in all fields of Congressional concern—have specious surface appeal of efficiency, simplicity and logic. But on careful examination, most of these suggestions can be shown to be damaging to free collective bargaining and our economic system.

Before discussing the major proposed solutions, it is appropriate to repeat the basic criteria that Congress should bear in mind in determining how to handle crisis strikes. The first consideration should be, in the apt language of Title II of Taft-Hartley, the preservation of "the national health or safety," and the second should be the preservation of free collective bargaining. Congress must seek to maintain the sanctity of collective bargaining right up to the point where cogent considerations of public necessity are overriding, keeping in mind the long-range costs of expediency.

A. Compulsory Arbitration

The most frequently proposed solution to threatened or actual strikes which are creating either an emotional or a real crisis is compulsory arbitration of the issues involved while employees remain at work during and after the arbitration proceedings. There are three basic and fatal defects which inhere in this proposal:

First, it is our belief that compulsory arbitration and free collective bargaining are incompatible bedfellows. In situations where a union and employer know that compulsory arbitration lies at the end of the road, history dictates that they will devote their energies to "making a case" for arbitration rather than bargaining seriously under the normal pressures to make decisions which otherwise would not be made.

Second, the fond belief that compulsory arbitration will limit or eliminate strikes and other concerted union pressures is not borne out by the experience of other countries as well as our own and several of our states. Strikes in such countries have been occurring in greater number and severity over the years despite—and maybe because of—the existence of compulsory, third-party determination of the issues in bargaining disputes. Our own experience with the War Labor Board in World War II and the Wage Stabilization Board during the Korean hostilities are two examples which come readily to mind. Moreover, the inability of the government to enforce compulsory arbitration awards in the face of concerted union and employee efforts to undercut them through stoppage (wildcat or otherwise), slowdowns, overtime refusals, and, indeed the entire gamut of work interference, can be documented. Political forces in aid of either side become even more polarized under such a system and the marshaling of power combines tends to result in nationwide confrontations—with the public caught in the cross fire.

Third, compulsory arbitration puts the power of determining labor costs and conditions on the shoulders of third parties who usually have little or no familiarity with the industry and its employees, and no responsibility for the practical impact of the employment conditions imposed. A significant spillover of this factor is that many employers, on whom an allegedly over-generous wage settlement has been thus forced, may feel the need for off-setting price increases. Inevitably, such compulsory arbitration of wage settlements will lead to pressures on prices, and then to clamor for government price-fixing.

No matter what additives are included, or what forms a compulsory arbitration procedure takes, a solution in this direction suffers these defects.

B. Government Seizure

In reality this proposal is but another form of compulsory arbitration with all of its defects and dangers, but it is also more totalitarian in concept. It is completely inconsistent not only with the principle of free collective bargaining but also with the principles upon which our form of government is based. And it seems unnecessary here to point out the serious constitutional hurdles which this extreme remedy must necessarily overcome.

Further, the effectiveness of government seizure, like compulsory arbitration, can be undermined by employee resistance, slowdown, and disruption. Government seizure by its nature frustrates the bargaining process and impairs efficient operations.

C. Fact Finding With Recommendations

A perennial proposal is that boards of inquiry provided for under Title II of Taft-Hartley be granted additional authority to make recommendations for the resolution of issues in a labor dispute which would be publicly released but which would not be binding upon the parties. On the basis of prior experience, Congress explicitly rejected this approach in Taft-Hartley. A ready answer to this proposal lies in a comparison of the experience under Taft-Hartley boards, which do not make recommendations, with that under the Railway Labor Act, whose Emergency Boards have always exercised the power to recommend. As we have seen, after decades of experience under these two dissimilar laws, it is apparent that collective bargaining under Taft-Hartley is still alive while under the Railway Labor Act it shows few visible signs of life. This is evidenced by the fact that most organizations covered by that Act are now willing to accept some form of federally-dictated labor settlements.

Here, again, when disputants understand that at the end of their bargaining period a fact finding board will make public recommendations for resolution of the dispute, the "making of a case" takes over and bargaining disappears. Extreme positions are usually taken and maintained on both sides, leaving the fact finding board little recourse other than the making of a "split the middle" type of recommendation. The normal pressures, soul searching, and creativity of true collective bargaining are thus bypassed, absolving the parties of their obligations.

Furthermore, advisory recommendations do not carry any guaranty or even probability of achieving final solutions of the crisis. The traditional practice of unions under the Railway Labor Act has been to take the recommendations of emergency boards as a new plateau from which to move to higher demands under renewed strike threats.

Thus the "recommendations" technique merely postpones the showdown, after pushing it to a higher cost level. Experience with such "recommendations" in Canada furnishes further evidence of their deadening effect on healthy collective bargaining.

D. The "Arsenal of Weapons" Approach

Some commentators have suggested that Congress explicitly authorize the President to utilize a broad choice of modes of intervention at his discretion. This carte blanche technique, usually called "the arsenal of weapons" approach, is often supported as one which will encourage bargaining settlements because "the parties won't know what's coming." With the exception of H.R. 3595, most of the bills before this Subcommittee appear to adopt this approach in varying degrees.

Such a solution and its supporting rationale are products of wishful thinking. The range of executive choice of weapons is not only limited, but, as most union officials would be willing to bet, predictable. In effect, the "arsenal of weapons" approach tends to encourage the temptation on the part of negotiators to sit tight at negotiations, and take their chances on doing better under whatever mode or modes of intervention the President will come up with, to the detriment of collective bargaining.

As a practical matter, the variety of Presidential interventions during the past decade furnishes ample evidence that an "arsenal of weapons" already exists—to the detriment of healthy collective bargaining.

V. FURTHER AREAS OF POTENTIAL AID TO THE COLLECTIVE BARGAINING PROCESS

Such areas of potential aid can be separated into two categories: (a) those which appear to have more general management acceptability, and (b) those on which there is less unanimity but which may warrant experimentation.

A. Areas of more general acceptability

1. Increased Employer Education of Employees and the Public in Labor Relations Economics

It would be appropriate for employers generally to increase employee and public knowledge of the area of basic economic education, and through appropriate publications, disseminate educational economic information covering wage and benefit guidelines, labor relations aspects of foreign competition, etc.

2. Federal Mediation and Conciliation Service

The expertise and skill of FMCS is an essential bulwark of free collective bargaining. It is important that Congress assure the high quality of the service by:

providing ample funds for full staffing by men of experience and stature, and for periodic professional training; and

reasserting in unmistakable language the independent status of the Service as a separate Federal agency, with exclusive responsibility for governmental intervention.

3. Reduction in Rank and File Rejection of Settlements

Communications and rapport between top union leadership and its members must be improved to facilitate the acceptance of settlements arrived at in good faith through collective bargaining, thereby reducing the alarming rate of rank and file rejection of such settlements.

4. Improvement of Labor Relations in the Construction Industry

One major branch of American industry—construction—has been a prime example of the national waste inherent in excessive union power and the erosion of the collective bargaining process. Unions in the construction field have acquired so dominant a position that:

Our vaunted American technology is largely nullified—primitive construction techniques are perpetuated, to the tune of billions of production dollars lost each year to home-owners, tenants, and industrial concerns.

Wage and benefit costs are spiralling out of control—again at the expense of the citizen and business who want to buy, rent, modernize or expand.

The very work force in the construction industry is artificially restricted because of the shortsighted attitudes of the union officials who control the industry.

The current Administration has been moving on a number of parallel fronts to grapple with this critical situation, as are many conscientious construction and manufacturing employers and some union leadership. We recognize and applaud the limited successes which have been achieved to date by the Administration. However, the efforts of the Administration, the Congress and employers must be pursued vigorously to deal effectively with these problems in terms of their root causes. The threat to America arising from the volcanic explosion of construction costs is clear—the need to counter and control it is imperative.

B. Areas of less acceptability but which may warrant experimentation

1. The Wider Use of Year-Round Informal Discussions Between Employers and Unions

In a number of industries, critical strikes, brought on by failure of either or both parties to understand fully the other's position, have been reduced by the establishment of informal discussion committees or subcommittees which operate during periods well in advance of regular negotiations. Committees of this nature permit unpressured research and discussion of mutual problems, particularly of the sometimes complicated benefits issues which can become confused if introduced only during the crisis stages of the bargaining period. To be effective, these committees should operate informally, without commitments being made or negotiations taking place. More widespread and conscientious use of the informal prenegotiations committees could be helpful in limiting the number and severity of crisis strikes.

2. *Voluntary contract arbitration*

In a few instances labor leaders and management themselves have decided to forego the use of strikes or lockouts (economic force) as the terminal point of collective bargaining disputes. As a substitute terminal point, the parties themselves have agreed in advance that if their impending collective bargaining should produce an impasse on certain issues, such issues would be submitted for final and binding decision by a panel of arbitrators *voluntarily established and named by the parties* for that purpose. Thus through the process of collective bargaining, the parties themselves have protected the employees, the companies, the union, and the public generally against the damages caused by strikes or lockouts.

Such procedure should not be confused with compulsory arbitration. Instead of the parties having arbitration *forced* upon them, they have collectively bargained to use arbitrators of their own choosing. Instead of destroying collective bargaining as does compulsory arbitration, evidence to date *generally* indicates that where voluntary arbitration has been planned by the parties, it may be used by them to enhance their negotiations and arrive at settlements without ever reaching the point of arbitration.

VI. CONCLUSION

For emphasis, we reiterate, the problem before us in not one of emergency strike legislation, and for that reason we have not limited our remarks merely to the bills before this Subcommittee. It is a far deeper problem—a problem of undue concentrations of collective bargaining power—power of two kinds, namely:

Strategic union power to cut off essential production and services—thus to create national emergencies and force government intervention; and, more importantly and long range, the

Union bargaining power to enforce inflationary wage and benefits increases.

The need is not for new measures or an arsenal of measures to deal with national emergency disputes. The real need is for a thorough examination of these concentrations of labor power, and examination of their roots and consqeuences—and the establishment of a legislative framework which will create a proper relationship of bargaining strength as among employees, their employers, and unions—and (as aforementioned) at a power level which our economy can tolerate—thus to enable and foster meaningful free collective bargaining.

Pending such investigation and legislative formulation, we believe the national interest will be served by a program wherein:

The national emergency provisions of the Taft-Hartley Act would remain unchanged. (Where used, they have generally worked out.)

The administrative agencies and executive branch of Government would make it perfectly clear by word and deed that government will not intervene in any labor-management controversy *unless* required to in accordance with statutory requirements and that such intervention will be confined strictly to statutory procedures. The need is not for more uncertainty—it is for absolute certainty that the Government will not intervene *unless* absolutely and finally required in the national interest.

The Congress forthwith would address itself, in depth, to the question of the dangerous and damaging effects of the current imbalance of power in labor-management relations and the means of remedying that imbalance in the public interest.

Thank you for your attention and this opportunity to present the views of the National Association of Manufacturers on this vital subject.

Mr. DINGELL. Mr. Fisher, you have given the committee a thoughtful and useful statement and we thank you for your kindness.

Mr. Kuykendall?

Mr. KUYKENDALL. Let me repeat what the chairman said. Yours is a most thoughtful document, but I find myself in the same position I view a lot of my political supporters back home what I call "philosophical purists." I sit and agree with them 100 percent, but yet I have to say "Yes, but * * *" and you see, sir, in the end, at the very very end, you threw an "if" in there in your whole premise. You got clear through and still came to the end by saying something that dumped it back in our laps. I don't know if you are aware of it.

Mr. FISHER. I am well aware of it.

Mr. KUYKENDALL. We are not going to tolerate that and will not let it be dumped back in our laps, so we are starting from that end. That is what we are maddest about, to sit up here and handle the labor problems. We are going to have to somehow come out with a finality and it is not going to be a finality that says "if," "and," and "but," but it is going to be a finality.

Now, the education process you are talking about, I am going to make a couple of speeches that I will steal out of the middle of yours that affect the education process, the idea that some unions and management teams have informed each other so well that they themselves have decided to quit fratricide.

This is wonderful. But, you see, in these five cases which we have had before us in our short career, they have run through all of this. It reminds me almost of the little boy that stole the key to the cabinet and climbed up where he should not have been and ate a bunch of green apples and got sick and "upchucked" on the floor.

After you get through lecturing him, the floor is still dirty. Well, then, we are stuck with the dirty floors. So that is what we are getting down to here.

So I would like to ask your help on that. Ideally, I agree with you. Ideally, everything that you have said here is helpful, but ideally we have to either settle it ourselves or work out some way for finality.

Now, of all of the methods of finality, which have been discussed here, and you know I am on record as having about three times in these hearings already that I considered all of the steps except the last one of the so-called arsenal of weapons is nothing but a charade anyway. I said it for the record and still say this arsenal is just for show.

All I am interested in finality, a fair method of finality. So, out of the systems of finality you studied and it is obvious you have done a lot of study, of all of the bills, do you see any with more hope than others or that you would like to comment on?

Mr. FISHER. Yes, sir; I would like to talk about the fact that you do have finality. I don't want to presume the objectives of the Congress, but when labor situations get to the point where they are so serious that they affect the health and welfare of the public, I know of no more important factor than the fact that Congress spend time with it.

Mr. KUYKENDALL. Let me make it clear we don't agree with you and you are not going to sell us on this.

Mr. FISHER. I understand that.

Mr. KUYKENDALL. Well, forget that and help us with something else. We are not going to except "us" as being finality.

Mr. FISHER. OK, let's get to your question. You are asking for the selective process. You indicated you are opposed to compulsory arbitration. We know nothing about this process. It has never been tried. Why don't you try it first? Why pass legislation that imposes this on industry generally because you cannot unring this bell after you have rung it. Why don't you try it in the next situation and see if it works and see if it has perpetual benefits or is just a stopgap measure that creates more problems. I can't predict what the outcome is.

Mr. KUYKENDALL. You say "Why don't we try it?" You help us find a couple of agreeable parties that it is not a national emergency. We don't get anything but terminal cases in this hospital.

Mr. FISHER. That is the only kind of case you should get.

Mr. KUYKENDALL. They are not likely to help us experiment.

Mr. FISHER. You don't have to ask their permission.

Mr. KUYKENDALL. Then we have to legislate.

Mr. FISHER. You have power always to come into the dispute of finality.

Mr. KUYKENDALL. We have to legislate. So your suggestion is that on the next one up on October 1, you are suggesting, and maybe this has some merit, maybe it has merit here, but you are suggesting on the next one up that we try one of these things to see if it works, which has to be legislation.

Mr. FISHER. OK, it has to be legislation as relates to that particular instance but not a legislative action that imposes that particular law on everybody in the future.

Mr. KUYKENDALL. You are suggesting a test case.

Mr. FISHER. Yes; the same as we would in marketing a product.

Mr. KUYKENDALL. Thank you for an original idea and that is the first one since we have had these hearings.

Mr. FISHER. I thought you were a little anxious for one. But you don't flood the market with a new product, but test market it.

Mr. KUYKENDALL. I have had 17 years as a salesman.

Mr. FISHER. Well, you understand only too well.

Mr. KUYKENDALL. Thank you, Mr. Chairman.

Mr. DINGELL. Mr. Fisher, the committee is grateful to you and we thank you. I think your suggestion about test marketing something before we try it is good counsel and I suspect your point about not finding any volunteers to rush out to try this package is also a good one.

Mr. FISHER. The first one not to volunteer.

Mr. KUYKENDALL. We won't even bother to ask.

Mr. DINGELL. The one thing I do observe and I have sat in the chair and listened to witnesses come in here to testify before us on these points and the enthusiasm for the compulsory arbitration I have noted is that as long as somebody else is going to be under compulsory arbitration, they say, "Fine, you can have compulsory arbitration here, but keep away from us." And I think it tends to speak well of compulsory arbitration as not being the weapon of choice in any of these situations or medicine of choice?

Mr. FISHER. We just don't believe in losing our freedom and when you have compulsory arbitration you have lost your right for options and I can't believe this is the way to run, I was gonig to say "a railroad" but maybe I had better not.

Mr. DINGELL. That is a good point.

Mr. FISHER. This is not the way to run free collective bargaining although they have a problem and it is a stinker.

Mr. DINGELL. I thoroughly agree. The point I have made to some of the folks, who don't take it too well, is there was actually a solution arrived at by the parties themselves with the Government staying out in the last difficulty that took place in the railroad industry and I suggested that maybe as long as they had that success they ought to build on it instead of rushing in to us to move forward into more outrageous solutions that are unpalatable to practically everybody except when they suggest it for somebody else's benefit.

Mr. FISHER. I agree and I believe the suggestion was made, what you are looking for is an alternative solution that scares the heck out of both parties.

I really believe in my experience if I were confronted by Congress with an alternative such as you have proposed, that would be scaring about as much heck out of me as could be scared.

Mr. DINGELL. Maybe Congress is the instrument that should scare these people.

Mr. FISHER. I don't have any doubt about it.

Mr. DINGELL. As opposed to having something engraved on the law books that may or may not work and will be a precedent and curse all of them.

Mr. FISHER. This is my point and I believe this is really the greater fear that employees could have—the wrath of Congress on their backs. If we lose that fear, we have then lost the ball game.

Mr. DINGELL. I notice unions are not too happy with the prospect either.

Mr. FISHER. For the same reason, the element of fear exists and they are not looking for that kind of ball game.

Mr. DINGELL. If you are looking for uncertainty, this is the way to get it.

Mr. FISHER. It is and it is the only way I know of and I wish I could be more original.

Mr. DINGELL. You are placing yourself in a position of being an emminently sensible and helpful witness. Thank you. I suspect, Mr. Fisher, and I disagree on many points and there are points in this testimony with which I am in strong disagreement, but I think on the major points you made I think that you talked plain good sense. I wish some of our other witnesses would listen to you.

Mr. FISHER. I wish we had more time to discuss some of the things we disagree about because I think we could convince you.

Mr. DINGELL. It might work both ways. We thank you and it was a privilage to have you before us.

Our next witness is Mr. Paul A. Amundsen, executive director, American Association of Port Authorities, 1612 K Street NW., Washington, D.C.

We are grateful for your presence and we will be pleased to hear your statement.

I might observe that I have frequently seen you in other committees, but it is a pleasure to have you here this morning and we welcome you.

STATEMENT OF PAUL A. AMUNDSEN, EXECUTIVE DIRECTOR, THE AMERICAN ASSOCIATION OF PORT AUTHORITIES; ACCOMPANIED BY GEORGE ALTVATER, EXECUTIVE DIRECTOR, PORT OF HOUSTON AUTHORITY; E. S. REED, EXECUTIVE PORT DIRECTOR AND GENERAL MANAGER, PORT OF NEW ORLEANS; AND J. L. STANTON, DIRECTOR OF PORTS, STATE OF MARYLAND

Mr. AMUNDSEN. Thank you, Mr. Chairman. We want to be the first volunteers on the test case in the forthcoming procedure.

I have with me George Altvater, executive director, Port of Houston Authority; E. S. Reed, executive port director and general manager, Port of New Orleans; and J. L. Stanton, director of ports, State of Maryland—who had to leave for a budget. These men represent a public investment totaling $500,000,000 in port facilities, and they are with me out of interest in this problem.

The American Association of Port Authorities appreciates this opportunity to be heard on what we regard as easily the most constructive piece of legislation to be introduced in our 65-year history as an organization. We say this because we function in the public interest, our members being those 80 public authorities, boards and commissions responsible for port operations and development on all U.S. coastlines.

These State, city, or county agencies have provided the physical facilities for handling the major share of this country's foreign commerce at their own cost and risk, having invested some $7 billion in local public funds in what is considered to be the most modern national port system on the globe.

Our recent survey indicates that 1,136,162 people are directly employed in the operation of all phases of this system, which moved 559 million tons of foreign trade in 1970 (as versus 417 million in 1969), plus heavy volumes of coastal and insular trade. Another 3,500,000 are in jobs dependent on imports and exports.

The Pacific coast segment of our port system has been out of action since July 1. If the Atlantic and gulf coast segments cease to operate as of October 1, we will experience a total shutdown of the Nation's trade gateways with the exception of the Great Lakes where contracts are of different duration.

Public port bodies are neutrals in the situation. We are not here to criticize either maritime-linked labor or management; both are vital to the commerce flow we also serve. And we wish equity and justice, fairness and prosperity for them both. The facts and the record, however, make it obvious that we have, and have had for too long, a situation which is intolerable and contrary to the national interest; a situation which is without available means of control in that interest.

Secretary of Labor James D. Hodgson, in his testimony before this committee on July 28, recognized that * * * "the Taft-Hartley emergency disputes provisions warrant high marks for success, except for the longshore and maritime industries." He said:

> Of those (12 disputes) settled after the cooling-off period, five were settled without a strike, while seven ended after strikes of varying duration. Six of the seven strikes occurred in the longshore industry, one in the maritime industry. Among these were a three-month shutdown of Pacific Coast shipping and several partial and total shutdowns of East Coast ports, ranging from 10 days to three months.

We have fleshed out the chaotic east and gulf coast record in an attachment to this statement. It shows that longshore strikes alone cost these port systems from 134 to 174 days of total shutdown since October 1, 1964. That is to say, almost half a year in some cases.

We have attached a chronology of the events of the 113-day strike of 1968–69 which illustrates how this happens. Why it happens is also borne out in this chronology. It is clear from this sequence of events going back to 1948 that the strike has been built in to the bargaining process insofar as the labor contractors of the Atlantic and gulf coasts are concerned. The deep-seated reasons for this are well known throughout the trade.

Months ago our association contacted the exporters and importers of the Nation and flatly advised them of the probability of the coming strike. We also predicted that the injunction would not be employed this time. This administration has not been using it, plus which both

waterfront labor and management have publicly stated that it, too, has become built in to the bargaining procedure as simply a postponement of the inevitable. With these advises we have, as a public service, enabled the Nation's shippers at least to better prepare themselves for major disaster.

We also indicated the length of the disaster as being upward of 90 days, if Federal intervention is lacking. Referring again to the attached chronology it takes about 30 days to settle the basic so-called money package, after which the union moves sequentially into the series of "outport" contracts, a 60- to 90-day operation at best.

We said one other thing to the shipping public. We said that the remedy was in Congress in the form of H.R. 3596 or similar legislation.

In 1963, following a 33-day Atlantic and gulf strike, our association took the position reflected in the resolution attached, calling for remedial legislation. It seemed obvious to us at that time that such a course was the only means by which work could proceed while the parties bargained. Testifying before the House Committee on Merchant Marine and Fisheries in that year we said:

> It is our opinion that the time has come when we must put an end to the frequent and recurring stoppages which have plagued the flow of our essential maritime commerce. With the past record in front of us, with the realization that stopping this flow of maritime commerce reaches and affects in some degree every one of our 50 States and countless thousands of their citizens, failure to control and to halt the sorry record of the past is to invite disaster.

Nothing was done to improve the legislative remedies, and we thereby invited the disasters of 1964–65 and 1968–69.

The extent of these disasters can be calculated in various ways, and estimates have ranged close to $2.4 billion for the 1968–69 strike. A widely used number is $20 million a day. This committee can take it on the information of the American Association of Port Authorities that, proceeding from recognized values of the economic impact of a ton of cargo to the port community, the Pacific coast port communities are losing $2½ million a day. The Atlantic and gulf coast port communities will lose a total of $10 million a day of economic impact from cargo flows as the threatening strike takes place.

These are the immediate economics. Our resolution attached cites some broader implications including loss of overseas markets, setbacks in the balance-of-payments program, and industrial upheavals, layoffs, and the like.

Some 2 years ago the then Secretary of Labor began an investigation into the national effect of the longshore strikes which resulted in the issuance in January 1970 of "Impact of Longshore Strikes on the National Economy," or what we know as the Schultz report.

Everyone who has lived with this situation over the years has thoroughly repudiated the basic finding of that report, which is that because of a stockpiling exercise in the prestrike period, and a large poststrike backlog of cargo movement, very little damage is done to the overall trade statistics. From this is concluded that there is minimal real damage to the national economy from these stoppages.

Following this simplistic conclusion, much of the balance of the report is a veritable chamber of horrors of strike effects on people, jobs, and businesses. Having performed a statistical exercise, the report brushes these aside as side effects.

This amazing document also proceeds to wave aside the effect of the strikes on balance of payments by stating the stoppage wreaks equal havoc among both exports and imports, thus balancing the scales.

On the question of loss of markets, those who prepared this report took a shortcut. They talked to the embassies, here in Washington, of other countries, asked them about the effect of the strike on U.S. markets in their countries. They got a diplomatic answer.

Where are balance of payments today? The United States suffered a record 6-months deficit in the first half of 1971. Although much of this is blamed on the overvalued dollar, we'd like to place a good share of the blame, on this record, on the longshore strikes. We suggest that the rising curve of world trade of the 1960's both soaked up immediate strike effects, and obscured the hidden damage which is now coming to light. During our work stoppages of the 1960's, our overseas competitors in world markets have been steadily strengthening their ability to produce and market abroad, and we are now living with the natural results of their ability to produce and our ability not to deliver periodically.

Here is a letter from a prominent firm that distributes in Switzerland the products of other countries:

AUGUST 3, 1971.

GENTLEMEN: We have been advised to expect a prolonged Docker strike on the East Coast from November next. For forty years we have represented important American factories. Unfortunately our relations have been upset periodically by the Docker strikes. Our customers are considering us to be an unreliable supplier and therefore in most cases they have switched over to European products.

We have been asked many times to represent in Switzerland other important American firms but we have refused in view of the foregoing.

Please report this situation to whom it may be concerned.

Very truly yours,

LAESSER, SA.

That letter is the voice of the real world. We suggest that the Schultz report was a ploy, but whatever its object it retains the stamp of the highest offices in our land and its lingering effect has hampered Federal movement to settle the Pacific coast strike, we are told. The administration should repudiate it.

Our country is not self-sufficient. Our economy is entirely dependent on foreign source for many basic raw materials. We remain the world's largest importers and exporters of crude and semiprocessed raw materials, manufactured goods and agricultural products. These items all flow back and forth in world commerce and when this essential flow stops everyone suffers and no one really gains. This is a situation demanding of remedial legislation.

The manner in which H.R. 3596, with its multiple options, influences the parties toward a bargained settlement is in keeping with our recommendation for bargaining machinery that will allow work to go on while the parties negotiate. This remains our only objective.

In connection with the options given the President in H.R. 3596, we have strong reservations on the feasibility of "partial operation" in our particular industry. We are convinced that it would be extremely difficult to single out port communities which would maintain a flow of cargo and those which would not.

We further suggest, in procedures under "Part B—Alternative Procedures Following Initial 80-Day Cooling-Off Period" that there appears to be no recognition of chronic situations in the bill. The investigating boards or panels as described could well insert a triggering mechanism in their final contract findings which would call for renewal of negotiations well before the end of the contract being given board or panel approval so that all or most of the issues involved in the next renewal could be resolved prior to actual expiration of the contract.

We further suggest that the broadest possible language be used to describe the types of emergencies in which the President may act. H.R. 3596 contains such language as "dealing with national emergency disputes" and refers to strikes or lockouts "in the transportation industry or a substantial part thereof." Certainly a disaster of the proportions of the current Pacific coast strike, wherein a broad area of the citizenry is under the most serious impact, should be considered a national emergency area. Under this legislation, the President ought to have the same powers of decision as he now applies in the case of natural disasters.

We would like to close this statement by adding that we are well aware of the effects of railroad, truck, and airline strikes on our industry and generally in accord with the objects and purposes of H.R. 3596, as remedial legislation for those problems, in the public interest.

We thank the chairman and committee members for this opportunity to be heard on a matter of the first importance. This legislation, the basic aim of which is to require meaningful negotiation, is most constructive. It provides a means of relief from chronic chaos that is thoroughly needed in our own field and should be welcomed by all of the partners in this important business of keeping commerce moving through our gateways to the world.

(The attachments referred to follow:)

NATIONAL EMERGENCY DISPUTES UNDER THE LABOR MANAGEMENT RELATIONS (TAFT-HARTLEY) ACT

EAST COAST LONGSHORE

1. August 17, 1948 - Board of Inquiry appointed
August 20, 1948 - Reported Board to President
August 21, 1948 - Federal District Court New York issued a 10 day restraining order prohibiting strikes and walk-outs by longshoremen and employers at Atlantic Coast ports
August 24, 1948 - 80 day injunction issued by Court
November 9, 1948- Anti-strike injunction dissolved
November 10,1948- Sporadic work stoppages
November 12,1948- Coastwise work stoppage
November 25,1948- Agreement reached
November 28,1948- Dock workers returned to work

2. October 1, 1953 - Work stoppage of Atlantic Coast dock workers. Board of Inquiry appointed
October 5, 1953 - Report of Board submitted to President
October 5, 1953 - Temporary 10 day restraining order was issued
October 6, 1953 - Longshoremen returned to work
October 15,1953 - Temporary injunction extended 10 days to October 25
October 20,1953 - 80-day injunction issued
December 17,1953 - NLRB scheduled a representation election for December 22nd and 23rd
December 24,1953 - NLRB announced ILA Independent won the representation election

Throughout 1954 the jurisdictional fight between the ILA Ind. and the ILA (AFL) prevented negotiations or settlement. On December 31, 1954 a 2-year settlement was reached which was ratified by the union on January 5, 1955 retroactive to October 1, 1954.

3. November 16, 1956 - Coastwise work stoppage
November 21, 1956 - Temporary restraining order against the ILA petitioned for by the NLRB to restrain the ILA from demanding Coastwise contract
November 22, 1956 - Board of Inquiry appointed
November 24, 1956 - 10-day restraining order
November 30, 1956 - 10-day restraining order to full 80-day period
January 23, 1957 - Board reported to President the employer's "last offer"
February 12, 1957 - Work stoppage from Portland, Maine to Hampton Roads
February 13, 1957 - 80 day injunction formally discharged
February 17, 1957 - Agreement reached for a 3 year master contract
February 17th to February 22nd, 1957 - Outports continue negotiations on local issues
February 23, 1957 - Longshoremen return to work

4. October 1, 1959 - East Coast longshoremen's strike
October 6, 1959 - Board of Inquiry appointed by the President
October 8, 1959 - Temporary restraining order issued
October 15,1959 - Temporary restraining order extended for full period
December 2, 1959 - Memorandum of Settlement signed

5. October 1, 1962 - East Coast longshore strike
October 1, 1962 - Board of Inquiry appointed by President
October 4, 1962 - 10 day temporary restraining order issued 4:25 p.m.
October 6, 1962 - Longshoremen returned to work
October 10,1962 - Original 10 day restraining order extended to full 80 day period
December 23,1962 - 80 day injunction expired - East and Gulf Coasts longshoremen strike
January 22, 1963 - NYSA accepts Board's recommendations for settlement
January 26, 1963 - Longshoremen returned to work in Port of New York. Normal operations were resumed along the Coast by January 28, 1963

6. September 30, 1964 - Board of Inquiry appointed by the President. (6 hours before the Midnight strike deadline. The union had walked out of negotiations.)
October 1, 1964 - 10 day temporary restraining order issued at 8:00 p.m.
October 3, 1964 - Longshoremen returned to work. (Saturday - actual employment lower than a normal Saturday)
October 10, 1964 - Original 10 day restraining order extended to full 80 day period
December 20,1964 - 8:00 p.m. 80 day injunction expires. ILA extends work period to Jan. 11, 1965. Then strikes all ports.
February 13, 1964 - Men return in North Atlantic after Federal Court order. Virginia ports return 6 days later. South Atlantic and Gulf ports return March 6, 1965.

7. See detailed account attached taken from Bulletin 1633, U.S. Department of Labor "National Emergency Disputes".

Stevedoring Industry Dispute, Atlantic and Gulf Coasts, 1968-69 — International Longshoremen's Association (AFL-CIO) v. Shipping and Stevedoring Companies

July 10, 1968	Negotiations to replace the 4-year contract expiring September 30, 1968, were opened by the International Longshoremen's Association (ILA) and the New York Shipping Association (NYSA). The ILA proposed a 2-year agreement with provisions to apply uniformly to the 5 major North Atlantic Coast Ports.[1] The uniform demands would eliminate the practice of simultaneous loading and unloading of containerships, grant exclusive rights to pack and unpack containers loaded away from the piers, except those with a "manufacturers label,"[2] and establish a standard work gang of 17 men.[3] The demands also included a $2.38 per hour wage increase, a 6-hour workday, an increase of $125 in the monthly pension benefits, a guaranteed annual income equivalent to 2,040 hours' work at straight-time rates,[4] and liberalized welfare, vacation, and holiday benefits.
August 7	The NYSA offered a 48 cents per hour, 4-year contract package, stating that it was authorized to negotiate only on the provisions in the "master agreement" for the North Atlantic District and for a container provision for Baltimore. (Philadelphia and Boston were not on the sailing schedules of containerships.)
August 22	A 1-year extension of the contract, including a 35-cent-an-hour package to be allocated by the ILA, was proposed by the NYSA to provide additional time to study the problems of worker security. In addition, employers in New York, Baltimore, and Hampton Roads offered a new container clause that would permit ILA members to strip and load containers that had been consolidated in the port area from less than full-load lots.
August 27	ILA negotiators rejected the proposal to extend the contract and suggested a 38-cent-an-hour-wage increase for a 6-hour day. Union demands concerning containers were not changed.
August 29	Negotiators agreed to refer the matter of pensions to a special committee. The union had proposed $300 a month pension, payable at age 50, after 20 years in the industry. In addition, the union requested that past service for pension benefits be fully funded within 10 years.
August 31	The ILA announced at a bargaining strategy meeting in Miami that conventional cargo ships, but not containerships, would be worked should the parties fail to reach agreement by September 30.
September 4	On resumption of negotiations in New York, the NYSA proposed, and the union rejected, a $275 a month pension at age 62 after 25 years' service.
September 9	Employers presented a new offer: a 2-year package with a 33-cent wage increase and 25-cent-an-hour pension and welfare contribution that would have permitted a $300 a month pension at age 62.

See footnotes at end of table.

Stevedoring Industry Dispute, Atlantic and Gulf Coasts, 1968-69 – International Longshoremen's Association (AFL-CIO) v. Shipping and Stevedoring Companies – Continued

September 9 – Continued	A stoppage begain in Boston over employer demands that union furnish full-sized gangs.
September 15	The NYSA tentatively proposed a guarantee of 2,080 hours' work in exchange for the freedom to automate operations and to assign longshoremen to jobs. The 2 hours of travel time paid in moving from one area of the port to another was eliminated. The union rejected the offer, and negotiations were discontinued until September 25.
September 20	The executive board of the ILA voted to strike October 1, if no contract was concluded. Agreement was reached to end the Boston port stoppage.
September 24	President Lyndon B. Johnson assigned James Reynolds, Under Secretary of Labor, to assist in mediating the dispute. At this stage, only wages, pensions, and the guaranteed annual income had been discussed. The problems of establishing an industrywide containerization provision had not been approached.
September 26	Thomas W. Gleason, International President of the ILA, stated that the employers represented by the NYSA must either let the ILA load and unload containers, or pay a royalty that was adequate to finance a pension and welfare plan the union considered satisfactory. Payments to these funds had been based on hours worked. Because of considerable savings in man-hours possible with containerships, the union maintained that hourly pension and welfare contributions would have to be much higher to finance these benefits at current levels. The NYSA had proposed that the ILA load and unload containers consolidated within the immediate port area. Fearing that container consolidating operations would be opened outside the port area, the ILA rejected this proposal.
September 30	The President stated that a stoppage would imperil the national health and safety and, pursuant to Section 206 of the Labor-Management Relations Act, appointed a Board of Inquiry.[5] David L. Cole, former Director of the Federal Mediation and Conciliation Service, was designated chairman. The other two members were Peter Seitz and the Rt. Rev. Msgr. George Higgins. In New York, negotiators met without success in a final effort to avoid a strike. Dock workers in New York began leaving their jobs before the midnight deadline.
October 1	About 46,000 workers were involved directly in the strike. The Board of Inquiry met in New York with employer and union representatives. Later, the Board reported to the President that

See footnote at end of table.

Stevedoring Industry Dispute, Atlantic and Gulf Coasts, 1968-69—International Longshoremen's Association (AFL-CIO) v. Shipping and Stevedoring Companies—Continued

October 1—Continued	there were "two overriding issues, and the failure to resolve these has prevented the parties from reaching agreement on other items." These were unionwide collective bargaining[6] and the problems of containerization. The President requested the Attorney General to seek an end to the strike. Shortly after 7 p.m., Judge Sylvester Ryan of the U.S. District Court for the Southern District for New York issued a temporary restraining order and set October 9 as the date for hearings on a 60-day injunction. Thomas W. Gleason, President of the ILA, indicated that due to the lateness of the order, ending the stoppage the next day would be impossible.
October 3	Work was resumed at all ports.
October 9	A ruling on the request for an injunction was put off to October 15. The restraining order continued in effect.
October 16	Judge Ryan issued a 60-day injunction prohibiting a strike by longshoremen until 7:05 p.m. December 20.
October 30	Formal negotiations resumed for the first time since September 30; the ILA demanded that the basic containerization and job security provisions apply equally to all Atlantic and Gulf ports. The NYSA's offer of a 2,080-hour guaranteed annual wage was also a problem. In New York, the offer was contingent on the imposition of penalties on workers who refused to work beyond their normal work area; in other ports, employers felt that they could not afford the guarantee.
October 31	New Jersey dockworkers struck, primarily at container loading sites. They demanded that the container royalty payments be divided among the workers as a bonus.
November 1	The NYSA proposed a 3-year, $1.01-an-hour contract, including wage increases up to 63 cents per hour; and 38 cents for pension and welfare funds, thereby allowing a $300 monthly pension at 62. Detailed hiring and income guarantee contract clauses also were presented. The union announced that it would reply November 6.
November 4	The U.S. Attorney's Office in New York ordered an investigation to determine if the wildcat strike in New Jersey was in violation of the injunction obtained under the Taft-Hartley Act. The workers returned to their jobs the next day.
November 6	Dissatisfied by the failure to negotiate a single North Atlantic District agreement, by the size of the money package, and by the retirement provisions, the International Longshoremen's Association rejected the NYSA offer of November 1.

See footnote at end of table.

Stevedoring Industry Dispute, Atlantic and Gulf Coasts, 1968-69—International Longshoremen's Association (AFL-CIO) v. Shipping and Stevedoring Companies—Continued

November 30	The Board of Inquiry reported to the President that the positions of the parties had not changed since the first report, and that none of the issues had been resolved.
December 2	Thomas Gleason recommended that workers reject the offers submitted by the employer associations for the North Atlantic District.
December 5	Workers in South Atlantic Coast ports began 2 days of voting on the employer's last offer.
December 10	Longshoremen in the North Atlantic District (from Hampton Roads, Va., to Searsport, Maine) voted on the employer's last offers.
December 11	The NLRB announced that longshoremen had voted approximately 15 to 1 to reject the final employer offer.
December 12	Bargaining resumed for the first time since November 6 amid reports that the leaders of the October 31-November 5 wildcat strike in New Jersey were calling for a slowdown. All ports were reporting working at "full employment."
December 16	A tentative oral 3-year agreement was reported to have been reached for the North Atlantic District. The contract provided for the right to open and repack all containers bearing consolidated cargoes loaded within fifty miles of New York. It also included a guaranteed annual wage of 2,080 hours. The offer included a $1.60 increase in wages and supplemental benefits over 3 years; these changes would raise hourly rates to $4.60 and provide a $250 monthly pension at 55 after 20 years, or $300 a month at 62 after 25 years of service. Changes in the work rules were to be negotiated.
December 17	The union bargaining committee for the North Atlantic District rejected the tentative offer, primarily because of the inability to achieve an agreement for the entire North Atlantic District. Although the container provision protected New York dockworkers, it did not prevent freight forwarders in other ports from shipping through New York, causing a decrease in employment in these ports. Philadelphia and Boston longshoremen representatives also attacked the provision that stated: "the men will work in any port which has an agreement on the master contract and local conditions, and that the union policy of 'one port down, all ports down' shall not be applied."
December 18	Bargaining continued over the issues of containerization and supplementary benefits. Employers in the ports of Philadelphia and Boston, which did not have container facilities, were unwilling to

Stevedoring Industry Dispute, Atlantic and Gulf Coasts, 1968-69—International Longshoremen's Association (AFL-CIO) v. Shipping and Stevedoring Companies—Continued

December 18—Continued	offer the same provisions as New York, Hampton Roads, and Baltimore. They contended that the improved supplementary benefits were to be paid for by increased productivity attributable to automation.
December 20	Negotiations ended in the afternoon without agreement, and the stoppage of 46,000 men was resumed at 7:05 p.m. when the injunction expired.[7]
December 21	The Philadelphia Marine Trade Association and the Boston Shipping Association issued a statement charging the NYSA and the ILA with an attempt to "usurp" the rights of local ports because the New York bargaining authority for them covered only the "basic wage increase and contributions to welfare and pension funds but not the benefits to be derived therefrom, basic working day, and term of the agreement." The two employer associations objected to NYSA offers on vacation and holiday pay, the guaranteed annual wage, and container restrictions. They indicated that the NYSA could commit them for only $1.44 of the offer, and that the remaining 16 cents, representing vacation and holiday pay, had to be negotiated locally. The Baltimore Steamship Trade Association indicated that if any other employer associations rejected the contract, it would be forced to do so also.
December 23	Negotiations resumed in New York. The ILA demanded that the "master contract" specify that a reasonable guaranteed annual income be negotiated in the other ports. Efforts to start local negotiations in Philadelphia, Baltimore, and Hampton Roads failed, in part, because union leaders were in New York. In Boston, the parties agreed to meet in an attempt to produce the first signed agreement in 10 years.
December 24	At the meeting in Boston, the Shipping Association notified mediators that it would participate only to negotiate a local contract.
January 3, 1969	New York longshoremen and shippers met in an attempt to resolve two major local issues: the jurisdiction of the ILA in stripping and loading containers, and the hiring practices under the guaranteed annual income plan. The negotiations ended in disagreement and were recessed indefinitely, subject to recall by the mediator.
January 7	Reportedly, at a full meeting of the New York Shipping Association, the members authorized the labor policy committee to withdraw the entire offer and seek Washington intervention. The next day the NYSA appealed to the President to refer the dock strike to Congress, as provided under Sec. 210 of the Taft-Hartley Act.
January 9	A meeting of top union and management officials continued to January 10. Agreement was reached on the container clause and on hiring practices under the guaranteed annual income plan.

See footnote at end of table.

Stevedoring Industry Dispute, Atlantic and Gulf Coasts, 1968-69—International Longshoremen's Association (AFL-CIO) v. Shipping and Stevedoring Companies—Continued

January 12	The full union and management bargaining committees met to review the written contract, including the provisions agreed to the previous day. The union committee unanimously accepted the new container clause, which protected local ports from the threat of losing work to New York,[8] and returned to their home ports.
January 14	A tentative agreement was reached for the Port of New York, but ratification by the membership was deferred pending settlement in other ports. Besides the container clause accepted January 12, the $1.60 wage-supplementary benefit package, and the pension plan offered December 16, the agreement included the annual guarantee of 2,080 hours' pay at straight-time rates. Travel pay would not be paid to workers hired after the agreement went into effect (October 1, 1968). Negotiations resumed in Boston, Baltimore, and Hampton Roads. In Philadelphia, the union demanded the entire New York contract. The shippers agreed to the same wage rates and supplementary benefit contributions as New York, but maintained that they would not pay the increased vacation costs. They also rejected the increased guaranteed annual income plan.
January 16	Negotiations began in Miami for South Atlantic ports from Morehead, N.C., to Key West, Fla. In Galveston, where bargaining resumed for a contract covering West Gulf Ports, talks broke off when the employers did not make a money offer.
January 22	Talks in New Orleans were discontinued after the shippers offered a $1.07 package and demanded a decrease in the size of crews loading grain ships.
January 23	The ILA was warned by the NYSA that it might be in violation of the Taft-Hartley Act if it refused to place the contract before its members for ratification. Management in Philadelphia offered three contract options: (1) the $1.60 package, including $1.44 for wages, pensions and welfare, and the remaining 16 cents for "whatever it would buy" in the way of additional vacations and holidays; (2) the same benefits as in New York, but changes in the work rules designed to reduce labor costs; or (3) subsequent negotiations on the vacation plan. The union declined all three options. Negotiators for South Atlantic ports reached tentative settlement on local issues and agreed that wages, supplementary benefits, annual wage guarantees, and the container clause would follow the New Orleans pattern.

See footnote at end of table.

Stevedoring Industry Dispute, Atlantic and Gulf Coasts, 1968-69—International Longshoremen's Association (AFL-CIO) v. Shipping and Stevedoring Companies—Continued

January 23—Continued	Talks resumed in Galveston for West Gulf ports. Employers were reluctant to discuss money until some agreement was reached on changing work rules.
January 26	Negotiators in Baltimore reached agreement on holiday and vacation benefits, but the union rejected the employers' offer of a guaranteed 1,800-hours' work.
January 29	Because of problems in Philadelphia and New Orleans, the executive council of the ILA met in New Orleans in an attempt to coordinate bargaining and concluded by requesting the President to "insist" that the Gulf employer associations increase their offer from $1.07 to $1.60.
February 1	Negotiators in Hampton Roads reached agreement on a guaranteed annual income of $6,800 for qualifying workers in 1969-70 and $7,820 in 1970-71 contract years.
February 2	A tentative agreement, providing for pay increases of $1.60 an hour over the life of the contract, was reached in New Orleans. It required that negotiations on a guaranteed annual income begin 90 days after ratification, and that the size of the work gang not be reduced during that period. The container provisions eliminated two clauses of the New York agreement, thus permitting containers consolidated in other ports to move through New Orleans without repacking, and also requiring arbitration of disagreements over the handling of containers. (These changes reflect the different practices in the two ports before negotiations began in July. See footnote 2.)
February 3	David L. Cole was asked by Secretary of Labor George P. Shultz to resume over-all direction of the mediation activity. Mr. Cole had not been involved since the agreement was reached in New York. Thomas Gleason indicated that the New Orleans container clause was unacceptable to the International. ILA South Atlantic and Gulf District officials refused to reopen negotiations. From Miami, the executive board of the Teamsters telegraphed ILA and the port employer associations that the new agreement would not be allowed to remove work from the Teamster jurisdiction. [9]
February 4	New York Shipping Association members agreed to withdraw the unratified contract of January 14 if workers did not return shortly. Negotiators in Philadelphia reached agreement on the wage and supplementary package, and container provisions and became the fourth major port to do so. However, eligibility for a fifth and sixth week of vacation and union demands to eliminate the "set-back"[10] clause prevented agreement.

See footnotes at end of table.

Stevedoring Industry Dispute, Atlantic and Gulf Coasts, 1968-69—International Longshoremen's Association (AFL-CIO) v. Shipping and Stevedoring Companies—Continued

February 4—Continued	Negotiations resumed in Galveston; the shippers matched the New Orleans' money offer, but the longshoremen demanded the New York container provision.
February 7	Seeking a ratification vote,[11] the New York Shipping Association filed an unfair labor practice suit against the ILA.
February 8	At a meeting of the executive council of the ILA in Houston, New Orleans' union officials promised to attempt to reopen negotiations on the container clause.
February 11	The NLRB petitioned the U.S. District Court for the Southern District of New York to order the longshoremen to return to work in the Port of New York. Judge F. X. McGohey, denying the request, ordered the ILA to hold an election by February 14, but allowed the NLRB to return to the court if work was not resumed.
February 14	Longshoremen in New York ratified the agreement 9,328 to 3,213.
February 15	Work was resumed in New York.
February 17	The NLRB petitioned the Federal District Court in New Orleans to order longshoremen in New Orleans to return to work.
February 18	Tentative agreement was reached for Miami. Most other South Atlantic ports also reached agreement.
February 19	Judge Frederick J. R. Heebe ordered five ILA locals in New Orleans to vote on the contract February 21. A checkers and clerks local had not reached agreement on a container clause. Shippers and union officials in Baltimore announced tentative agreement, also to be submitted for ratification on February 21. The contract included a guaranteed annual income of 1,800 hours.
February 20	Agreement was reached in Philadelphia, providing for a fifth and sixth week of vacation for longshoremen who worked 1,600 hours in 10 of the past 12 years. The contract eliminated the "set-back" provision, and the container provision allowed packing and unpacking of consolidated containers that were local in origin or destination. The guaranteed annual wage was increased to 1,800 hours. Ratification was set for the 23d. Workers in Miami and Port Everglades ratified their contract.

See footnote at end of table.

Stevedoring Industry Dispute, Atlantic and Gulf Coasts, 1968-69—International Longshoremen's Association (AFL-CIO) v. Shipping and Stevedoring Companies—Continued

February 21	Longshoremen in New Orleans, Hampton Roads, and Baltimore ratified contracts and returned to work the next day. Following the conclusion of these settlements, longshoremen in South Atlantic and Gulf ports were expected to return to work shortly. [12]
February 23	Philadelphia longshoremen ratified their agreement and resumed work February 25.
April 12	The last port agreement was concluded. [13]

[1] The New York Shipping Association is authorized to bargain for New York, Baltimore, Boston, Hampton Roads, and Philadelphia with respect to wages, hours, employer contributions to the welfare and pension funds, and the term of the agreement. Settlements on these issues, generally referred to as the "master contract," are then incorporated into local agreements in these ports. Negotiations on working conditions, holidays, vacations, and other matters are conducted on the local level. Boston, however, had not had a signed agreement since 1959. The agreements for the remainder of the North Atlantic District and the South Atlantic and Gulf Districts follow the general North Atlantic Coast pattern.

[2] New York, Baltimore, and Philadelphia ports had royalty clauses on containers since 1960, 1961, and 1967, respectively. The royalties were 35 cents per gross ton for conventional ships, 70 cents for partially automated ships, and $1 for automated or containerized ships. Establishment of a container fund in Boston was delayed because of jurisdictional problems between the ILA and the Teamsters.

Although containers had been stripped in North Atlantic ports when the ILA found more than 1 bill-of-lading on a container, no such action had occurred in South Atlantic and Gulf ports.

[3] New York had 17-man gangs under the current agreement.

[4] New York had a 1,600-hour, and Philadelphia a 1,500-hour guarantee.

[5] This stoppage marked the seventh time that Atlantic Coast longshoremen were involved in a "national emergency" dispute.

[6] During the 1956 contract renegotiations, the ILA was enjoined from insisting on industrywide bargaining. In appeals to the courts during the next year, the injunction was upheld, and a trial examiner of the NLRB ruled that the insistance upon industrywide bargaining was an unfair labor practice.

[7] This stoppage marked the sixth time that an East Coast stevedoring industry strike had occurred or had been resumed after an 80-day "cooling-off" period.

[8] The new master clause read: "Containers owned or leased by employer-members (including containers on wheels) containing LTL [less than truckload lot] loads or consolidated full-container loads, which are destined for or come from, any person (including a consolidator who stuffs containers of outbound cargo or a distributor who strips containers of inbound cargo and including a forwarder, who is either a consolidator of outcargo or a distributor of inbound cargo) who is not the beneficial owner of the cargo, and which either comes from or is destined to any point within a 50-mile radius of any North Atlantic District port shall be stuffed and stripped by ILA labor at longshore rates on a waterfront under the terms and conditions of the General Cargo Agreement." The New York Times, January 13, 1969, p. 93. In addition, disagreement over the handling of a container was not arbitrable.

[9] The ILA and the Teamsters had met occasionally to discuss jurisdiction, but no agreement had been announced.

[10] When a ship failed to arrive on time, longshoremen's work schedules were changed from 7:30 a.m. to 1:00 p.m. under the "set-back" clause, which also provided pay for 1 hour in the morning and a 4-hour guarantee in the afternoon. In this situation, other port agreements provided 4 hours' reporting pay and permitted longshoremen to take another job in the afternoon. Philadelphia dockworkers struck over this issue in 1967.

[11] In the 1964-65 negotiations, the contract was ratified in New York and New Orleans shortly after agreement was reached, but the longshoremen did not return to work. The NYSA and New Orleans Steamship Association successfully filed suits to require the groups to return to work.

[12] Longshoremen at Jacksonville, Fla., Mobile, Ala., and Baton Rouge, La., and West Gulf ports did not return to work at that time. However, work was resumed in Mobile on February 25 and at Jacksonville on March 1. The West Gulf ports and Baton Rouge, where dockworkers demanded the New York container clause rather than the one for New Orleans, did not return to work until April 2 and March 14, respectively. Operations were resumed in Beaumont, Orange, and Port Arthur, April 13.

[13] Work was not resumed in New England ports until March. At Boston, where employers demanded concessions in work rules in exchange for higher wages, benefits, container clause, and guaranteed annual wage, work was resumed April 2.

NO. E-9

URGING THE ADOPTION OF LEGISLATION BY THE CONGRESS DESIGNED TO AFFORD A MEANS OF AMICABLE SETTLEMENT OF LABOR DISPUTES AND TO PREVENT STOPPAGES IN THE MARITIME INDUSTRY

WHEREAS, The United States Corporate membership of The American Association of Port Authorities is composed of public and governmental departments, boards, commissions, agencies, authorities, organizations and bodies engaged in the planning, development or operation of ports and harbors, and by reason of their public character are charged with the duty of serving the public interest in the foreign and domestic waterborne commerce of the United States; and

WHEREAS, such members collectively have a multi-billion dollar investment in port and harbor facilities dedicated to the needs and furtherance of such commerce; and

WHEREAS, such Corporate members of The American Association of Port Authorities have been deeply concerned for many years with the frequent labor disputes and work stoppages which have affected and halted from time to time the vital flow of essential foreign and domestic waterborne commerce; and

WHEREAS, from time to time there have been waterfront strikes which have resulted in the closing of a major portion of the ports and harbors of the United States; and

WHEREAS, such a paralysis and disruption has included (1) the immediate and in many ways permanent damage to the National Export Expansion Program through loss of overseas markets, (2) a crippling backup in relief foreign cargoes with the consequent setback to various aid programs, (3) unrecoupable setbacks in the Balance of Payments program, (4) serious immediate, and often permanent financial effects on industry, manufacturing concerns, and labor through (a) inability of manufacturers to channel larger orders into production by reason of not receiving imported raw materials, such as jute, wool, paper, etc. leading to a widespread spectrum of employee layoffs, and in many cases, to bankruptcy in industry itself; (b) unemployment on the waterfront and ever-growing unemployment in inland firms and industry forced to lay off portions of their employees as a direct result of the stoppage of maritime commerce, and (c) the halting of normal agriculture marketing procedures vital to the economy of the nation, with product marketing and outlets for surplus commodities closed off, together with the concomitant result of product spoilages and downgrading when held up in the process of transportation; and

WHEREAS, such strikes and work stoppages in the maritime industry, existing before and often continuing after the use of the injunctive machinery provided for in the Taft-Hartley Act, demonstrate the need for improved and possibly specialized laws applicable to and governing strikes, work stoppages, contract bargaining procedures and grievance machinery in the maritime industry because the procedures and provisions of existing laws are inadequate and ineffectual to meet national labor emergencies in the maritime industry to prevent or avoid irreparable and incalculable damage resulting therefrom to the national economy;

NOW, THEREFORE, BE IT RESOLVED by The American Association of Port Authorities:

(1) That existing and past strikes and work stoppages in the maritime industry have so affected the public welfare, the national defense and the national economy of the United States and its citizens, despite the use of available laws, that it is essential and imperative that new federal legislation be enacted providing for improved collective bargaining machinery and for sound grievance and dispute settlement;

(2) That such legislation should provide for more effective procedures for the fair, impartial and speedy settlement of labor disputes, grievances and contract negotiations in the maritime industry without strikes, lockouts or work stoppages; and

(3) That Committee V on Port Operations be and it is hereby authorized and instructed to take such steps forthwith as in the judgment of the Board of Directors shall be deemed desirable and expedient to cause such legislation as will generally effectuate, so far as possible, the objectives and purposes set forth in this Resolution to be introduced in the Congress and to urge and seek its adoption.

(Unanimously passed - United States Members only voting)

Mr. DINGELL. The committee is grateful to you and your associates for your very helpful testimony. It is always a pleasure to have you before the committee. Thank you very much.

Mr. AMUNDSEN. Thank you.

Mr. DINGELL. The committee will now stand adjourned until Tuesday next at 10 a.m.

(Whereupon, at 10:30 p.m., the hearing adjourned, to reconvene at 10 a.m., Tuesday, September 21, 1971.)

SETTLEMENT OF LABOR-MANAGEMENT DISPUTES IN TRANSPORTATION

TUESDAY, SEPTEMBER 21, 1971

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

The subcommittee met at 10 a.m., pursuant to notice, in room 2322, Rayburn House Office Building, Hon. John Jarman (chairman) presiding.

Mr. JARMAN. The subcommittee will please be in order.

We will continue the hearings on proposed legislation dealing with the settlement of transportation labor disputes.

Our first witness this morning is James E. Yost, president of the Railway Employes' Department, AFL–CIO, Chicago, Ill.

STATEMENTS OF JAMES E. YOST, PRESIDENT, RAILWAY EMPLOYES' DEPARTMENT, AFL–CIO, AND EDWARD J. HICKEY, JR., GENERAL COUNSEL, RAILWAY LABOR EXECUTIVES' ASSOCIATION; ACCOMPANIED BY TAYLOR SOOP, EXECUTIVE SECRETARY, RAILWAY LABOR EXECUTIVES' ASSOCIATION

Mr. YOST. Good morning, Mr. Chairman.

Mr. JARMAN. Mr. Yost, for the record will you introduce your associates?

Mr. YOST. Well, that is a part of our statement, Mr. Chairman, but on my right is Mr. Edward J. Hickey, Jr., general counsel for the Railway Employes' Department and also general counsel for the Railway Labor Executives' Association; and on my left is Mr. Taylor Soop, executive secretary of the Railway Labor Executives' Association.

Mr. JARMAN. You may proceed with your statement.

Mr. YOST. Thank you.

Mr. Chairman, members of the subcommittee:

My name is James E. Yost. I am president of the Railway Employes' Department of the AFL–CIO. This department of the federation is composed of six international labor organizations commonly referred to in the railroad industry as the shopcrafts. These organizations are:

International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers;
Brotherhood Railway Carmen of the United States and Canada;
International Brotherhood of Electrical Workers;

International Association of Machinists and Aerospace Workers;
Sheet Metal Workers' International Association; and
International Brotherhood of Firemen and Oilers.

Each of these organizations has a vital interest in the legislation pending before you because they represent thousands of employees on practically every railroad in the United States as well as in Canada. They also represent additional thousands of employees in industries outside the railroad industry. For example, the total membership of the International Association of Machinists and Aerospace Workers exceeds 900,000 and that of the International Brotherhood of Electrical Workers is approximately 1 million. For this reason they feel particularly qualified because of their experience under both the Railway Labor Act and the Taft-Hartley law to evaluate some of the proposals before you to drastically devise the Railway Labor Act and substitute Taft-Hartley procedures.

I appear before you today with Mr. Edward J. Hickey, Jr., who is the Railway Employes' Department's General Counsel, to testify on pending legislation concerning emergency labor disputes in the transportation industries.

My main purpose is to support and recommend your favorable action upon H.R. 3595 sponsored by Chairman Staggers of your full committee, Congressman Eckhardt and also Representative Macdonald of Massachusetts and to oppose H.R. 3596, which is the Nixon administration's proposal.

At the conclusion of my statement Mr. Hickey will explain to you in more detail some of the technical and legal reasons for our support of the Staggers-Eckhardt-Macdonald and our opposition to the administration's proposal and will also comment upon some of the other bills which are before you for consideration. In doing so, he will be speaking for the Railway Labor Executives' Association which comprises 14 railway labor organizations of which the six shopcrafts are a part.

In approaching the problem of what should be the central point of concentration in the observations which I wish to lay before you, I must necessarily direct my attention to the avowed reason for the introduction of this proposed legislation. As I understand that objective, it is to seek better ways and means to avoid or settle emergency disputes in the transportation industries—which because of our involvement means the railroad industry. Or, to put it another way, the objective of this legislation is to provide procedures which will take the crisis or emergency out of railroad strikes because past national railroad strikes have proved unacceptable to the public, the administration and the Congress.

We accept the fact that the right of labor under the existing Railway Labor Act to engage in a nationwide strike is, from a practical point of view, a dead letter. But we also want to make the point that the harassment of Congress and the public in recent years is not properly attributable to railroad labor which has tried to avoid nationwide shutdowns through resort to selective strikes, but, on the contrary, is due to the railroads' success, until just recently, in securing court injunctions against such limited strike action on the grounds that since the bargaining is nationally pursued, the strike must be nationally maintained. The objective was obviously to provoke congressional in-

tervention. A good example is the shopcrafts' efforts in 1969 to limit strike action and avoid a national strike, the carriers' retaliation of a national lockout, the court's injunction against any selective strike, and the resulting congressional action when the only strike then legally permissible created an emergency situation.

While it is true that after H.R. 3595 was drafted and introduced, the Court of Appeals for the District of Columbia ruled that a selective strike is legal under the Railway Labor Act and the Supreme Court rejected the petition of the railroads to review this decision, it does not follow that the legislation proposed by H.R. 3595 is no longer needed. On the contrary, there are important provisions in the bill which, if enacted, would preclude the deliberate expansion of the strike by the carriers so as to convert limited action into national proportions, thereby creating a national emergency. The carriers' objections before this committee to these safeguards belie their exhortations against national emergencies.

Both the carriers and the administration in thier appearances before the Congress continue to profess the belief that collective bargaining should be preserved and improved in the railroad industry and that it should be as free as possible from Government interference and that any legislation should serve to enhance, rather than reduce, the incentive to such bargaining. Mr. John Hiltz, chairman of the Natonal Railway Labor Conference, who is the carriers' chief spokesman in national railway labor negotiations, embraced the same philosophy in his appearance before this subcommittee last week when he said that "the overall challenge to your committee, as I see the situation, is to amend the Railway Labor Act in a way that preserves and improves the collective bargaining process" and his "preference is for as little Government intervention as possible."

It is axiomatic in any free society which believes in the right of its citizens employed by private industry to be free from involuntary servitude that the right to strike is an inherent part of the right to bargain collectively. Aside from nationwide shutdowns which, as I have already observed, we accept as impractical, if the time has come when railworkers are no longer to be viewed as citizens employed by private industry and are to be denied the right to strike at all by the adoption of any of the proposals before you for compulsory arbitration then, as stated by the AFL–CIO in February of this year in its comments on the Nixon administration's proposals, the Congress should immediately move to nationalize the Nation's railroads.

This brings me to the provisions of the administration's bill (H.R. 3596) and why we find them totally unacceptable as a solution to the problem of removing the emergency or national impact from strikes in the railroad industry.

The legislation proposed by the administration's bill goes much too far to remedy the defects which it states now exists under the Railway Labor Act and in our opinion would, if enacted, seriously and needlessly curtail advantages now enjoyed under existing law and jeopardize legitimate interests of railroad labor.

In saying this I do not wish to be understood as taking the position that some remedial legislation in the area of emergency disputes is not necessary or desirable. On the contrary, that is the precise reason why the AFL–CIO and all of railroad labor are supporting

the Staggers-Eckhardt-MacDonald selective strike bill. But what I am trying to say most emphatically is that the broadsword approach of the administration's bill is not the cure.

Perhaps the most fundamental fallacy in the administration's bill is its failure to follow its initial premise, stated in the proposed congressional "findings and purpose," that the present procedures for dealing with national emergency disputes under the Railway Labor Act tend to encourage too much resort to governmental intervention rather than utilization of collective bargaining processes to solve disputes. From such a premise one would reasonably expect that the proposed procedures in the bill would limit governmental intervention and require solution through collective bargaining, including the ultimate right of labor to strike. Instead, the administration's bill requires not less but more governmental intervention and a longer rather than a shorter period of delay if the succession of boards of inquiry; court reviews and injunctions, Presidential intervention, special boards, and "final offer" panels attendant upon the resolution of national emergency disputes are viewed, as realistically they must, as nothing short of institutionalized governmental intervention.

Even more fundamentally, the administration bill fails to follow its initial premise by not confining its procedures to the resolution of major disputes. Instead, contrary to this first finding and purpose, it requires arbitration of minor disputes. In doing so, it abolishes the existing National Railroad Adjustment Board where the costs are, in part, assumed by the Government and places the entire cost on the unions and the carriers. The net gain is no advancement in collective bargaining but only one to the administration's budget.

This brings me to the bill's second finding or premise that present procedures for dealing with disputes in the transportation industries have proved insufficient to prevent serious disruptions of transportation services. Aside from the fact, as again observed by the AFL–CIO in its February 1971 statement on the administration's antistrike bill, that no case at all can be made out to sustantiate this premise in the trucking, maritime and longshore industries—which we shall leave for substantiations by those who represent such industries—the facts in the railroad industry are also to the contrary. In the 45 years that the Railway Labor Act has been in effect there have been only three nationwide rail strikes, each lasting but a few days, and only one major airline strike. Secretary Hodgson has admitted this fact in his appearance before the Congress and testimony in support of the administration's bill. Moreover, there have been only seven instances in this total period of 45 years where it has been necessary for the President or the Congress to intervene.

Insofar as emergency boards are concerned, even if we include the airline industry as well as the railroad industry, only 176 emergency boards have been created pursuant to section 10 of the Railway Labor Act as of June 30, 1970, according to the annual report of the National Mediation Board—an average of less than four a year throughout the history of the act.

These statistics are a far cry from the administration bill's proclamation that present procedures for dealing with the disputes have proved insufficient to prevent serious disruptions in an industry of over 650,000 employees. Completely overlooked is the fact that there

are literally thousands of disputes whirh are settled through collective bargaining without even the intervention of the National Mediation Board. Mr. Hiltz himself admitted the fact that collective bargaining under the Railway Labor Act had not broken down, as claimed by the administration, in his appearance before this committee last week when he said that "collective bargaining in our industry does work—not perfectly, of course, and it can be improved, but it does work. The fact is that hundreds of agreements each year are negotiated in the railroad industry with no governmental intervention of any kind."

On the basis of these observations we think it fair to conclude that the underlying assumptions of the administration's bill of need for the drastic legislation proposed are simplistic and wrong. The over-concentration of the administration on the few isolated instances of congressional or Presidential intervention have blinded its appreciation of the overall efficacy of the Railway Labor Act in areas outside the arena of national emergency disputes. We see no justification whatever for the wholesale slaughter of provisions in the Railway Labor Act governing adjustment of minor disputes, judicial enforcement of awards of the adjustment boards, the abolishment of the mediatory function of the National Mediation Board and transfer to another agency, or the institution of a variety of new procedures which would be highly injurious, time-consuming and costly to railroad labor when none of these provisions are responsive to the asserted reasons of the administration for the introduction of the legislation or are related to the avoidance of emergency disputes or their settlement. To do so would create a chaotic situation, junk years of experience and expertise in the handling of minor disputes and in the long run create more problems than would be solved.

Now let me illustrate a little more concretely what these changes are which the administration seeks in areas unrelated to the provisions for resolving emergency disputes and tell you more specifically the reasons for our opposition.

First, in the area of disputes involving the interpretation or application of collective bargaining agreements, all such disputes are now subject to compulsory arbitration under the Railway Labor Act by the National Railroad Adjustment Board or by other boards of adjustment established under that law. An important feature of these arbitration provisions of the Railway Labor Act is that the cost is borne essentially by the Government. While it is true that each partisan member of the Adjustment Board appointed by the railroads and labor organizations, respectively, is paid by the party each represents, this is really a small part of the costs of the arbitration process. Each neutral member selected to resolve deadlocks in the termination of disputes between labor and railroad members is paid by the National Mediation Board. Similar provisions apply to the special boards of adjustment called Public Law Boards that were established by congressional amendments to the act in 1966.

The administration's bill proposes to eliminate this Government-supported arbitration and supbstitute private arbitration paid for entirely by the parties. Although the administration purports to make this change in order to eliminate reliance upon governmental machinery for resolving disputes, such a claim is completely inconsistent with the elaborate governmental machinery established by the

administration's bill for the handling of major disputes where the costs are assumed by the Government. In any event, the substitution of private arbitration would visit a real hardship upon the rail unions whose membership and dues are decreasing. The cost of supporting the arbitration of minor disputes under the Railway Labor Act is a rather insignificant amount for the Government, but would be significant for the unions. By way of example, in 1969 total expenditures for the National Railroad Adjustment Board were $831,311.

Moreover, the loss of background and experience of the members of the Adjustment Board, many of whom have spend most of their lives in this work, through conversion to private arbitration would be highly detrimental to a knowledgeable disposition of disputes.

Another highly injurious feature of the administration's substitution of private arbitration for the present procedure of the Railway Labor Act is the elimination of the enforcement provisions of the act. These provisions permit recovery of costs and attorney's fees by the unions when the carriers fail to abide by arbitration awards of the adjournment boards and court enforcement is required. The alternative of private arbitration proposed by the administration would visit prohibitive expenses upon the rail unions and very likely would result in considerable stalling and foot-dragging by the carriers in complying with their obligations under collective bargaining agreements simply because of the unequal financial contest between the railroads and the employee representatives.

Second, there are a number of so-called miscellaneous provisions contained in the administration's bill which are highly objectionable. One of the most dangerous is the prohibition in the proposed law of the restraints against injunctions contained in the Norris-LaGuardia Act in any judicial proceedings brought under or to enforce the provisions of the act. Such a provision can only be viewed as completely antilabor.

Courts already have severely limited the application of this anti-injunction law in cases brought to require compliance with requirements of the Railway Labor Act. But the purpose of the administration in doing away with it entirely can be viewed as nothing short of an effort to give the courts unrestricted power to issue injunctions. If the administration's bill is enacted, we can easily see that the day of Government by injunction in labor disputes would be back with us. Contrast this with Secretary Hodgson's statement to the Congress that the administration's objective was that "collective bargaining should be as free as possible from Government interference and that any legislation should serve to enhance, rather than reduce, the incentives to such bargaining."

Another objectionable miscellaneous provision of the administration's bill provides for court actions by and against railroads and employee representatives for violation of agreements. This could result in a flood of litigation including damage suits since another provision of the proposed law would make a union liable for the acts of its agents notwithstanding other provisions of existing law such as those contained in the Norris-La Guardia Act which now permit defenses to such suits. This is another illustration of how the present administration is seeking to have labor disputes resolved more and more by the courts and one of the fundamental reasons why we are so opposed not only

to the provisions of the administration's bill, but its underlying philosophy as well.

It is apparent from what I have said thus far that the administration's proposals for changes in the Railway Labor Act outside the area of emergency disputes are not only unacceptable to railroad labor but are also foreign to the avowed reason for the proposed legislation and should be rejected.

Insofar as the administration bill's proposed changes in the emergency disputes procedure are concerned, we do not oppose them for the reason that they are unrelated to the problem which triggered all of the legislation before this committee, but simply because we do not believe they would cure the problem. On the contrary, they would create more delays in the solution of emergency disputes rather than less, would involve the courts to an abnormal degree which should be avoided and would ultimately result in compulsory arbitration which is the antithesis of free collective bargaining.

In substance, the administration's proposal would add three new emergency antistrike procedures to the 80-day injunctions now provided by the Taft-Hartley law. These three devices are: (1) an additional 30-day injunction; (2) an authorization for partial operation only, such as moving essential goods; and (3) a new variation of compulsory arbitration panel would choose one or the other without change or modification.

For practical reasons the so-called choices actually dissolve into one, the "final offer selection" procedure, which is unacceptable for a variety of reasons. Here the disputing parties are supposedly put on the defensive in terms of demanding too much because to do so would lead to rejection of their offer by the President's selection panel. But "final offer selection" does not take into account the facts of life of present-day trade unionism.

The leader of a trade union represents a membership. That membership measures the effectiveness of its leader primarily in terms of what they achieve in the collective-bargaining process. In most instances members of a union will accept in a collectively bargained agreement less than the initial demands. But it is naive to assume that the leadership of the union can afford to take the responsibility of making an offer far below the initial demands in order to make it sufficiently attractive to be adopted by a selection panel. And it is not realistic to believe that if agreements are subject to ratification, the submission of a proposal substantially below the initial demands would be approved by the membership. Incidentally, the time limits prescribed by the administration's bill in the "final offer selection" procedure would not permit realistic ratification references anyway. To this extent at least the proponents of the administration's bill either are not aware of or completely ignore the internal laws of some of our railroad labor organizations.

The administration has argued vigorously that its "final offer selection" does not amount to compulsory arbitration. This claim is based upon the fact that the offer selected by the panel is the offer of one of the parties rather than a decision imposed by third parties. While this is true technically, the fact remains that one party is saddled with his adversary's draft of a collective-bargaining agreement which he must accept. And he must accept it under compulsion of law.

Consequently, we have the use of governmental power enforcing a unilateral decision of one of the parties to a labor dispute which is the very opposite of collective bargaining.

Now let me turn to the provisions of the Staggers-Eckhardt-MacDonald bill and give our reasons for supporting this proposed legislation.

The purpose of H.R. 3595 can be simply stated. It would take the national emergency out of railroad strikes by permitting the rail unions to exercise their right of self-help now given to them under the Railway Labor Act after the exhaustion of all required procedures in such a way as to avoid nationwide shutdowns and the attendant intervention of the President and the Congress. As I have already said earlier in this testimony, the right to strike nationally is for all practical purposes precluded to the rail unions and if this right is to be preserved at all—or to put it another way, if collective bargaining is to be permitted to function in the railroad industry—the more limited selective strike must be permitted. But it must be permitted in a way which will prohibit the carriers from converting the limited strike through the use of a lockout into a national crisis or we are right back where we started with no practical strike at all and thus no real collective bargaining under the Railway Labor Act. It is for this reason, among others, that the legislation sought by H.R. 3595 is still necessary notwithstanding the recent court decision which I mentioned earlier which held selective strikes to be legal. We would hope that decision will settle the question, but we cannot be sure the railroads will not institute other litigation seeking inroads upon it as they recently attempted in the selective strikes of the United Transportation Union when the Chicago & Northwestern Railroad sought and obtained a separate settlement with the union without the concurrence of the National Railway Labor Conference.

The selective strike bill expressly recognizes and reaffirms the right of the carriers to put their proposals into effect when the procedures of the Railway Labor Act have been exhausted; the only restriction is that when the railroads have proposed changes, not on their own initiative, but in anticipation of or as counterproposals to union proposals, they would not be permitted to put such changes into effect unless they are struck. The reason for this restriction is that during recent years the railroads have adopted, as a deliberate strategy, the practice of countering union proposals with intolerable counterproposals in order to be in a position to put the counterproposals into effect if the union should call a selective strike and thus convert a selective strike into a national strike, thereby creating a national emergency in which Congress must intervene. The railroad insistence on putting their counterproposals into effect would defeat the purpose of the bill to take the national emergency out of railway disputes.

The selective strike bill also provides important safeguards with respect to the national health and safety by providing that both the union and the railroads shall be required to furnish transportation during a strike to the extent that the Secretary of Transportation, after consultation with the Secretaries of Defense and Labor, finds it essential. The carriers complain that such partial operation of a carrier, even though it is also a part of the administration proposal, is burdensome and difficult. Even if it is, so also is the effectiveness

of the strike and both sides must make that sacrifice for reasons of public necessity. This safeguard to national health and safety is another reason why the legislation is needed despite the court decision validating selective strikes.

I should like to defer at this point to our general counsel, Mr. Hickey, who will testify on behalf of all organizations of the Railway Labor Executives' Association and will, as I previously stated, deal more specifically with the particular provisions of the bills I have discussed in general terms and also state our views on some of the other bills pending before your committee.

I thank you for your time and attention, Mr. Chairman, and committee members.

Mr. JARMAN. Mr. Hickey, we will be glad to hear from you.

STATEMENT OF EDWARD J. HICKEY, JR.

Mr. HICKEY. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, my name is Edward J. Hickey, Jr. I am a lawyer and member of the firm of Mulholland, Hickey & Lyman with offices at 620 Tower Building, Washington, D.C. I have been engaged in the private practice of law in Washington since 1948. My particular field of work has been the representation of labor organizations under the Railway Labor Act.

I appear before your committee today in behalf of the Railway Labor Executives' Association for which association I am general counsel. I am accompanied here at the table by Mr. Taylor Soop, who is the executive secretary of the Railway Labor Executives' Association.

The 15 international or national rail unions comprising Railway Labor Executives' Association are the following:

American Railway Supervisors' Association;
American Train Dispatchers Association;
Brotherhood of Locomotive Engineers;
Brotherhood of Railroad Signalmen;
Brotherhood Railway Carmen of the United States and Canada;
Brotherhood of Sleeping Car Porters;
International Association of Machinists and Aerospace Workers;
International Brotherhood of Boilermarkers, 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;
Railroad Yardmasters of America;
Railway Employes' Department, AFL–CIO; and
Sheet Metal Workers' International Association

As Mr. Yost has informed you in his testimony on behalf of the Railway Employes' Department, AFL–CIO, all of the rail unions are united in their opposition to the administration's bill—H.R. 3596—and in their support of H.R. 3595, the Staggers-Eckhardt-Macdonald bill. What Mr. Yost has had to say with respect to these two bills on behalf of the railway employes' department is also the position of the Railway Labor Executives' Association. Accordingly, I shall not repeat testimony which he has already adequately stated, but shall, as

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he has told you, provide supporting detail for that testimony by reference to particular provisions of the administration's bill and of H.R. 3595. I shall also comment on the other bills which are before you for consideration, including the so-called Harvey bills and H.R. 9989, which represents the position of the Association of American Railroads and the National Railway Labor Conference.

OBJECTIONS TO ADMINISTRATION'S BILL (H.R. 3596)

Let me first discuss the emergency disputes provisions of the administration's bill since, as we understand it, the primary objective of the Congress is to legislate improvements in the procedures for settling or preventing such disputes.

Any consideration of the emergency disputes provisions of the administration's bill must start with the notice provisions of section 6. Under this section, as it would be amended by the administration's bill—section 202(h)—parties would change from the present procedure of open-ended agreements to the system common in industries subject to the Taft-Hartley law where contracts have fixed termination dates. But this is not all that section 6 as amended would do. Deleted from its provisions are the status quo requirements of the present Railway Labor Act. Section 6 now contains the important provision that "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 the Railway Labor Act. No corresponding status quo requirement is contained in proposed section 6. The only preservation of existing terms and conditions is proposed section 6 is the requirement that for a period of 60 days after notice of intended modification or termination or until the expiration date of the agreement containing such terms and conditions, whichever occurs later, no change may be made. This raises problems.

Suppose the parties do not reach agreement within the 60 days contemplated by the revised section 6. What are the rates of pay, rules, and working conditions in effect upon expiration without a new agreement?

Consider another problem. In the case of *Manning* v. *American Airlines*, 329 F. 2d 32 (2d Cir., 1964), the carrier sought to discontinue a checkoff agreement upon passage of a fixed expiration date in the agreement establishing the checkoff. The union resisted the cancellation on the basis of the status quo requirements of section 6. The carrier contended that section 6 was inapplicable because the agreement contained a fixed termination date. The Court held with the union on the grounds that regardless of the termination date in the agreement, the intended change by the carrier brought the matter within section 6 and with it the requirement that the status quo be maintained until compliance with all the requirements of that section. What becomes of the law established by this case in the light of the administration's removal of the status quo requirements?

Take an even more important recent decision of the Supreme Court of the United States. In *Detroit & Toledo Shore Line R. Co.* v. *Transportation Union*, 396 U.S. 142, 24 L. ed. 2d 325 (1969), the Court held that under the status quo requirements of section 6 of the Railway Labor Act which forbid a carrier from taking unilateral action

altering rates of pay, rules, or working conditions while a dispute is pending before the National Mediation Board, a railroad may not make outlying work assignments away from its principal yard even though there is nothing specifically in the parties' collective bargaining agreement which prohibits such assignments. It, therefore, upheld the issuance of an injunction against the carrier's effectuation of the change pending negotiation. What becomes of the benefits of this decision to railroad labor? Presumably they would die upon the elimination of the status quo requirement to section 6 since there are no counterpart requirements in the new section 6 proposed by the administration's bill aside from the 60-day period.

There is also a serious problem caused by the administration bill's elimination of the Norris-La Guardia Act—section 403—and the effect of this on section 6 notices served by unions to prevent unilateral changes. Suppose a carrier seeks an injunction. Heretofore the Norris-La Guardia Act was a protection in this area. Now it will no longer be applicable since section 403 of the administration's bill states that the Norris-La Guardia Act "shall not be applicable to any judicial proceedings brought under or to enforce provisions of this act." Since the proposal amends the Railway Labor Act and the national disputes section of the Labor-Management Relations Act, the argument will be advanced that Norris-La Guardia is dead for purposes of section 6 of the Railway Labor Act and probably for all Railway Labor Act purposes.

We invite the committee's attention to the fact that the inapplicability of Norris-La Guardia is total. Even section 8 of that act—29 U.S.C. 108—is inapplicable. Thus a carrier may obtain an injunction without making "every reasonable effort" to settle a dispute. Likewise, section 7—29 U.S.C. 107—will not apply. There will be no opportunity to show unlawful acts. Presumably we will revert to Government by injunction with all the evils we knew before 1932. Indeed, the courts will have additional sanctions for intervention because the proposed act creates rights of court review in several key instances. Moreover, carriers may use section 401 suits by and against representatives as an additional basis for intervention by injunction.

These examples of problems created by the administration's proposed changes in section 6 of the Railway Labor Act could be multiplied if time permitted. But enough has been said, I believe, to illustrate the great harm and confusion which will result from changes in a vitally important section of the Railway Labor Act which has received a settled construction through court decisions over the years and to which literally thousands of collective bargaining agreements in the railroad industry are geared. For what purpose, we ask. Certainly not for the purpose of improving settlement of emergency disputes which can be accomplished by far less drastic means.

Let me turn now to a consideration of those provisions of the administration's bill which repeal the existing provisions of section 10 of the Railway Labor Act and substitute provisions of title II of the Taft-Hartley Act—proposed as part A—plus a new set of procedures contained in part B of this title. Since the provisions of part A are the existing provisions of the Taft-Hartley law with only minor modifications and are well known to you, I shall move directly to part B.

Under section 214 of the Taft-Hartley law, as it would be amended, within 10 days before an injunction is dissolved the President may move into the controversy and may select any one of three choices. These choices are: first, an additional 30-day cooling-off period; second, partial operation; and third, final-offer selection. Presumably the choice would be made during the period that NLRB is taking its vote among the employees. At any rate, it is clear that the President is to act before the inunction is dissolved.

Among the choices open to the President is the choice not to select any of the three options given to him. If this is his choice, then he is to submit a supplemental report or recommendation to Congress. If the President selects one of the three choices, then he is to give appropriate notice to Congress. Congress may reject the choice. In that case the President is to make a supplemental report or recommendation to Congress. If Congress does not reject the President's choice, then the President will proceed to implement his choice. So we can easily see that if a major objective of the pending legislation is to preclude harassment of Congress in these emergency disputes, it seems reasonable to conclude that the proposal of the administration not only does not accomplish that objective, but actually aggravates the involvement of Congress in labor disputes.

Under the first choice available to the President, he may direct the parties to maintain the status quo respecting terms and conditions of employment and to continue bargaining for an additional 30-day period with the mediatory assistance of a board of inquiry and the Federal Mediation Service. If this does not result in an agreement, presumably the injunction will be lifted and the employees may strike It should be noted, however, that the proposed legislation nowhere provides specifically for the lifting of the 80-day injunction after the expiration of the 30-day cooling-off period.

The second of the three choices is partial operation. Here the President appoints a special board which is instructed to make a determination whether and under what conditions a partial strike or lockout would appear to be sufficient in economic impact to encourage the parties to make continuing efforts to resolve the dispute. The board may determine that the partial strike or lockout cannot take place in accordance with such criteria. If so, it shall so report to the President. Presumably, although this is by no means clear, the parties have a right to court review of such a determination. The bill is silent as to what is the next step. Is the union entitled to a lifting of the injunction? We reach an anomalous situation. A board could determine that a partial strike should not be granted. Presumably neither would a national strike be permitted. The result may be that the union is deprived of any bargaining power whatsoever.

On the other hand, the special board might issue an order permitting a partial strike or lockout for 180 days. The 180 days apparently start from the date of the order and thus come after the 80-day injunction, the 10 days allowed the President to make his choice, and the 30 days allowed the board to rule. An order allowing a partial strike or lockout is conclusive unless found to be arbitrary or capricious by the district court. Suppose that the court does hold that the order is arbitrary or capricious. What happens then? Does the matter go back to the special board for a new order, or does this mean that

the employees are then entitled to a full strike? Are they entitled also to a lifting of the injunction?

The last of the three choices is final offer selection under section 219 of the administration's bill. Of all the choices available to the President this is by far the most controversial. It is also quite probably the one which the President is likely to choose in every case. It has the strong attraction of bringing a dispute to an end. The basic assumption underlying this choice is that it offers an equal threat to employers and unions. But this is like a game of Russian roulette. It presumes that it will encourage the parties to arrive at a settlement by negotiations. Should the negotiations fail, it presumes that each party's final offer would be realistic—that is, that it would be sufficiently fair to make it attractive to the selectors, but with just an edge of an advantage for the side offering it. Less than this would make it unacceptable to the selectors and more would be a needless sacrifice.

Consider for a moment the complications which would likely arise under this arrangement. The typical pattern of bargaining in the railroad industry in recent years has been that when a union presents its wage package, the railroad serves demands for sweeping rules changes called counterproposals. The response is the same when the union demands rules changes. Accordingly, a board that chooses an offer which in its opinion presents the fairer offer is apt to be making decisions not only with relation to a wage package, but also with relation to rules.

The prospects of bewilderment are staggering. Even wage issues seldom are presented in pure form. They may well involve hourly rates coupled with questions of differentials, premium pay, et cetera. It is even conceivable that the selector might be faced with the following dilemma in a simple wage submission. A union asks for an increase to $4.80 per hour and the carrier in collective bargaining negotiations offers $4.50. When they get before the final selection panel, the union's final offer is $4.60 and the carrier's final offer is $4.70. Which would the selectors select?

Demands which are only casually referred to in the negotiations between the parties might well be included in the final offer and as to these demands the parties would come to the hearing without any collective bargaining on the issues and inadequately prepared to meet the issues involved. In order to be prepared it would be necessary for a railroad union to assume that every demand made by the carrier and his counteroffer might well be included in its final offer and accordingly prepare testimony for presentation to the board during its hearing on all such issues. This would place an intolerable burden upon a union.

Apart from this, at least in the railroad industry, the board would be presented with problems involving changes in work rules which call for an exceptionally high degree of experience and understanding of railroad terminology and operation without the benefit of any discussion of the complications of the problem with third parties or the right to vary any term of either offer, irrespective of what the evidence shows. Again, we say, it simply will not work.

It should be added that the draftsmen of the administration's bill are either not aware of or overlook the internal laws of many railroad labor organizations. It is assumed under the administration's

bill that the negotiators within the 3 days can formulate for presentation an entire collective bargaining agreement. What is disregarded is the requirement of union constitutions of ratification by general chairmen's associations or by actual referendum of the membership. Ratification by its very nature is not suited to the poker-playing aspects of the final offer selection process. It would require one side—the union—to expose its entire hand while the other side—the carriers—keeps its cards close to its chest.

In concluding this testimony on behalf of the Railway Labor Executives' Association on the emergency disputes provisions of the administration's bill, let me say this by way of summary. Viewed as a whole, the intricate and time-consuming provisions for resolving emergency disputes are undeservedly punitive and oppressive. They appear to rest on the supposition that strikes in the transportation industry result from hotheaded actions by impetuous union representatives. By way of illustration, the administration's bill selects as one of the three methods of resolving emergency disputes the so-called cooling-off concept as though the Government was dealing with a brawl over trivia.

The realities are quite different. Railroad labor disputes of national consequence arise out of serious economic issues, particularly today when inflation ravages paychecks. Strikes are not lightly called because they are grave undertakings. And union leaders are conscious of their serious responsibilities and obligations to the public as well as to the employees they represent. They do not really wish to strike except as a matter of last resort, but sometimes their members demand it whether they like it or not.

It is a fact of life today, perhaps as never before in our generation, that people tend to overreact when they must act. This is particularly true when employees believe that procedures for the resolution of disputes short of a strike are unfair or that the dice are loaded against them.

There is a real probability that if the administration's bill becomes law, it will discourage rather than encourage settlement of emergency disputes. What real inducement is there for carriers to settle under legislation which offers so many avenues of escape to echelons of inquiry boards and panels plus the courts standing by to review any action which the carriers conclude is "arbitrary or capricious"? Such an arrangement is not only unfair legislation—it is dangerous because it will encourage carriers to procrastiante and then go to the courts, spawn suspicion, frustrate unions and embitter employees.

My final observation on the administration's bill concerns its heavy-handed repeal of provisions of the Railway Labor Act which have nothing to do with emergency disputes. In his testimony on behalf of the Railway Employees' Department, Mr. Yost has already informed you that the proposals abolishing the Railroad Adjustment Board, the mediatory functions of the National Mediation Board, the existing provisions for judicial enforcement of adjustment board awards, the elimination of the Norris-LaGuardia Act from applicability to any judicial proceedings brought under or to enforce the provisions of the act, and the institution of a variety of new procedures would be highly injurious, time consuming and costly to railroad labor and would create a chaotic situation in the industry. The Railway Labor Executives' Association agrees with this assessment.

Mr. Yost has also demonstrated without serious question, we believe, that the administration has failed completely to make out a case that minor disputes cause strikes or lockouts which imperil national health or safety. Accordingly, there is no valid basis for amending the Railway Labor Act so as to substitute private arbitration for Government-paid grievance arbitration. There is also no justification for the Government to refuse now to finance an agreement it obtained in 1934 from management and labor in the railroad industry to submit minor disputes to final and binding arbitration.

I appreciate the fact that I may have overextended my observations on the administration's bill. This is the inevitable sin of trying to go from the general to the specific which has been my assignment today in the light of Mr. Yost's previous testimony. My justification for these extensive comments is the grave concern with which not only all of railroad labor but the AFL–CIO as well view the sweeping proposals of the administration. We would not wish it said that any of the particulars of our opposition had failed to be stated.

SUPPORT OF THE STAGGERS-ECKHARDT-MACDONALD BILL (H.R. 3595)

In his testimony on behalf of the Railway Employees' Department Mr. Yost has also stated in general terms why railroad labor and the AFL–CIO support H.R. 3595, the selective strike bill. He has told you that this bill has the virtue of confining its provisions specifically and exclusively to the problem of more effectively preventing or resolving emergency disputes in the railroad industry rather than proposing omnibus provisions which are unrelated to the basic reason for congressional concern for new legislation in the railroad industry.

He has also informed you of the major provisions of the bill and why the rail unions support them.

The Railway Labor Executives' Association endorses and joins in this statement of support and little need be added to it except to answer some of the objections which have been urged before you by opponents of the bill, to try to answer any questions you may have concerning its provisions, and to all a word of explanation of why we believe this sensible approach to the problem before you would accomplish the objective you seek since we are convinced that the administration's proposed solution would not for reasons which we have already stated.

In his appearance before your committee last week Mr. John Hiltz, chairman of the National Railway Labor Conference, which represents the railroads in national labor negotiations, made the surprising statement that H.R. 3595 would "broaden the self-help that may be exerted by the unions" under the Railway Labor Act. I say this is surprising because it is well established under Supreme Court decisions that the rail unions are entitled to strike all the Nation's carriers with which they are involved in major dispute after exhaustion of the required procedures of the Railway Labor Act and since the selective strike obviously is less than the whole and confined by the bill to not more than three carriers in any of the three regions of the country, the bill does the opposite of what the railroads claim by reducing rather than broadening the self-help which the unions may employ. If the purpose of the statement is meant to imply that the legislation of the right to engage in selective strikes is to broaden the

type of strike which may be pursued rather than the scope of the strike, the short answer is that the U.S. Court of Appeals for the District of Columbia Circuit held in the *Delaware & Hudson* case in March of 1971 (76 LRRM 2900) that a selective strike was valid under the Railway Labor Act and the Supreme Court of the United States denied a petition of the railroads to review the decision.

The railroads also opposed H.R. 3595 on the ground that it would deprive the carriers of their right under the present law to lock out their employees. We have never agreed that the carriers have this right under present law and the claim that it is a necessary and permissible retaliation to a strike has never been judicially established. We maintain that a lockout is a violation of the carriers' obligation to serve the public with essential transportation and the right of the employees with whom there is no dispute to continue to work. The Supreme Court's decision in the *Florida East Coast Railway* case (384 U.S. 238, 16 L. ed. 2d. 501) appears to us to confirm this view. In the course of that decision the Court said (pp. 244–245):

> The carrier's right of self-help is underlined by the public service aspects of its business. "More is involved than the settlement of a private controversy without appreciable consequences to the public." *Virginian Ry.* v. *Federation*, 300 U.S. 515, 552, 81 L. ed. 789, 802, 57 S. Ct. 592. The Interstate Commerce Act, 24 Stat. 379, as amended, places a responsibility on common carriers by rail to provide transportation. The duty runs not to shippers alone, but to the public. In our complex society, metropolitan areas in particular might suffer a calamity if rail service for freight or for passengers were stopped. Food and other critical supplies might be dangerously curtailed; vital services might be impaired; whole metropolitan communities might be paralyzed.
>
> We emphasize these aspects of the problem not to say that the carrier's duty to operate is absolute, but only to emphasize that it owes the public reasonable efforts to maintain the public service at all times, even when beset by labor-management controversies and that this duty continues even when all the mediation provisions of the Act have been exhausted and self-help becomes available to both sides of the labor-management controversy.

Certainly the reasoning of the decision casts sufficient doubt on the existence of the claimed right of lockout to justify the Congress in prohibiting its exericse not only so as to preclude deprivation of the public of essential transportation, but also to prevent a spreading of the area of the strike into a national emergency which is the very purpose of the bill.

The carriers further object to H.R. 3595 on the ground the bill would deprive them of their right under present law to implement proposed changes unilaterally after all the processes of the Railway Labor Act has been exhausted. This is not entirely accurate and to the extent that there is a restriction on the right of the carriers to unilaterally impose proposals it is justified. Section 10(c) of H.R. 3595 authorizes the carriers to put their proposals into effect unilaterally subject to two exceptions. The first of these exceptions is designed to prevent counter-proposals used solely for the tactical purpose of converting a limited strike into a national emergency which happened in the recent United Transportation Union selective strike. The second exception simply prohibits changes not permitted by other provisions of the Railway Labor Act.

Finally, the carriers contend that H.R. 3595 does not prohibit national strikes. True, it does not. But the avowed objective of the bill and the reason it is supported by all rail unions and the AFL–CIO is to establish an alternative to the nationwide shutdown which hereto-

fore has been forced upon the rail unions and enable them to exercise their full rights to collectively bargain in a limited way so as to avoid national crises. No one knows better than the rail unions that national strikes are from a practical standpoint impermissible and any likelihood of their exercise as permitted by existing law is highly improbable if they obtain the right to selectively strike with appropriate safeguards which will preserve it from escalation. Since the employment of the full right is denied only because of its impact upon the public and considerations of national health and safety, certainly the Government owes those denied the exercise of the limited right which will avoid such impact.

OTHER PROPOSED LEGISLATION UNDER CONSIDERATION

Now I would like to undertake a brief discussion of the other bills which are before this commitee. Time will obviously not permit a complete discussion of all of them, but our position on the principal proposals they contain will be stated. In addition, I shall comment more specifically on the proposals of H.R. 9989 which represent the position of the Nation's railroads and also on the Harvey bills.

We understand that 17 bills have been referred to the committee on the matter under consideration and that between them six different proposals for resolving emergency disputes have been recommended.

Four of the 17 bills contain provisions identical to those of H.R. 3595, the Staggers-Eckhardt-Macdonald selective strike bill. These bills are H.R. 3985, 4620, 4996, and 5870. No further comment on these bills is required because of our full discussion of H.R. 3595.

Four others bills: H.R. 901, 3639, 4116, and 5377 are the same as the administration's bill, H.R. 3596, which we have also fully discussed.

This accounts for 10 of the 17 bills.

Two additional bills, H.R. 9089 and 9571, are the same as H.R. 9088 introduced by Congressman Harvey and 24 other Members of the House of Representatives. H.R. 8385 is an earlier version of H.R. 9088 also introduced by Congressman Harvey. As I have said, these proposals will be separately discussed.

Aside from the railroads' bill, H.R. 9989, which will also be separately discussed, this leaves only the Pickle and Dingell bills. The Pickle bill, H.R. 2357, adopts the so-called arsenal of weapons approach including binding arbitration as the preferred method of resolving emergency disputes. For this reason the bill is opposed by the Railway Labor Executives' Association for the same reasons which will be given for our opposition to the railroads' bill.

While the provisions of the Dingell bill, H.R. 5347—permitting partial strikes and partial seizure after final offers, a secret ballot vote of employees and report of a special presidential board—is far less objectionable to railroad labor than the administration's bill and its counterparts as well as the railroads' bill which include compulsory arbitration, the Railway Labor Executives' Association must still oppose it because of its support of H.R. 3595.

This leads me to a discussion of the railroads' bill, H.R. 9989, which is also supported by the Air Transportation Association of America, the airlines' counterpart of the Association of American Railroads.

This bill is vigorously opposed by not only the rail unions but also all of labor through the AFL–CIO because it includes compulsory arbitration, which means the imposition of terms and conditions governing rates of pay, rules and working conditions not agreed to by the parties to the dispute, but determined by a tribunal established by law. Our position is that it is a violation of the basic principles of democracy which characterizes and separates this Nation from other forms of government to compel employees in private industry to work under terms imposed upon them by law.

Aside from its provisions for settling emergency disputes through compulsory arbitration, the railroads' bill is also highly objectionable for another reason. It contains no less than nine separate amendments to the Railway Labor Act which have nothing to do with the settlement of emergency disputes and are purely and simply attempts to use the crisis-strike issue before the Congress as a vehicle for improving management's position under the act at the expense of long-established rights of labor. A few examples will serve to illustrate this. They would have you abolish the right of a union to represent subordinate officials. They seek the elimination of the right of employees to ratify agreements negotiated by their representatives—a right expressly upheld by the courts. They want to make the employer a party to disputes between unions over representation of employees. They seek the abolishment of the Railroad Adjustment Board and Government financial support and a shifting of the expense of neutrals of the special boards of adjustment from the Government to the parties—a rather obvious effort to make arbitration of minor disputes unattractive to the rail unions. The railroads also seek an amendment to the Railroad Unemployment Insurance Act to eliminate payment of unemployment benefits to employees engaged in a lawful strike.

Aside from the lack of merit in these proposals, we do not think this is an appropriate time for Congress to consider them when it is fully occupied with the problem of emergency disputes. For this reason our objections to the provisions of the administration's bill which seek amendments to the Railway Labor Act which do not concern emergency disputes apply with equal force here.

The final bill which I shall discuss is H.R. 9089, which as I stated previously was introduced by Congressman Harvey and by 24 other Congressmen. This bill is an amendment to an earlier version introduced by Congressman Harvey, H.R. 8385.

The Harvey bill is decidedly better than either the administration's bill or the railroads' bill. First and foremost, it adopts the approach that the Railway Labor Act should be retained as the statutory source for resolving major disputes in the railroad and airlines industries. It proceeds on the premise that the entire body of administrative practices, mediation services, procedural precedents, and judicial rulings which have been built up under the Railway Labor Act over the 45 years of its history is too valuable to discard.

Second, and equally important, the Harvey bill recognizes that the right of rail unions to strike must be preserved and it implements this conclusion by permitting selective strikes and prohibiting lockouts as a management response to selective strikes. In doing this, however, unlike the Staggers-Eckhardt-Macdonald bill, the selective strike is proposed in the context of three Presidential courses of action, the

second of which would be final offer selection and the third, an additional 30-day cooling-off period. These alternative courses of action are the reason for our principal objections to the bill. We have already stated at considerable length in our discussion of the administration's bill that regardless of its euphemistic label final offer selection is simply another form of compulsory arbitration. In addition to this, we have also informed you that we do not think it will work anyway and have given you a number of reasons for that conclusion.

Another objection to the Harvey bill is that in authorizing the selective strike as the first of the Presidential courses of action, the number of carriers which may be struck in each of the three regions is limited to two rather than three as under the Staggers-Eckhardt-Macdonald bill. Correspondingly, the revenue-ton-miles carried by the struck railroads cannot exceed 20 percent of the regional total as contrasted with the 40 percent permitted under H.R. 3595. This restriction is qualified, however, by providing that if only one carrier is struck in any one region, the revenue-ton-mile limitation is not applicable in that region.

Accordingly, while we cannot support the Harvey bill for the reasons given, we welcome the fact that it avoids extraneous amendments to the Railway Labor Act by confining its terms to emergency disputes and also recognizes that the selective strike, with the attendant safeguard of prohibiting carrier lockouts, must be preserved if collective bargaining is to effectively function under the Railway Labor Act.

In concluding this testimony on behalf of the Railway Labor Executives' Association, may I be permitted one personal observation. I am convinced on the basis of my 23 years of representing rail unions and handling some of their problems under the Railway Labor Act that no act of Congress would more vitalize and improve the ills which have beset negotiations of agreements in the railroad industry than the passage of the Staggers-Eckhardt-Macdonald bill. The reason I say this is that it provides the precise spark which has been needed for too long now to ignite real collective bargaining in this industry.

We have heard the Railway Labor Act blamed over the years as the cause of the breakdown in negotiations, the long delays in consummating agreements, the succession of mediation efforts by the Mediation Board, the Labor Department, and Presidential panels and ultimately the intervention of the Congress.

It is not really the fault of the act. In my judgment the same vexations and harassments would have occurred under the Taft-Hartley Act or any other law for one major reason. The essential ingredient of a practical and effective way for the rail unions to strike has been missing.

Aware until only recently that any strike by labor in a national wage or rules dispute had to result in a nationwide strike if there was to be any strike, the carriers could maintain an inflexible position without fear of union retaliation secure in the knowledge that they had nothing to lose because the President and Congress would not permit a national shutdown and dispute would be settled by what really has amounted to high level arbitration.

Consequently, what has been sorely needed, and what I believe is supplied by H.R. 3595, is an effective incentive for real collective bargaining which exists in other industries such as steel and automobiles.

I am persuaded that the whole process will come alive and quicken if a genuine right to strike by railroad employees is legislated. And by that I mean not only the negotiations of the parties themselves, but also the function of mediation which never really had a chance when no economic pressure could be applied.

I am also persuaded, contrary to what Mr. Hiltz told you last week in his appearance on behalf of the railroads, that if the selective strike bill is passed with the necessary safeguards to prevent nullification of such a strike through carrier lockouts or similar devices, we shall have far less, rather than more, strikes in the railroad industry. It is a truism that the best collective bargaining occurs when the right to strike never has to be exercised.

The Railway Labor Executives' Association appreciates this opportunity you have afforded it to state its views on legislative proposals which would so vitally affect the employees its organizations represent.

Mr. Chairman and members of the committee, I thank you for your time and attention.

Mr. JARMAN. Gentlemen, we thank you for your analysis of the various bills and recommendations, and it will certainly be carefully considered and will be most helpful.

The only comment I would ask for at this time would be with reference to a comment contained in Mr. Yost's statement in which you refer to the final offer selection procedure. You go on to say that "from a practical standpoint, it would be difficult, if not impossible, that leaders of a union representing the membership would not be in a position to take the responsibility of making an offer far below the initial demands in order to make it sufficiently attractive to be adopted by a selection panel."

You also mention that it is not realistic to believe that if agreements are subject to ratification, a submission of a proposal substantially below the initial demands would be approved by membership.

If a final selection offer procedure is written into the law, don't you think that the membership of the union will recognize the very pratcical aspects of it in terms of their repersentatives having to come up, if it comes to that stage of the procedure and settlement, and they will recognize that their representatives have to come up, from a very practical standpoint, with a final offer that is as equitable as they can make it and that still achieves as much as they feel can be gained, because they are then in competition with that final selection offer being made by the other side?

Mr. YOST. Mr. Chairman, I would say this: that the membership would certainly recognize that the leadership had to make an offer, but in the majority of cases I think we would find the membership disagreeing with the offer we had made. They would say we had made too small an offer, we had taken away too many things from the initial demands, and I wouldn't be surprised if, in many instances, they may not be able to point to the carrier's final offer and possibly, in some instances, prove this to be true because somewhere in the carrier's final offer the carrier would have offered more on a particular subject than what we had felt that we could get and had put into our final offer.

We would be subject to all kinds of criticism and, being the political animals that we are, we might have a change in leadership every 3 years or 4 years, whatever the particular laws of that individual organization might be as to the election of officers.

Mr. HICKEY. Let me add one thing that I think is very important to keep in mind. We have precisely 3 days under this bill of the administration, and I think Congressman Harvey modified that a little to 5. But, anyway, we are talking about the administration's final offer selection. Three days and you have to come up with a complete bargaining agreement, and, as we pointed out—and, I think, justifiably—you can't leave out anything, even though it has not been bargained on, if it is supposed to come up with a complete bargaining agreement involving all of the issues and you have to get it back to the membership and have it ratified.

On this ratification, whether we like it or not, there are different thoughts about it, but, nevertheless, it has been upheld by the courts to ratify, or union membership to ratify the agreements; you have to get it to the membership and back and before the selection panels, and this is impossible.

If it does go back there, and let us assume, through some kind of magic, that through improved communications that you could do it—but I think it is literally impossible—but suppose you could do it by calling everybody into Washington from all of the 50 States; the chances, as Mr. Yost has said, of something of that kind, in that scope, being supported by the membership is really remote. It is just impractical.

Mr. JARMAN. What do you feel would be a more realistic time schedule for ratification?

Mr. HICKEY. Certainly, putting aside for the moment all of the other objectives we have to final offer selections, as I said, it is poker playing and it does not impress me at all as a philosophy for settling disputes, but putting that aside, I think you are going to have to have not 3 days but at least 2 weeks really in order to consummate your ratification and to put together the agreement; even without ratification, we have this situation.

Mr. DINGELL. If the gentleman will yield, when you have elections, or ratification of contracts, how long does it ordinarily take now?

Mr. HICKEY. About 2 weeks.

Mr. DINGELL. Is it 2 weeks?

Mr. HICKEY. Thirty days I am told here by my associates, and I said "2 weeks" in terms of what I thought.

Mr. YOST. The policy of the Department requires 30 days, and it takes almost every day of it by the time you get the documents out and the membership has opportunity to vote and you get results back in.

You see, the International Association of Machinists, which I represent, has a requirement in their law for a referendum. This takes time. The other organizations ratify at local union meetings, which means that special meetings have to be called and the agreement has to be explained, and it will take practically 30 days.

Mr. THOMPSON. Will you go over how referendum compares to ratification?

Mr. HICKEY. Referendum is a form of ratification which some, or a good many, unions employ but not all of them, and some unions have the ratification by or through their general chairmen's association,

rather than having all of the membership vote on it. But many of them have an actual referendum, such as the machinists.

Mr. THOMPSON. In other words, ratification can take place without all of the membership voting?

Mr. HICKEY. It can, and under some unions' rules, it does, but this is always a decision by the union, or in its constitution, and has been upheld by the courts.

So, as Mr. Yost is pointing out, it is not simply a question of sending out a communication in writing and saying, "Vote on it up and down," and that is not the way it is handled. That is supposing, as there should be in all collective bargaining, some real desire on the part of the leaders to have the membership support what they are going to propose, and obviously they have to go out and speak in its behalf and explain it and answer questions, and it can't take place in a short period of time.

Mr. THOMPSON. May I ask a further question? How many unions have their constitutions so written that an agreement does not require ratification? Do you have any idea?

Mr. HICKEY. In the shop crafts, there is one that doesn't.

Mr. THOMPSON. Is ratification something that is well treasured by the membership?

Mr. HICKEY. It has become so. It didn't used to be, but, as I think you are aware, there has arisen a new militancy in this generation and the rank and file want more to say about the decisions that are being made and this includes ratification of agreements.

Mr. THOMPSON. Thank you.

Mr. METCALFE. Will the gentleman yield for a question along this particular line? I thought you were very thorough and analytical in your analysis of each one of the bills that has been presented, but, for my own information—and I am not expert in this labor law nor in union procedures—I am concerned about the statement, your statement, Mr. Hickey, on page 11 in which you indicated that the leadership of the unions—and I am paraphrasing—are not anxious to strike, but what I would like some clarification of is: You say that sometimes their members demand that they strike whether they like it or not.

I have always been of the opinion that the leadership in unions are the ones who set the policy and that is the reason they are there and they are there to advise the membership, and then the membership in turn either ratifies or rejects the proposals.

But I gathered from this that you are indicating that the leadership is under compulsion in some instances, from the rank and file members, and I raise the question as to whether or not this is the practice; I get a misinterpretation of this, and I would like some clarification.

Mr. HICKEY. I would be glad to talk to that. I don't think you are misinterpreting it. It is particularly true where ratification procedures are required by a union constitution; this statement. It is also true, even in the absence of such a ratification requirement, because of the fact that—well, let us take the shop crafts group; a leader of a union, the one union that does not have ratification procedures would be on very shaky ground to take a position that was not supported by the membership, by all of the others which did have ratification procedures; and, even though he was not subject to it technically, he would be heeding much more today than ever before in our generation the desires and the wishes of the rank and file.

I think that is a very fair answer to your question there. There is much more coming and demanded by the rank and file today than ever before, certainly in my experience.

Mr. HARVEY. I want to join my colleague from Illinois, Mr. Metcalfe, Mr. Hickey, and Mr. Yost, in welcoming you and also congratulating you for your very fine and thorough statements. Much of it I agree with and, of course, as you know from your familiarity with the subject, I would disagree with a considerable part of it also.

But I think we both recognize the problem that is facing our country and the problem that is facing this Congress and one of our first duties here is, as Mr. Staggers' bill seeks to do, is to define a selective strike.

I don't think you disagree in that regard, but where you seem to disagree is that, after we have defined a selective strike, you seem to say that we should make no provision beyond that. If, for any reason, the effect of the strike is escalated over and above what is provided for within the limits of the selective strike, then the Congress should do nothing. It seems to me this is your basic objective.

Mr. HICKEY. I didn't mean to say, Mr. Harvey, anything with regard to what Congress should or shouldn't do if a bona fide selective strike became escalated beyond its terms. We are not here, obviously, on behalf of labor supporting the repeal of the right to strike nationally. We are, as I attempted to point out, supporting a right which we think can be practically exercised.

Mr. HARVEY. Let me interrupt you here—and I hate to interrupt, but time is so short—that H.R. 3595 seeks to define a selective strike, but then it would permit a national strike without question.

Mr. HICKEY. That is correct.

Mr. HARVEY. So why do we bother about defining it if we go ahead and we still permit a national strike?

Mr. HICKEY. As I say, we think that you know that we recognize that a nationwide strike would not be permitted by Congress. We have no desire whatever to engage in national strikes any longer, because we have found them futile. We have wound up with this high level arbitration of our disputes. We are trying to find a way out. The only way out of it is a more limited strike.

Mr. HARVEY. That does not quite answer my question, though. I would agree with you very strongly that "selective strike" needs defining, and whether you agree with the definition in my bill of two carriers in any region or 20 percent of the revenue ton-miles or whether you agree with the definition in Mr. Staggers' bill, it is a subject that can be decided by Congress.

Mr. HICKEY. That is a matter of degree. We are in agreement on principle.

Mr. HARVEY. Yes; but I would point out to you, Mr. Hickey, and to you, Mr. Yost, that if, for example, the UTU had carried through with its threat up through August 6 of this year, at that particular point in the eastern region we would have had four carriers, not three, on strike, and they would have affected 43 percent of the revenue ton-miles, not 40.

I point out to you in the western district of the country we would have had eight carriers—not three but eight carriers—on strike, and we would have had 55 percent of the revenue ton-miles affected in the country.

Now my question to you is: How would the Staggers bill have prevented that sort of thing from happening? Obviously, it wouldn't, because it would have permitted a nationwide strike, as it would have permitted a selective strike of any size as well.

Mr. HICKEY. Your answer as to national strikes is yes, but you are asking a more difficult question as to whether a strike which exceeds the term of selective strikes would be unlawful, and there is an argument that it would be, because otherwise there is no point in defining limits of a selective strike; and if this purports to be a selective strike and not a nationwide strike, it would violate the terms of the Staggers bill and yours.

Mr. HARVEY. That is correct.

Mr. HICKEY. That is the way I feel about it. But I can't sit here on behalf of labor, of course, and tell the Congress what it should do with regard to national strikes, but I can only say, as a practical matter, we recognize there is a futility.

Mr. HARVEY. I think all of us on the committee recognize the measure of futility also, but what we are concerned with is this: What do we do beyond defining the selective strike? In other words, suppose in the situation that happened in August, if it had escalated above even the limits as defined in the labor bill, what is the administration, whether Republican or Democrat, empowered to do? What kind of tools does Congress provide in that case for settling disputes, if it cannot provide final offer selection or compulsory arbitration; what, in the minds of you gentlemen should the tools be?

Mr. HICKEY. That is a good question. I agree.

Mr. HARVEY. Well, you have not answered it in your statement. I will say to you gentlemen seriously that the time is coming when you may well wish you answered the question in your statement, because I don't think—and I am trying to look at it as fairly as possible from the view of labor—that the American public will long tolerate the set of circumstances that prevailed in the month of August of this year, and in which we were so swiftly set upon.

If a bill does come out—it might not be in this year of this Congress but a year afterwards or within a very short time, because it is a bill that is absolutely essential—I would say to you, then, that I hope when you leave here today you won't disregard this subject and say, "We put it on the back burner, this is the end of it, we don't have to worry about it any more." I think you have a tremendous opportunity here to come into Congress, to seek to define the area of selective strike that can be permitted within your industry and by your unions and, at the same time, to recommend to Congress some fair tools for settlement when, for any reason at all, the effects of that strike escalate over and above those limits.

Mr. HICKEY. That is a very fair question, and I attempted to answer as to what I think is the situation, but it is important enough to justify some serious consideration and submission in writing to the committee of an answer, and I would like to do that.

Mr. HARVEY. We would certainly welcome it.

Mr. HICKEY. Let me be sure I understand your question. What happens in the event that a selective strike exceeds the terms within the law?

Mr. HARVEY. That is right.

Mr. HICKEY. Exceeds the terms for selective strike.

Mr. HARVEY. And how it can be settled at that point; if not final offer selection and compulsory arbitration, what should be the tools at that point?

I sort of had the impression, on pages 9 and 10 of your statement, Mr. Hickey, that you were speaking rather favorably, when you were talking about the unions' asking for an increase of $4.80 an hour and management offering $4.50, and you got down to final offer selection of $4.60 and maybe $4.70 of compulsory arbitration.

Mr. HICKEY. No; I am trying to solve some of the dilemmas and why it wouldn't work and maybe use the final offer selection. This is a facetious reference to something I think could occur and, of course, was a dilemma for the final selection panel, and that is the reason I stated it.

Mr. HARVEY. As we see it today, it goes to a considerable extent to arbitration?

Mr. HICKEY. Of minor disputes, and that was a concession made back in 1934, and, as Mr. Yost pointed out, it was because of the agreement with Congress then to have these resolved through arbitration that there was financial support of the arrangement by the Congress, and that would still be the case; we are not urging any change in that at all.

Mr. HARVEY. Because time is going too fast, I have one other area of questioning. You spoke rather harshly of the 30-day cooling-off concept and mentioned the fact that it would indicate brawling and so forth, and, of course, I am sensitive to it because I included it in my bill as well. I didn't have in mind as much the fact that the parties were brawling as I did, that at certain times during negotiation the delay might be beneficial; in other words, if there is a possibility of the parties' reaching agreement, then delay should be beneficial. It is my thought that it should be used only if there is some other remedy to go through and if it is not an end point in itself.

Mr. HICKEY. No; I appreciate that; I just believe, as I say, the euphemistic title, a good example is right-to-work laws, which the union regards not as really right-to-work laws at all but laws prohibiting the making of union-type agreements; and the concept of cooling off; I was begging the question as though it was a brawl. I don't have any objection to the use of time if time can serve a useful purpose as such.

Mr. HARVEY. I have one other question to Mr. Yost. I had the impression, from what Mr. Luna said at one time late in negotiation recently, that it is union's desire to proceed to regional or local negotiations rather than nationwide bargaining. I got this impression from his desire to meet with company presidents rather than with Mr. Hiltz and to talk with them individually. Yet railroad management disputed it when they were here last week. Do you care to comment?

Mr. YOST. We are prepared to meet with anyone that the railroads designate and give the authority to, to negotiate and make agreements. We have had the feeling for some time that the conference committee did not have the full authority to proceed to make agreements. They have authority up to a certain point. When they reach that terminal point, then it is an exercise of futility to negotiate with them, because they don't have authority to proceed further.

Certainly it could be said that they could go back to their principals and get that authority. I suspect in some instances they do. But we never know how they state the facts or how they state the status of the negotiations to their principals.

I would join with Mr. Luna in saying that if we could meet with these railroad presidents—when we get down to that point to where we say that there is one burning issue between us, if we could meet with them, I think we could settle all of these disputes. I think the very fact that when Mr. Luna did meet with three railroad presidents that were given authority by the others, that they did say this, which supports my position.

Mr. HARVEY. Thank you, Mr. Chairman.

Mr. JARMAN. Mr. Dingell.

Mr. DINGELL. Thank you, Mr. Chairman. You have cited in your statement something which interests me. It is the section about the final offer selection, and in it you came up with a rather anomalous condition where the unions would offer really in the final settlement offer less than management.

Mr. HICKEY. As I say, it could happen.

Mr. DINGELL. It is definitely possible that it would happen. It would be most probable if it happened in a case where, for example, work rules were questioned, would it not?

Mr. HICKEY. Yes.

Mr. DINGELL. And where management really had something else that they wanted, much more, let us say, than money, they wanted perhaps to change the structure of the work rules and the whole contract structure of the industry, isn't this a probability?

Mr. HICKEY. That is a possibility. I didn't use it in that context of a complicated wage rules case. I used it in a pure wage case, and I said it could happen, and I think it could, but it could also happen in the instance you stated, yes.

Mr. DINGELL. As a matter of fact, it is a fair probability that it would; is it not?

Mr. HICKEY. Well, I don't know whether it is a probability as against a possibility that the wage picture or wage figures would be too much off. The whole complication in terms of predicting probability of final offer selection is that the parties, through the process of collective bargaining, have gotten down to the point of solving the issues and are concentrating on a few rules as well as a wage problem, and all of a sudden they have to make offers which embrace the whole gamut of the issues between them. This just does not make any sense to me. So I do not know what the probabilities are in that kind of situation.

Mr. DINGELL. Let me switch to discuss this from a slightly different aspect. In this instance, what matters would be subject to this final offer? You indicated in your statement that the probabilities are that it would be kind of—in this instance, it would be kind of a grab bag. Would it involve participation of unions in management decisions? Could it, under the law, for example—let us say three nonpaid union executives as members of a board of directors—would it be subject to the final offer selection process?

Mr. HARVEY. Will you yield? The only reason I interrupt is that the question is very general. I think there would be a difference if final offer selection were used under the administration bill and under Taft-Hartley, which wipe out portions of the RLA, than if it were used

under the bill I introduced with cosponsors, because we retained the Railway Labor Act. Do you follow me?

Mr. DINGELL. I think you made an admirable point, and I am troubled about it and intend to go into it later, but if you can answer both from the comment he made and mine.

Mr. HICKEY. I agree with what Mr. Harvey said as to a difference here whether you are proceeding under the Railway Labor Act or Taft-Hartley.

Mr. DINGELL. Let us take under the administration's proposals dealing with Taft-Hartley, and then my colleague, Mr. Harvey's proposal, what would be subject to negotiation that could be thrown in this kind of bargaining process.

Mr. HICKEY. I would like to confine mine to what would be happening under the Railway Labor Act. It would be confined to the subjects contained in notices of the two parties.

Mr. DINGELL. Supposing the parties were putting in notices dealing with directors.

Mr. HICKEY. Put on notice?

Mr. DINGELL. Suppose the unions say, "One of our demands is that we get three directors; that we get three unpaid nonvoting directors on the board."

Mr. HICKEY. I think that would probably be challenged as beyond this scope of bargaining; some issues not as remote as that have been.

Mr. DINGELL. Such as what?

Mr. HICKEY. Such as the right of old telegraphers union to bargain with respect to abolishment of tower operators. It went into the courts, and the courts held it was within the scope of the bargaining. I think the example you cite is probably more farfetched.

But, to answer your question, it would depend on what is included within section 6 notices.

Mr. DINGELL. I will be glad to yield.

Mr. HARVEY. That is fine. I would agree with the gentleman's statement.

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

Mr. JARMAN. Mr. Skubitz.

Mr. SKUBITZ. Thank you, Mr. Chairman. First, I want to commend you, Mr. Yost, and you, Mr. Hickey, for the excellent statements you have presented. I think you raise a number of very interesting points, particulary with respect to the administration bill. I do not intend to ask you any questions about the administration bill, but there are questions which I am asked when I meet people in my district that I can't find the answers to.

When we speak to the average man on the street, about free collective bargaining, he thinks in terms of management on one side of the table and labor on the other and open and free discussion in an effort to reach an agreement. That is what he understands collective bargaining to be. I think maybe that is a fair definition of it.

Then we get to a point in collective bargaining when neither management nor labor will give then we reach the stage of pressures; is this correct?

Mr. HICKEY. Yes.

Mr. SKUBITZ. Labor then resorts to pressures which it thinks will force the other side to give and vice versa. Now the question I have been

asked is: If labor has the right to strike, why shouldn't management have the same right to a selective lockout to put pressures on labor? Can you give me an answer?

Mr. HICKEY. I think that is a fair question, and I would try to answer it this way: that to the extent that the problem of the so-called limited walkout as related to the labor dispute, I think it is a quid pro quo under the circumstances you state.

That is not the end of the problem unfortunately, though, as far as the public, and it is not the end of the problem as far as nondisputants are concerned; so if I ran into the fellow on the street and wanted to answer him, I would say to him that as long as you can do that, give them the equivalent right without depriving the public of essential transportation, as against a third party, and without involving employees that are not involved in that dispute, and then it is all right.

Mr. SKUBITZ. But when you give labor the right to call a selective strike and management the right of some selective lockout, now we reach that stage where the public interest is affected because of the national interest. Now what do I tell them?

Mr. HICKEY. I am sorry; I didn't follow.

Mr. SKUBITZ. Well, the selective strike may work a tremendous hardship on some but in itself may not be considered against the total national interest, since if management also has the right to retaliate with a selective lockout—than a national emergency does exist.

If management closes one line which could affect shipments on a dozen lines with selective strikes, we have actually created a situation in transportation where the whole railroad or the whole transportation system is broken down. Who is at fault, labor by calling selective strikes or management by having certain lockouts on certain railroads?

Mr. HICKEY. Well, of course, the purpose of the bill is to exclude the rights to lockout and that is the point.

Mr. SKUBITZ. I am not talking about the bill. I am seeking from you—how you would respond to a constituent who asks: If you are going to give one side a benefit after collective bargaining breaks down and the pressure stage is reached, why do you deny it, then, to the other side?

Mr. HICKEY. Well, I am trying to answer it. I would think as to the other side it is the impact on the public and it cannot be permitted under those circumstances and is the reason why you deny the union the right to strike nationwide.

Mr. SKUBITZ. I thought you said they had the right.

Mr. HICKEY. It does; but I also said: As far as explaining it to the man on the street, I would tell him we don't as a practical matter.

Mr. SKUBITZ. That is your answer?

Mr. HICKEY. It can't be exercised as a practical matter, because every time it is, the Congress stops it because of its impact on the public.

Mr. SKUBITZ. You were very emphatic on page 15 of your testimony, in fact, you were looking at me when you read it. I thought you were reading it to me. You said:

> We maintain that a lockout is a violation of the carriers' obligation to serve the public with essential transportation and the right of the employees with whom there is no dispute to continue to work.

Mr. HICKEY. That is just what I said to you about the man on the street.

Mr. SKUBITZ. Suppose Mr. Hiltz was sitting next to you and changed two words and your statement would then read, "We maintain that a strike is in violation of the workers' obligation to serve the public with essential transportation and the right of the employer to presume there is no dispute to continue with——

Mr. HICKEY. If you are talking about anything less than a nationwide strike, there would be no support for that and, as far as legal right to strike is concerned, there is no question about that, either, but we are talking about practicalities in both cases.

To prove this, I would assume, for the purpose of your question, that the lockout and the deprivation of essential transportation to the public is not even in the picture, which, of course, it is, and this is particularly understood by the man on the street.

Let us assume for the moment that it was not even in the picture; even under those circumstances, I would urge you to outlaw it here, because it defeats the very purpose of your bill. It converts a limited selective strike, with limited effect on the public, into—well, it escalates it into a total nationwide strike.

Mr. SKUBITZ. One other point. Mr. Hickey; one proposal that has been submitted with regard to final offer was the idea of a sort of a semifinal offer. Would you prefer that to the final-offer approach?

Mr. HICKEY. Well, I think that as far as semifinal offers are concerned, that the more it is encouraged, the better. The part about the final-offer selection that is important to us, the reason we so bitterly oppose it, is that it amounts to compulsory arbitration once it is imposed as a result of law.

Now, you are talking about exchanges, which the word "semi-" connotes to me. It means that something else has to be done.

Mr. SKUBITZ. Permit me to phrase it another way: We reached the stage where it is either fish or cut bait. We turn to management and to labor and say: "Submit what you consider your final offer, or semifinal offer, whatever you want to entitle it."

We then give management labor's offer, and give to labor, management's offer.

At that particular time, we have the issues narrowed. After reviewing each other's offer labor and management then submit their final offer to the board to make its determination. Do you think that would be better than just a final offer and letting the board make a determination of final offer?

Mr. HICKEY. Well, if it is done in the mediation process, I would be in favor of it, because I believe this is essentially collective bargaining and I believe in collective bargaining. If it is done in the context of somebody imposing one or the other of these, I am against it, whether it is final or semifinal.

Mr. SKUBITZ. In collective bargaining, we get to the place where the parties seem to reach an impasse and resort to pressures outside of collective bargaining.

Mr. HICKEY. I would like to see this have a chance to work, because I think the problem would be immensely simplified and we might have an entirely different, abbreviated problem here before the Congress if the selective strike were given a chance to operate.

I believe what I said today. It was not just a statement in behalf of a client but my own personal conviction.

Mr. SKUBITZ. That is all, Mr. Chairman.

Mr. JARMAN. Mr. Thompson.

Mr. THOMPSON. Thank you, Mr. Chairman. On page 17, you state:

> No one knows better than the rail unions that national strikes are from a practical standpoint impermissible and any likelihood of their exercise as permitted by existing law is highly improbable. . . .

Why should we not just go ahead and outlaw national strikes? In other words, if Congress is not going to allow it in the first place, why should Congress go into session and be confronted with the issue, a national strike? Why should we not have a provision in the law, regardless of what measure we finally adopt, that simply states that strikes beyond 35 or 40 percent of the tons transported are not permitted, and so forth?

Mr. HICKEY. Congressman Thompson, you put me in a difficult position. I have been saying this practical matter of a nationwide strike was a futility, and I am sure my clients agree with that, but my answer would probably be that Congress could do this but you could hardly expect the unions to propose it.

Mr. THOMPSON. Thank you.

Mr. SKUBITZ. Will my colleague yield? One other thing that bothers me—and I think it might help some of the labor leaders and officials of the unions—when we Congressmen have legislation before us for consideration and vote, it would be fine if we could take a ballot in our district each time and find out how the majority stood and then vote on it. We would sure keep ourselves in Congress. Unfortunately we cannot do this. We have to say yes or no; we make a decision. Two years later on—at the next election—we have to defend our position.

When you reach an agreement you take it to your membership for ratification. If it is turned down—then what? More negotiations?

Maybe we have to accept the final-offer approach because I don't know how much further the negotiators representing labor or management or the leadership can go if their unions say, "we are not going to take it," or railroads say, "we are not going to take it." Somebody has to give. I believe in collective bargaining. I'm sure that you do. I'm sure management does. Nobody wants compulsory arbitration. But when we reach the stage where the national interest is involved, then somebody has to step in.

I think what this committee is wanting to know is how far can we let a strike continue when it affect the public interest. I wish you folks would come forth with an answer.

Mr. HICKEY. I am going to come forth with an answer now. I am going to repeat what I said. You take a selective strike with safeguards against escalation into a national strike, you give that a chance and then do something about the national strike because of its impact on the public in terms of procedures, then you wouldn't have the same problem you have now. I think you would have an entirely different issue before the Congress than the one that is before you now.

Mr. SKUBITZ. But should labor be given an advantage by calling a selective strike and denying to management the right to use some pressure to force a national emergency of some sort?

Mr. HICKEY. I think management has their pressures here.

Mr. SKUBITZ. What are their pressures?

Mr. HICKEY. Their proposals; they have a right.

Mr. SKUBITZ. I mean if they disagree with you, with the brotherhood, what is a fair condition when you reach loggerheads on this point and you give to labor the right to selective strike; what can management do to strike back? Can you suggest something?

Mr. HICKEY. Yes; right in the bill, they are permitted to put into effect the proposal, not counterproposals.

Mr. SKUBITZ. What proposals?

Mr. HICKEY. H.R. 3595.

Mr. SKUBITZ. What section do you refer to?

Mr. HICKEY. Subject to only two exceptions, they may put their proposals into effect. I am referring to subsection (c), section 10, as amended, which is on page 38 of the staff document.

Mr. SKUBITZ. I don't have a copy.

Mr. HICKEY. I will read it. "Whenever any carrier has proposed a change in agreements affecting pay, et cetera, in accordance with section 6 of the act and all procedures under the act have been exhausted with respect to such change, such carrier may make such change effective without agreement, et cetera," and that means unilaterally to put it into effect.

Mr. SKUBITZ. And all of the rules on strike?

Mr. HICKEY. That is right, except where such change was proposed by carrier in response to or in anticipation of changes in agreements, et cetera, proposed by representatives of employees considered concurrently therewith. That is the counterproposals for purpose of escalating a strike I mentioned, "Or two, such changes as not permitted by other provisions of the act." Now, that means some other provision of the Railway Labor Act would make the proposal unlawful itself.

Mr. SKUBITZ. I wish I had more time to discuss it.

Mr. HICKEY. I wish we did, too. It is a fascinating subject.

Mr. SKUBITZ. After all, I don't think there is a member of this committee that wants to do violence to labor's right to free collective bargaining and their right to negotiate for decent working conditions and decent wages. At the same time, I don't think there are many members of this committee that will go along with a strike or lockout, which would tie up the transportation system. The public would not stand for it. No one will stand for it.

Mr. HICKEY. That is why we are here and that is why we propose the selective strike, Mr. Congressman.

Mr. THOMPSON. Do I still have some more time?

Mr. JARMAN. Yes.

Mr. THOMPSON. One thing my colleague said, of course, was that the railway management could call a lockout in order to put pressure on the public, and if this is the purpose of the lockout, I will be very much opposed. I don't want to see pressure on the public at any time, whether it is by the companies labor representatives or by Congress.

I must confess I do share some of the concern, but I do not want a one-sided bill where labor has the right to bring pressure through strike and management would not have a right through a lockout. However, the more I listen to the discussion between you and Mr. Skubitz, it appears to me that if there are sufficient safeguards for management to put into effect unilaterally certain work rule changes and so forth, this, in and of itself, may well be pressure enough exerted upon the membership that would suffice rather than a lockout.

A strike is an inconvenience against the public, and I think it is a side effect that no one likes, and I hope when a strike is called, it is never called in order to bring presure on the public to try to bring pressure then on Congress to act but the pressure is being brought rather against the company; so, for the very same reasons, I would object to any lockout that was designed to bring pressure on the public.

Now, we may very well be able to prevent a lockout or not allow a lockout and still give to management the necessary pressure tools that they can have to counter the pressure you mentioned, Mr. Skubitz, of selective strike.

Mr. SKUBITZ. Well, what I meant to say was this: Certainly labor can have a number of selective strikes—that is, with regard to the criterion laid down in Mr. Harvey's bill—which would certainly work a hardship upon management, and that is the purpose of these pressures—to force them into line or pressure them into line. You can use any word you want.

In turn, I can conceive of the railroads' having a lockout on one or two lines which would cause shipments to be affected on two dozen lines because of transfers of freight shipments which would work a hardship on the public. This effort would create a national problem, something affecting the national situation. This is what I tried to say.

Mr. THOMPSON. I realize this. The point I am making is simply this: that if the railroads are given the right unilaterally to put into effect certain work rule changes or whatever they may be, that, in and of itself, may well be pressure enough to compensate for not having a lockout.

Mr. HICKEY.I would agree with this. That is precisely what we believe that the bill does permit and it also prohibits only the type of action by the carriers which would escalate it from a limited strike into a nationwide strikedown.

Mr. SKUBITZ. Isn't that exactly what happened in the UTU dispute?

Mr. HICKEY. Well, we had a situation——

Mr. SKUBITZ. Well, certain strikes were being called at the same time and the UTU member went back to work. They worked under new conditions and new work rules set up by the railroads.

Mr. HICKEY. That is not my information. Maybe yours is better.

Mr. SKUBITZ. "UTU agreement is running into ratification trouble"—this information was given to me a few minutes ago.

Mr. HICKEY. May I venture a thought here. As regards trouble, I would say it is not because of anything you and I have been discussing here this morning.

Mr. SKUBITZ. This is something you have not heard about.

Mr. HICKEY. It probably had something to do with the wage and price controls. That would be my guess.

Mr. JARMAN. Gentlemen, we appreciate your being with us to help make the record on this important subject.

The subcommittee stands adjourned.

(Whereupon, at 12:20 p.m. the subcommittee adjourned, to reconvene at the call of the chair.)

SETTLEMENT OF LABOR-MANAGEMENT DISPUTES IN TRANSPORTATION

TUESDAY, SEPTEMBER 28, 1971

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

The subcommittee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. John Jarman (chairman) presiding.

Mr. JARMAN. The subcommittee will come to order.

We will continue the hearings on the settlement of the transportation labor disputes legislative proposals.

Our first witness this morning is Prof. Jerre Williams, University of Texas Law School, appearing on behalf of the American Bar Association. Mr. Williams, it is good to have you.

STATEMENT OF JERRE S. WILLIAMS ON BEHALF OF THE AMERICAN BAR ASSOCIATION

Mr. WILLIAMS. Thank you, Mr. Chairman. The committee has been furnished with copies of my statement. With your permission, I would like to talk more informally and just put the statement in the record.

Mr. JARMAN. The committee will receive the statement in full, and you proceed in your own manner.

Mr. WILLIAMS. Thank you very much.

My name is Jerre S. Williams, and I am professor of law at the University of Texas Law School. Up until a year ago I was chairman of the Administrative Conference of the United States here in Washington. I have come before the committee today as the representative of the American Bar Association, which has developed its own recommendations concerning handling of national emergency disputes in the transportation industry.

In 1966, the American Bar Association set up a special committee to study this problem. The charge from the House of Delegates to the committee referred to the lack of existing legislation and the failure of the current arbitration and mediation procedures to be adequate to protect public interest.

President Marden of the American Bar Association in 1969 appointed this special committee, and it was continued by succeeding presidents. The committee consists of Hon. Charles S. Desmond, Buffalo, N.Y., retired from the New York Court of Appeals; George Bodle of Los Angeles; Archibald Cox of Cambridge, whose name, I

am sure, you will recognize as former Solicitor General of the United States; William J. Curtin, Washington, D.C.; Edward J. Hickey, Jr., Washington, D.C.; Bernard Meltzer, Chicago; Gerard Reilly, whose name I believe you will recognize because he is now a judge of the District of Columbia Court of Appeals; Harry Wellington of New Haven; and Jerre S. Williams of Austin.

Our committee engaged in a great deal of study of the various modes of transportation and the labor disputes in them. We held public hearings at which representatives of the industry, both labor and management, participated. We also held a number of executive sessions with Government leaders and experts in the field. At an earlier stage of our consideration, we did not include the trucking industry in our deliberations because we felt at that time the problems concerning work stoppages in the trucking industry had not been acute enough to merit our attention; however, later, working with the board of governors of the ABA, we included trucking in our deliberations and in our recommendations. Our recommendations now include the airlines, railroad, maritime, both offshore and onshore, and the trucking industries.

We came up with what I think are very complete, very innovative, very significant recommendations. Let me just state that these recommendations have been approved by the House of Delegates of the American Bar Association, and they constitute the official position of the American Bar Association on this problem which this committee is considering.

Our recommendation is in two parts, and I believe it is a very imaginative approach to the problem. We recommend first legislation to establish industry commissions for each of these critical industries to be appointed by the President, which commissions will be given 8 months to work out their own procedures for handling emergency disputes in their industries.

We recommend, however, at the same time that Congress passes the legislation setting up these commissions, that it also enact legislation for the handling of these disputes through governmental procedures if these industry commissions do not come up with their own solutions to this problem.

Our thinking is that in the background of the legislation already existing to set up the Government machinery, that for the first time we may get some very creative ideas from the industry itself in setting up procedures under which these disputes can be handled without having to go to the Government.

So the industry commission would have this 8-month period. If this 8-month period elapsed without the industry commission growing up with its own recommendations and own means of settling these disputes, then the governmental procedures, which we also recommend in detail, would go into effect.

We attach these recommended procedures to the Railway Labor Act, when an emergency arises in the maritime and trucking industry. We would move over into the procedures which are built onto the RLA. But for all other purposes, these industries would remain under the Labor-Management Relations Act. These procedures use existing machinery in the Railway Labor Act and then build upon them.

Let me briefly describe what these recommendations for governmental procedures, developed by the ABA committee, are. We would first use the Presidential Emergency Board, which already exists in the Railway Labor Act. We would give it three functions. It would continue to have its current function of holding hearings and preparing to make recommendations for the settlement of the dispute. Also specifically in the statute, it would be charged with functions directed toward mediating the dispute to settle it. This is one of the critical areas of recommendation, because often in these proposed statutes it is recommended that these governmental boards do not engage in mediatory functions.

Our committee very carefully considered this problem and recommended a strong mediation function for the Presidential Emergency Board.

Failing the settlement of the dispute under these circumstances, the third function of the Presidential Emergency Board would now go into effect. This would be a recommendation to the President from the board as to his next step in settling the dispute. There are four Presidential procedures proposed in the American Bar Association recommendations. The first and most obvious is for the Government to get out of the dispute if it is determined that this dispute is not significant enough to continue to involve the Government and then the Government can get out.

A second is for the Emergency Board to make public its recommendations for the settlement of the dispute, the function which it now fulfills. This is what we know as factfinding with recommendations, and it has on not an inconsiderable number of occasions, worked highly successfully in bringing about settlement of disputes.

Then we propose two other alternatives to the President under a standard that it must be determined that the work stoppage would "impair national security or seriously endanger the health, safety, or welfare of a large segment of the public." One of those two alternatives is the setting up of a Presidential Arbitration Board which would be given the authority and the mandate to settle the dispute. The other alternative would be an Executive receivership of the tied up transportation facilities by the President with compensation, of course, to the owners of the facilities. This procedure is sometimes commonly known as seizure of the business by the Government.

The two ultimate procedures, then, given to the President by this recommendation would be a final and binding arbitration settlement, through a Presidential Board, or an Executive receivership and continued operation of the facility.

As I say, these proposals, after very careful deliberation and work with other sections of the ABA, were approved by the House of Delegates of the ABA at its annual meeting in St. Louis on Wednesday, August 12, 1970.

I have furnished the clerk of the committee with copies of the full report of the committee which developed these recommendations as they were approved in August 1970, and I would like to ask, if convenient, that they be incorporated in the record as well.

Mr. JARMAN. Yes; they will be received.

Mr. WILLIAMS. Now, this did not end the work of the committee, however. If I may take a few moments more, I will say that at about

this time, while completing our work, the administration made its proposals to handle exactly the same problem. Our committee was requested by the board of governors to consider the administration's proposals, in the light of all the work we had done, and evaluate them. Our committee did do so, and our recommendations concerning the administration's proposals were approved by the board of governors of the American Bar Association on April 30, 1971, and therefore they also have become official policy of the American Bar Association.

Essentially what this committee recommends concerning the administration proposals is very much a combining of the recommendations of our committee, which I have just outlined to you, with those proposals.

Now, you know, of course, that the administration's proposals are based upon the Taft-Hartley Act and ours are based upon the use of the Railway Labor Act. We did not feel this is critical. We had concluded as a practical matter, basing upon the Railway Labor Act was a little more pragmatic. But we certainly do not feel strongly either way on this.

What we come up with basically is approval also of the administration's proposals but with substantial amendments to those proposals which we recommend. One of the major amendments which we recommend is to increase the number of alternatives available to the President in his proposal to include the two which we developed, the Presidential Arbitration Board, not limited to a final offer selection, and the Executive receivership.

Our committee expresses grave doubts on the theory of partial operation, which is contained in the administration's proposals. We had considered it in detail before and rejected it. Our committee now takes the position that partial operation is a doubtful proposal and deserves further study before it is adopted and used.

We also, of course, reacted very carefully to the final offer selection proposal of the administration, which we had earlier considered. By a split vote, our committee approves the use of the final offer selection device so long as it is also accompanied with a more general Presidential Arbitration Board proposal, such as the one we recommend. We feel that there are some disputes involving such things as technological change and manning problems and the like which could be very troublesome under a final offer selection proposal.

Some of the members of the committee also felt concerned that an official settlement by the Government, which would be what a final offer selection constitutes, which does not include the public interest in the settlement, is of doubtful validity and usefulness; and, of course, under a more general Presidential Arbitration Board, the public interest in the settlement can be taken into account.

We recommend strongly that the Presidential Emergency Board provided for in the administration's proposal should have a mediation role. We recommend also that an advisory group to aid the President in choosing the alternatives under the administration's proposal should be set up.

Other relatively minor matters: We recommend elimination of the last offer ballot in the Taft-Hartley Act. We think that would get in the way of final offer selection. We approve the administration's proposal to eliminate unemployment compensation in the railroad indus-

try during strikes and to eliminate the Railroad Adjustment Board over a period of time and have grievances handled as they are handled today as a matter of private contract uner the Taft-Hartley Act.

Finally, we propose amendment to the concept of the National Special Industries Commission in the administration's bill. We suggest that the membership should be broader and that the Commission should be given more time. We are particularly concerned that the various industries be adequately represented on that National Special Industries Commission.

Also, with the approval of the chairman, I would like to have included in the record a copy of our final report, which includes all suggested amendments to the administration's proposal. This has been furnished to the clerk.

Mr. JARMAN. The committee will be glad to receive the report and attachments.

Mr. WILLIAMS. Finally, one somewhat personal word. At the deliberations of the House of Delegates to the American Bar Association in St. Louis in August 1970, one of the management members of our committee and one of the union members of our committee got up and opposed recommendations of the committee because of certain things in them they felt they could not accept.

At that time, I made a statement on behalf of the public members of the committee, and I would like to take just a moment to make again the point I made at that time. I have complete understanding and sympathy with the viewpoints of management and labor in their desire not to have Government intrusion in these labor disputes. There is no question that legislation providing for regular Government intrusion in emergency disputes interferes to a degree with the processes of free collective bargaining.

There is, however, a third party in these disputes who must be heard. The third party, of course, is the public. There are certain work stoppages in our society that we simply cannot ask the public to tolerate. The cost to free collective bargaining of legislation to control such disputes is less of a serious national cost than is the economic and social cost to the public of allowing such emergency disputes to take place.

It was the unanimous view of the neutral members on the committee that such general restrictive legislation in the true emergency situation is justified; and that, as long as the definition of what constitutes an emergency dispute is kept narrow enough, the interference with the processes of free collective bargaining in our society does not threaten the destruction of those free processes in industry generally.

Representatives of labor and management tend to favor the ad hoc approach to these disputes. They tend to favor no legislation and a scrambling, maneuvering, makeshift handling of each serious dispute as it arises.

The ultimate spectacle we have seen in recent years of the Congress itself having to resolve some of these emergency disputes in the transportation field is far less conductive to orderly, effective labor relations than is an established procedure, which nevertheless contains a number of effective options so that the parties are kept off balance as to what may happen in resolving the dispute, but the public is not

kept off balance. It may rely upon the continuation of essential services.

The legislation proposed by ABA would move effectively toward these objectives. The American Bar Association also takes the view that the proposals of the administration would do so as well with the changes which this committee and now the American Bar Association recommends.

Mr. Chairman, on behalf of the American Bar Association and the committee and on my own behalf, I want to thank this committee for the opportunity to appear before it and present these views of this prestigious national organization of American lawyers.

(Testimony resumes on p. 624.)

(Mr. Williams' prepared statement and attachments follow:)

STATEMENT OF JERRE S. WILLIAMS, PROFESSOR OF LAW, UNIVERSITY OF TEXAS LAW SCHOOL, ON BEHALF OF AMERICAN BAR ASSOCIATION

My name is Jerre S. Williams. I am a Professor of Law at the University of Texas School of Law in Austin, Texas. From 1967 to 1970, I served here in Washington as Chairman of the Administrative Conference of the United States.

I appear before you today as the representative of the American Bar Association. This eminent national association of lawyers, perceiving serious problems concerning emergency labor disputes in the transportation industries, in 1966, set up a Special Committee on National Strikes in the Transportation Industries. This Committee was appointed initially by then President Orison S. Marden and was renewed by successive Presidents until, at the annual meeting of 1971, it was dissolved as having completed its work.

The personnel of the Committee, maintained throughout the development of its recommendations, was as follows: The Honorable Charles S. Desmond, Buffalo, New York, Chairman of the Committee; George E. Bodle, Los Angeles, California; Archibald Cox, Cambridge, Massachusetts; William J. Curtin, Washington, D.C.; Edward J. Hickey, Jr., Washington, D.C.; Bernard Meltzer, Chicago, Illinois; Gerald D. Reilly, Washington, D.C.; Harry H. Wellington, New Haven, Connecticut; and Jerre S. Williams, Austin, Texas.

After the initial recommendations of the Committee were developed, Judge Desmond resigned and Mr. William J. Curtin served as chairman for the remaining years of its activities. In preparing this statement of the work of the Committee, I have had the assistance of Mr. Curtin, but the final responsibility for the entire statement is my own.

In creating the Committee in 1966, the House of Delegates of the American Bar Association directed it to study the problems of work stoppages in the transportation industries, because "existing legislation and the arbitration and mediation procedures authorized thereby having proved repeatedly to be inadequate to protect the public interest," and to make recommendations to the Board of Governors and the House of Delegates.

The Committee considered all modes of transportation, but concluded that only the railroad, air and maritime (both longshore and offshore) industries should be specifically covered by new legislation immediately. The Committee did recognize that a breakdown of the collective bargaining process in the motor carrier industry could result in serious damage to the public interest, but concluded that the history of labor negotiations and work stoppages in this industry did not warrant coverage of trucking at this time. Later, in further deliberations and in response to the views of the Board of Governors of the ABA, the Committee did include the motor carrier industry in its recommendations.

The Committee utilized the expertise of its own members to study the history of labor disputes in all modes of transportation, the two federal statutes which at present are used by the Government to attempt to regulate "emergency" situations arising from labor disputes in these industries, and the considerable amount of material which has already been written on this subject. In addition, the Committee held public hearings during which a number of representatives from labor organizations and management directly involved in the transportation industries appeared and presented their views. Further, the Committee in

executive session discussed the issues before it with representatives of the legislative and executive branches of Federal government and experts from the academic field.

The Committee's final Report and Recommendations embodied its conclusion that the present statutes covering emergency disputes do not operate effectively to protect the public interest from the serious disruptions caused by major work stoppages in the airline, railroad, motor carrier, and maritime industries. The Committee concluded that the collective bargaining processes in these industries have failed to operate effectively in preventing such stoppages and that a thorough reexamination by the industries themselves, as well as new legislation, is necessary. The Committee asserted that the implementation of its recommendations would create an atmosphere in which the private parties might agree among themselves upon conditions for more effective collective bargaining, while at the same time the public interest would be protected when necessary by Governmental mediation in labor disputes if a breakdown in the collective bargaining machinery threatened to deprive any section of the country of an essential transportation service.

The Special Committee made a two-part recommendation for amending the current statutes—the emergency provisions of the Railway Labor Act and the Labor Management Relations Act. First, the Committee recommended that Congress pass legislation which authorizes the President to appoint an industry commission for each of the four industries involved, consisting of an equal number of labor and management representatives, as well as representatives of the public who would be in a non-voting, advisory capacity. These commissions would be permitted eight months to study the bargaining machinery within their own industries and to develop and agree upon new procedures for eliminating or minimizing the danger of strikes or lockouts which impair the national security or threaten serious injury to the health, safety or welfare of a large segment of the public.

Second, the Committee recommended that at the same time Congress authorizes the industry commissions, it also amend existing statutes to provide the President with a new framework of procedures to handle "national emergency" strikes in these four transportation industries. Should an industry commission be unable to agree on alternative procedures, these amendments would become immeditaely effective for that industry. Thus, the commissions would know in advance the statute under which the transportation industries would operate if they are unable to reach agreement.

The Committee recommended that, as in the past, the emergency disputes' procedures initially be triggered by a recommendation from the National Mediation Board (or in the case of the motor carrier and maritime industries, the Director of the Federal Mediation and Conciliation Service[1]) to the President that a labor dispute is either causing or threatening to cause a work stoppage which may deprive a section of the country of essential transportation service. If the President agrees with this conclusion, he is then authorized to appoint a Presidential Emergency Mediation Board whose function is twofold. First, the Board is directed to attempt to mediate the dispute and assist the parties in reaching a peaceful settlement. Second, however, if it appears that its mediation efforts have failed during its 60-day life, the Board is also authorized to recommend to the President the stpe he shouold take next regarding the dispute. During the period of the Board's mediation functions, and at all times during the use of these emergency procedures, the parties to the dispute would be statutorily enjoined from causing a work stoppage or from changing any terms or conditions of employment unless mutually agreed upon.

The Special Committee made a further key proposal. It recommended that the Presidential Emergency Mediation Board also have the function of suggesting the use of one of four further procedures to the President. The final decision on which step to implement would be left with the President. The four procedures, as outlined in the Committee's Report, are: (1) end Government intervention in the dispute; (2) request the Presidential Emergency Mediation Board to make public its recommendations for the terms of settlement of the

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[1] If the President accepts this recommendation from the Director, the motor carrier or maritime dispute will be subject to the new emergency disputes provisions of the Railway Labor Act, instead of those now contained in the Taft.Hartley Act. All other industries now under Taft-Hartley will remain subject to that Act exclusively, as will the motor carrier and maritime industry for all purposes but emergency disputes. The Committee did not recommend any other changes in Taft-Hartley procedures.

dispute; (3) establish a Presidential Arbitration Board which would be authorized to issue a final and binding award on the merits of the dispute; or (4) place the company or companies involved in the dispute under Executive Receivership, to be operated at the direction of the President while the parties continue their negotiations. If Executive Receivership is chosen, then contemporaneously the companies in receivership shall cease deducting union dues from employees' paychecks and any provisions in the collective bargaining agreement which require employees to join the union shall become inoperative. As recommended by the Committee, the President's decision as to which of these options to select would be final, with no recourse to another choice should the option selected fail to achieve settlement.

The Report and Recommendations also contained certain standards which the Committee suggested should be met prior to the implementation of each stage of the emergency disputes' procedures. In addition, the legislation recommended contains guidelines for the operation of the Presidential Arbitration Board and the operation of Executive Receivership. The former includes a list of factors which the Board should consider in reaching its decision, while the latter includes restrictions on changes in the terms and conditions of employment which may be implemented by the receiver and provisions for compensation to be paid to the company or companies placed in the receivership. In all cases, the Committee attempted to provide a general framework in which the parties to a labor dispute may operate in attempting to settle their dispute through the processes of free collective bargaining. This framework would also provide the President with a wide choice of procedures which he may implement at his discretion and as each individual case warrants, free from the rigidity contained in the implementation of the present statutes, to protect both the public interest and safeguard the rights of labor and management.

This report of the Committee was not unanimously adopted by its members. The management members of the Committee, Mr. Curtin and Mr. Reilly, dissented on the Executive Receivership provisions, and the labor members of the Committee, Mr. Bodle and Mr. Hickey, dissented on the provisions for a Presidential Arbitration Board with power finally to settle the dispute.

The report which I have briefly outlined above was approved by the House of Delegates of the American Bar Association at the annual meeting of the ABA in St. Louis on Wednesday, August 12, 1970. With the permission of the Committee, I would like to introduce into the record the complete report of the Committee as it was finally approved.

The Special Committee on National Strikes in the Transportation Industries of the American Bar Association did not complete its work with the approval of its recommendations by the House of Delegates of the American Bar Association in August of 1970. As the Committee was completing its deliberations, the current national administration proposed new legislation to deal with national emergency labor disputes. The Board of Governors of the American Bar Association requested the Special Committee to study and compare the administration proposals embodied in the proposed Emergency Public Interest Protection Act with the recommendations which the House of Delegates had adopted. In addition to making its own study, the Special Committee was also requested to solicit comments from other interested committees and sections of the Association.

The Special Committee did make such a study and did solicit the views of the Standing Committee on Commerce and the Sections on Public Utility Law and Labor Relations Law of the ABA.

As the result of its deliberations, the Special Committee developed suggested changes in the administration's proposals and then voiced its approval of those proposals with those changes. These recommendations by the Committee in turn were submitted to the Board of Governors of the American Bar Association at its meeting in Williamsburg, Virginia, on April 30, 1971, and they were unanimously approved. The effect of the action of the Board of Governors was to recommend adoption in principle of the amendments to the Emergency Public Interest Protection Act proposed by the Special Committee.

In brief summary it can be said these proposals for amendment constituted a combining of the recommendations of the Special Committee and the administration measure.

The approved recommendations for amendment include a major change in the administration proposals to increase the number of alternative procedures available to the President for handling a dispute, including the binding arbitration and Executive Receivership devices developed by the Special Committee. The Committee endorsed the "final offer selection" procedure included in the proposed

administration legislation but urged that it be modified by providing that the parties exchange their final positions upon notification that the President has invoked the procedure, extending to seven days the time for preparation of the "final offers" to permit bargaining as well as preparation, and extending to seven days the period for bargaining after submission of the final offers.

Two other recommended amendments are designed to give the President more freedom in using alternative procedures. The proposed legislation now permits the President to declare a thirty-day extension of the "cooling off" period after the 80-day injunctive period expires. But if no settlement is reached, the President may not then choose another procedure. The recommended amendments urges that extension should be by private agreement and the President should be free to choose other procedures as necessary.

The Special Committee and the Board of Governors take the position that partial operation, as an alternative available to the President, should not be included unless its feasibility can be substantiated. If partial operation is included and is first chosen as the procedure, later proving not feasible in the particular dispute, the President should be authorized to select another alternative procedure.

Other proposed amendments provide that—

The Presidential Emergency Board should fill an active role of mediation in a dispute during a temporary injunction, and not merely act as a fact-finding panel.

Regardless of whether there is an extension of the temporary injunction in an emergency situation, the injunction should remain in force for an additional ten days while the President selects a procedure for settling the dispute. An advisory group knowledgeable in all aspects of the issue should assist the President in determining the best procedure to use.

The "last offer ballot" now required to be held immediately preceding the end of the injunctive period in the Taft-Hartley national emergency provision should be eliminated from the bill because the device tends to conflict with final offer selection.

The Special Committee agreed with proposals in the administration bill to end unemployment compensation payments to strikers in the railroad industry, a peculiar and exceptional situation which exists in no other industry, and to refuse government financial support in the establishment of grievance procedures, which in industries under the Taft-Hartley Act are in the area of private contract agreement and expenses are borne by the parties.

In the establishment of a seven-member National Special Industries Commission as suggested in the administration bill, the Committee took the view that either the size of the Commission should be expanded so that representatives of the specific industries and labor groups involved may sit, or that individual industry Commissions should be created. The Committee also urged that the life of the Commission or Commissions should be lengthened from two to three years to permit members sufficient time to study problems and report to the President.

A major aspect of the Committee's deliberations on the administration proposals was directed at the "final offer selection" technique. The Committee split on the wisdom of this proposal, although a majority favored its use as one alternative available to the President but only so long as full or "normal" arbitration was included as an alternative procedure. The Committee pointed out that there are many types of labor disputes, such as those involving technological change and manning levels, which are not amenable to the final offer selection process.

To keep the record complete concerning the views of the Special Committee and of the American Bar Association, I would also like to put into the record a copy of the final report of the Committee. This report reflects the development of its views on the proposed Emergency Public Interest Protection Act. As Appendix A of this report, there is a useful chart which shows a careful comparison of the American Bar Association's recommendations as outlined earlier and the provisions of the proposed Emergency Public Interest Protection Act.

In conclusion, I would like to have the opportunity to state a personal word concerning these hearings and the work of the Committee on Interstate and Foreign Commerce on the problem of national emergency labor disputes in the transportation industries. On August 12, 1970, when the recommendations of the Special Committee of the ABA went before the House of Delegates, one man-

agement member of our Committee and one labor member of our Committee spoke against the adoption of our recommendations because of some aspects of the recommendations which were not favorable to their respective viewpoints. I was given the opportunity to speak as a representative of the neutral members of the Committee. I should like now to make in just a moment the same point I made then.

I have complete understanding of and sympathy with the viewpoints of management and labor in their desire not to have restrictive legislation designed to eliminate the threat of national emergency labor disputes. That such restrictive legislation interferes to a degree with the processes of free collective bargaining is clear.

There is, however, a third party in these disputes who must be heard. The third party is, of course, the public. There are certain work stoppages in our society that we simply cannot ask the public to tolerate. The cost to free collective bargaining of legislation to control such disputes is less of a serious national cost than is the economic and social cost to the public of allowing such emergency disputes to take place.

It was the unanimous view of the neutral members on the Committee that such general restrictive legislation in the true emergency situation is justified and that as long as the definition of what constitutes an emergency dispute is kept narrow enough, the interference with the processes of free collective bargaining in our society do not threaten the destruction of those free processes in industry generally.

Representatives of labor and management tend to favor the ad hoc approach in these disputes. They tend to favor no legislation and a scrambling, maneuvering, makeshift handling of each serious dispute as it arises. The ultimate spectacle we have seen in recent years of the Congress itself having to resolve some of these emergency disputes in the transportation field is far less conducive to orderly effective labor relations than is an established procedure which, nevertheless, contains a number of effective options so that the parties are kept off balance as to what may happen in resolving the dispute but the public is not kept off balance. It may rely upon the continuation of essential services.

The legislation proposed by the American Bar Association would move effectively toward those objectives. The American Bar Association also takes the view that the proposals of the administration would do so as well with the changes which are here recommended.

AMERICAN BAR ASSOCIATION SPECIAL COMMITTEE ON NATIONAL STRIKES IN THE TRANSPORTATION INDUSTRIES

FINAL RECOMMENDATIONS

The ABA Special Committee on National Strikes in the Transportation Industries recommends that the Association support the Emergency Public Interest Protection Act of 1971 (S. 560) with the following modifications:

(1) An amendment deleting the last offer ballot provision of Section 209(b) of the Labor-Management Relations Act, as amended;

(2) An amendment emphasizing the mediatory functions of the Emergency Board;

(3) An amendment replacing the initial jurisdictional test in Section 206 as it applies to the transportation industries with standard set forth in Section 10 of the Railway Labor Act, as amended; but retaining the standard set forth in the Emergency Public Interest Protection Act as an additional jurisdictional prerequisite to invoking a procedure involving severe curtailment of the right to strike or lockout, including but not limited to binding arbitration, final offer selection and executive receivership;

(4) An amendment preventing strikes, lockouts or unilateral changes in working conditions in the time between the submission of the Emergency Board's report to the President and his decision on which procedure he will invoke;

(5) An amendment (or amendments) increasing the number of alternatives available to the President for handling a dispute, including binding arbitration and executive receivership;

(6) Deletion of Section 217, the "Additional Cooling-Off Period" procedure;

(7) Deletion of Section 218, the "Partial Operation Procedure", unless this option is carefully substantiated with regard to its practical possibilities;

(8) An amendment to Section 219, the "Final Offer Selection" procedure—
(*a*) Providing that the parties shall exchange their final positions upon notification that the President has invoked this procedure;
(*b*) Extending to seven days the time for preparation of the "final offers", to permit bargaining as well as such preparation;
(*c*) Extending to seven days the period for bargaining after submission of final offers;
(9) An amendment providing that the Railway and Airline Representation Board adopt the procedures of the NLRB for handling representation cases;
(10) An amendment providing that the National Mediation Board shall mediate disputes in the railroad and airline industries for the first three years under the new procedures; and that the FMCS establish a division of mediators experienced in the transportation industry;
(11) An amendment insuring that the Special Industries Commission is large enough to include members of the specific industries under study and that it has sufficient time to complete its work.

FINAL REPORT

I. Background

A. Past Action by the Association

At its meeting in February and August, 1970, the House of Delegates of the Association approved the Final Report and Recommendations of this Committee, as amended at the request of the Board of Governors. This Report [and Recommendations] proposes changes in existing statutes[1] amending the procedures available to the federal government in the event of an actual or threatened work stoppage in the railway, airline, trucking, and maritime (longshore and offshore) industries. The proposals are in two parts: first, the establishment of individual industry commissions to study the industry's bargaining procedures, to make recommendations for the improvement of bargaining to avoid "emergency" strikes and to recommend improved procedures for handling work stoppages in these specific industries; second, suggested amendments to Section 10 to improve the mediation and bargaining process, as well as to give the President a standing "choice of procedures", which are to be available to deal with an actual or threatened stoppage likely to result in an emergency situation. These procedures are: public recommendations for settlement; executive receivership; binding arbitration; or no action.

While the Special Committee's Report and Recommendations were under consideration, the Nixon Administration submitted to Congress its suggested amendments to the above-noted statutes, entitled the Emergency Public Interest Protection Act of 1970.[2] No action was taken on this Bill in Congress in 1970, and it was reintroduced as S. 560 in January, 1971, in substantially the same form by Senator Griffin. Because of the conflict in substantive content between the Association-endorsed proposals and the Emergency Public Interest Protection Act of 1970, the Board of Governors requested the Special Committee, which had been continued in existence for one year by action of the House of Delegates at the 1970 Annual Meeting, to study and compare the two and report to the Board at its spring, 1971, meeting. In addition to making its own study, the Special Committee was requested to solicit comments from other interested committees and sections of the Association. In view of their prior expression of interest, the Standing Committee on Commerce and the Sections on Public Utility Law and Labor Relations Law were asked to comment.

B. Brief description of the Emergency Public Interest Protection Act of 1971

A comparison of the basic provisions of this Act and the Association Recommendations as they relate to possible emergency disputes in the transportation industries is attached. Additionally, the Administration's proposals include provisions for ending the authority of the National Railway Adjustment Board and System Boards of Adjustment to handle grievances in the railway and airline industries and direct these industries to negotiate collecitve bargaining agreements with the type of no-strike and arbitration clauses usually found in industries which are subject to the National Labor Relations Act (Taft-Hartley).

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[1] Railway Labor Act § 10 and Labor Management-Relations Act, Title II.
[2] This proposed Act also substantially revises the provisions of the Railway Labor Act other than Section 10.

Further, the Act provides for the transfer of mediation functions from the National Mediation Board, under the Railway Labor Act, to the Federal Mediation and Conciliation Service under the National Labor Relations Act. Consequently, the Railway Labor Act would provide administrative machinery only for handling representation cases in the rail and airline industries. Such cases would be determined by the Railroad and Airline Representation Board. Other provisions include a section, similar to Section 301 of the Taft-Hartley Act, permitting suits on collective bargaining agreements negotiated in railway and airline industries; a section permitting the issuance of injunctions enforcing provisions of the Act; and a clause removing the rights of striking railway employees to receive unemployment insurance under the Railway Unemployment Insurance Act of 1938. Presently, strikes may receive this unemployment compensation if they are not striking in breach of the Railway Labor Act or the rules of their union.

C. Committee procedures

The Committee, having received responses from the interested committee and sections of the Association, met in Washington on February 19th and 20th. Those members of the Committee unable to attend were asked to present their opinions in writing to the Chairman, and all members were given an opportunity to comment on this report. This report reflects consideration of the expressed opinions of all Committee members.

D. Other bills now pending

At the time of the Committee meeting, other bills had been introduced in Congress to amend the statutes covering emergency transportation disputes.[3] The Committee was not asked by the Board of Governors, nor did it have the opportunity, to review each of these proposals. However, since one member Edward Hickey, Esquire, did state that he preferred H. R. 3595 to the Administration bill, this measure was reviewed by the Committee.

II. The committee position on the Emergency Public Interest Protection Act of 1971 (S. 560)

A. Underlying purposes and philosophy

The Committee agrees with the purposes of the Administration's bill, which are the same as those of the Committee's own Recommendation endorsed by the Association; specifically, the encouragement of private collective bargaining, with a minimum of governmental intervention.[4] The bill correctly bases its rationale on providing permanent statutory procedures, in the form of an "arsenal of weapons" or "choice of procedures" for the President. This procedural framework rests on the premise that collective bargaining by the parties directly involved in the dispute will be strengthened if they are both uncertain as to which procedure may be chosen and are unwilling to accept some or all of the procedures as a substitute for a bargained contract. Further, the presence of different types of procedures recognizes the fact that disputes are not always identical and, therefore, the President should be given an opportunity to utilize the appropriate procedure given the facts of the dispute.

Additionally, the bill correctly recognizes the need to provide for procedures that will either encourage the parties to reach their own agreement or impose a settlement which is most likely to be fair to both sides and to take into account the public interest. Further, the Committee agrees with the Administration's attempt to reduce the time necessary to reach agreement between the parties in certain disputes, particularly in the railroad industry.

B. Implementing statute and initial procedural sections

The Administration has utilized the Taft-Hartley Act as the implementing statute for its proposals. Under Taft-Hartley, the first step is the securing of an 80-day injunction against a stoppage if a Presidentially-appointed Board of Inquiry determines, and the President agrees, that the—

> "Threatened or actual strike or lockout affectiing an entire industry or a substantial part thereof . . . [engaged in interstate or foreign commerce] will, if permitted to occur or continue, imperil the national health or safety. . . ."

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[3] Senator Javits—S. 594; Congressman Pickle—H.R. 2357; Congressman Staggers—H.R. 3595.

[4] Members Bodle and Hickey, however, are in disagreement with the method proposed for such encouragement. They do not agree with a majority of the Committee that there is a need for changing statutory procedures to impose new governmental restrictions on work stoppages in these industries. See Special Committee Report and Recommendations, 1969, p. 8, and Member Bodle's dissent, attached as Appendix B.

The parties are directed to continue negotiations during this period, with an offer of mediation assistance from the Federal Mediation and Conciliation Service.

The Committee believes that the primary problem with this procedure, as contrasted with its own Recommendations is the lack of emphasis on active mediation to encourage agreement during the injunctive period and the retention of the Taft-Hartley standard as the initial jurisdiction test.[5] The Committee prefers the standard set forth in the Railway Labor Act for use as the initial jurisdictional test to be met before any emergency disputes procedures are invoked. However, it does agree that a more stringent standard is necessary when a procedure is to be invoked which involves a severe curtailment of the right to strike or lockout, and which may also include a method for settlement of the dispute by a third party. This was the position of the Committee as adopted by the Association, and the Committee reaffirms this dual standard procedure. It is therefore recommended that the Administration's standard be utilized as this second test.

Additionally, the Administration's bill retains the use of the "last offer ballot" procedure immediately preceding the end of the injunctive period. The procedure, in and of itself, is neither good nor bad, although most sutdents of this area believe it to be completely ineffective. The difficulty, however, with the retention of this procedure as viewed by the Committee is its possible conflict with one of the Administration's "choices of procedure", namely "final offer selection". The "last offer ballot" requires employers to draft a final offer, while the union(s) are ont required to do so, for a vote by the employees. The Committee believes that this early requirement for an employer "last offer" will be detrimental to the statutory processes and bargaining, particularly if the "final offer selection" procedure is ultimately utilized.[6] The Committee recommends that this provision ("last offer ballot") be deleted from the Administration bill, at least with regard to the transportation industries, or preferably with regard to all industries.

Under Title II of the Taft-Hartley Act, the injunction is to be discharged by the 80th day, and S. 560 provides that if there is no settlement of the dispute at the time of discharge, the President may invoke one, but only one, of the below discussed procedures within ten days, subject to a Congressional veto. The Committee suggests that the injunction remain in force for the 10-day period while the President selects a procedure. It is the Committee's opinion that the right to strike or lockout during this 10-day period should be foreclosed, since three of the four options available to the President would require an end to any stoppage and the resumption of service. As a practical reality, the Committee believes that a stoppage during this period will be detrimental to the bargaining process and the ability of the government to reinstate normal operations.

Additionally, a majority of the Committee disagrees with some of the substantive procedures embodied in the Emergency Pubic Interest Protection Act of 1971.[7] Furthermore, the Committee, although it does not disagree with the other components of the Administration proposal, continues to express its preference for its own procedures.[8]

C. The Choice of Procedures—Initial Consideration

As stated, the Committee agrees that the objectives of the Administration bill are laudatory. However, it is further the opinion of the Committee, as developed below, that the substantive procedures are deficient in two respects. First, in the opinion of the Committee, the majority of procedures open to the President are not likely to be individually effective to accomplish the objectives. Second, as a corollary of this first conclusion, it is the Committee's opinion that there are not a sufficient number of *real* alternatives. As mentioned earlier, an im-

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[5] The Committee's Recommendations utilized Section 10 of the Railway Labor Act, under which, upon notification to the President by the National Mediation Board [rail and air] or the Federal Mediation and Conciliation Service [maritime and trucking], that a dispute:

"Threaten[s] substantially to interrupt interstate commerce to such a degree as to deprive any section of the country of essential transportation service. . . ."

he may appoint a Presidential Emergency Mediation Board to investigate and actively mediate the dispute during a 60-day status quo period.

[6] The Committee does believe that both parties should be required to exchange final positions and then final offers as part of the "final offer selection" process. See *infra*, p. 619.

[7] The Committee also noted that the Administration's bill as introduced lacked clarity in some sections and contained some inconsistent or ambiguous provisions. The Committee agreed that before this bill is considered for passage it should be subject to a careful, technical review and redrafting where necessary.

[8] Member Meltzer agrees with the Committee's reaffirmation of its own procedures, but also believes that "final offer selection" as discussed herein would be a desirable addition to the Committee's own Recommendations.

portant basis for the choice of procedures approach is that it will create uncertainty in the minds of the parties to a dispute as to which procedure will actually be used, and that the parties will therefore prefer to settle their own differences rather than risk a possibly unpalatable choice by the President.

In the case of S. 560, however, the Committee, for various reasons, believes that "final offer selection" is likely to be the only viable (and usable) alternative. The Committee considers this procedure to be a useful component in a choice-of-procedures approach, but is of the opinion that it should be supplemented by additional feasible alternatives.

Before proceeding to a procedure-by-procedure examination, the Committee also wishes to state its belief that the Administration bill should provide, as did the Committee's Recommendations, an advisory group to assist the President in determining which procedure to designate. Preferably, this group would have an active and close knowledge of the bargaining history, the present positions of the parties, and the possibility of private settlement so that it could offer a reasoned brief for the President for selection of one procedure or another, although he need not follow the recommendations.

D. The Procedures: A Thirty-Day Extension of the "Cooling Off Period"

The Committee objects to the designation of this step as one of the exclusive procedures on the ground that the extension of the cooling off period is likely to be unnecessary or, if used, to be ineffective. If the parties are close to agreement (the situation in which resort to this procedure would appear to be attractive) they would probably agree to extend the no stoppage period. On the other hand, if they are far apart, it is unlikely that an additional thirty days at this stage would produce an agreement. Furthermore, if the procedure is invoked and does not lead to agreement, there is no remedy open to the President (aside from the *ad hoc* legislation which both the Administration proposals and those of a majority of the Committee are designed to avoid).[9] The Committee, therefore, recommends that another procedure be substituted for this one. Alternatively, the Administration bill should specifically provide for extension of the status quo period by private agreement, but with a provision that such agreed-upon extension does not remove the right of the President to invoke one of the "choice of procedures" at the end of the extension period if no settlement is reached and no further extension agreed upon.

E. The Procedures—Partial Operation

It is the Committee's opinion that, although this procedure deserves consideration, there has been no demonstration that it is feasible in operation. Additionally, assuming the ability to effectuate partial operation of a transportation system [10] the Committee sees procedural and practical difficulties in the invocation alternative.[11]

One such difficulty which the Committee agreed must be overcome if the procedure is to be used in this: If the Board charged with investigating and considering partial operation finds that partial operation is not feasible, the Administration's proposals do not authorize the President to invoke any other procedure to handle the dispute involved. Accordingly, the nation may face a possible or actual stoppage which was deemed threatening enough to warrant consideration of this drastic remedy, but which could not be subjected to any other standing procedure. That difficulty might be overcome by permitting the President to choose another procedure if a panel finds partial operations not to be feasible.

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[9] Cf. The Committee's proposal that the Presidential Emergency Mediation Board make public recommendations for settlement and then a thirty-day extension of the status quo period, with continuing mediation emphasis. While perhaps usable only in relatively few situations, there is at least an increase in the public pressure for settlement, within the parameters set forth by the Presidential Emergency Mediation Board, compared to a simple continuation of the confrontation as set forth by this recommendation in the Administration bill.

[10] Cf. Silberman, "National Emergency Disputes—The Consideration Behind a Legislative Proposal", 4 Ga L. R. 673, at 687 and ftn. 53, relying on a study of the steel industry and isolated instances in the maritime, longshore and airlines industries. The Committee, however, remains unconvinced that partial operation will work effectively or fairly.

[11] This difficulty was recognized by the President in his message of February 17, 1971, to Congress [part of which has been introduced as SJR 43 (92nd Conf., 1st Sess.], in which he rejected "partial operation" in favor of "selective operation" and discussed the difficulties with the former procedure. It is unclear whether S. 560 contemplates both types of operations under the general heading of "partial operation". Partial operation, as understood by the Committee, is one part of a company operating while another is subject to the work stoppage; while "selective operation" is the total shutdown of some companies and the complete operation of others.

Even though the establishment of such a panel might chill bargaining, the panel's determination to reject partial operations does not directly affect the terms of settlement and, unlike recommendations of settlement terms, does not fix limits within which arbitrators must, as a practical matter, operate. Therefore, the possibility of a resort to another procedure, after a panel has rejected such operations, would not operate to chill bargaining prior to Presidential action. Accordingly, the usual reasons against resort to successive procedures[12] do not operate in this case, and there do not appear to be adequate reasons for providing that the rejection of partial operations by a panel should bar the President from invoking another procedure.

A second difficulty results from the relatively short time granted for the determination by a panel of the feasibility of partial operations in a particular case and the concomitant risks of either determinations to employ that procedure without adequate consideration of the difficulties involved or rejection of that procedure because of inadequate time to identify and to deal with such difficulties. Such risks would be reduced by in-depth studies and contingency plans for the industries involved, prepared before an impasse arises. Such studies may exist or might be undertaken during the 80-day cooling off period. The Committee is, however, not aware of the existence of such studies. It is, moreover, concerned that their institution during the 80-day period might distract the parties from bargaining if the parties are involved in such studies or might be ill-informed if the parties are not consulted.

A third problem is the probable distraction of the parties, who will spend thirty days arguing the merits, demerits and procedures for partial operation while they could be bargaining. The Committee also believes that there may be difficulty in enforcement, where some companies and employees may be working and earning money while others are subject to a stoppage.[13] Finally, a fourth problem seen by the Committee is that a panel, although skilled in labor management relations and negotiations, might lack the expertise required for its role in assessing the practical possibility for, and consequences of, partial operation. Thus it appears clear that the panel must have expertise not only in labor relations but also in the practical operation of a transportation system if it is to discharge its statutory duty to order partial operation when the "* * * partial strike or lockout would, in the judgment of the Board, appear to be sufficient in economic impact to encourage the parties to make continuing efforts to resolve the dispute [.]" and "* * * in no event shall the order of the Board place a greater economic burden on any party than that which a total cessation of operations would impose."

In summary, although partial operation may be sound in theory and the objective of minimizing governmental interference is clearly sound, the Committee is of the opinion that substantial evidence of the practicality of partial operations is required before that procedure should be endorsed as one of the relatively small number of exclusive procedures. The Committee is, moreover, skeptical that the required demonstration could be made in a significant segment of the transportation industries.

F. The Procedures—Final Offer Selection

A majority of the Committee, in principle, approves this procedure, with the recommendation, however, that it be modified. In the Committee's opinion, this procedure is the only one of those in the present Administration bill which is likely to be used. Consequently, it is particularly important in the framework of the Administration's bill to strengthen this procedure. The Committee believes it would be strengthened by improving the opportunity for a bargained settlement after the invocation of this procedure.[14] Such improvement would, in the Committee's view, result if, as discussed above, the "final offer ballot" provision were deleted from the bill. Second, a series of increasing pressures for agreement should be generated by providing that after the President invokes the final offer selection procedure, the parties shall exchange their "final positions";[15] they then

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[12] The Committee generally does not favor progressive use of procedures and agrees with S. 560's reflection of this position.

[13] Such a situation could also be harmful to the bargaining process.

[14] Some members of the Committee believe that a stoppage of sufficient impact to require that the government intervene should be settled on a basis which specifically includes a recognition of the public interest. While the parties may, of course, consider this factor, this procedure does not require it. Other members of the Committee reject this criticism on the ground that this procedure is at least as protective of the "public interest" as agreed upon settlements.

[15] These "final positions" would be the parties' positions with regard to matters still in dispute at the time the "final offer selection" procedure is involved.

will be granted seven days in which to bargain with regard to their "final positions" and to prepare and submit to the Secretary of Labor their "final offers" if they cannot agree; after the final offers are exchanged, another bargaining period of seven days should be provided, with the mediatory assistance of the Secretary of Labor or his representative. Then, if the parties still connot agree, the final offers are to be submitted to the final offer selector panel.

Additionally, the Committee believes that full arbitration should be included as one alternative to final offer selection. In the opinion of the Committee, there are certain types of disputes, particularly those involving technological change and/or manning levels which might not readily lend themselves to the final offer selection process. In such cases and others, the "normal" arbitration process may be better suited for resolving the disputes. The Committee recognizes that the addition of unrestricted arbitration might dilute the key element of the Administration's proposals, i.e., pressure on the parties to narrow and to eliminate the differences between them. Nevertheless, the Committee is concerned that final offer selection might not be suitable for a broad range of disputes and is of th view that a more *diversified* set of procedures, including normal arbitration is warranted, even though such procedures might reduce *somewhat* the pressure on the parties to reach agreement. The Committee believes that if the final offer selection procedure is to be adopted, these recommended changes would improve it. A majority of the Committee favors the adoption of this proposal with these modifications.

III. The other provisions of the Emergency Public Interest Protection Act of 1970

The Administration bill, as discussed *supra*, provides for major changes in the bargaining and grievance handling procedures now in effect in the railroad and airline industries under the Railway Labor Act. The Committee agrees that with respect to both areas the present delays are harmful and that there should be a reform in procedures. However, in the representation area, the Committee believes that the procedural rules of the National Labor Relations Board are superior to those of the National Mediation Board and that, while either agency could handle representation problems in these industries, using the present *legal* criteria of the RLA, the procedures of the National Labor Relations Board should be adopted.[16] With regard to bargaining, the Committee does not object to the transfer of the mediation function to the Federal Mediation and Conciliation Service, but suggests that the National Mediation Board be retained to mediate for a transitional period, perhaps three years, during which parties would be negotiating for the first time under the National Labor Relations Act procedures. Further, the Federal Mediation and Conciliation Service should establish a division of mediators skilled in the transportation field in order to build on the expertise now encompassed in the National Mediation Board and its staff.

Specifically with regard to grievance handling, the Committee agrees with the principle that the procedure, either as changed or as currently used, should not receive government financial support. Such support promotes the filing and prosecution of unmeritorious grievances and unwarranted delays for meritorious ones. The Committee, however, recognizes that the problems differ in the various industries and therefore suggests that the industries now covered by the Railway Labor Act be consulted before any change is made. However, the Committee has agreed that the success of the "Public Law Boards" does suggest that the National Railway Arbitration Board is no longer needed and that System Boards in the airlines may not be necessary in all cases.

Additionally, the Committee agrees with the bill's proposal to end unemployment compensation payments to strikers in the railroad industry. In this regard, the Committee notes that, except for two states, striking employees in other industries are not accorded the right to receive unemployment compensation.

With regard to Title III of the Emergency Public Interest Protection Act of 1971, calling for the establishment of a National Special Industries Commission, the Committee believes that either the size of the commission should be expanded so that representatives of the specific industries and labor groups involved may sit, perhaps as subcommittees, or that individual industry commissions should be established. Finally, the life of the commission(s) should be lengthened to three years to permits its members, who will be part-time only, sufficient time adequately to study the problems involved and to report to the President.

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[16] For example, the NLRB procedural rules governing the form of ballots, allowing an employer to be a party in a representation case, etc.; and the Railway Labor Act's legal criteria regarding the unit scope (class or craft), etc.

IV. Conclusion

In summary, the Committee commends the Administration's position that new legislation is needed to handle emergency disputes in the transportation industries and fully agrees with the premise of the Administration Bill's that such legislaiton should both protect the public interest and encourage settlement of disputes by the parties themselves. Additionally, the Committee supports the basic framework of the emergency disputes provisions, the "choice of procedures" approach. However, in the opinion of the Committee, additional alternatives should be considered to give the President a wider choice of viable options and those options now in the Bill can be strengthened to increase their effectiveness without harming the original rationale for their inclusion. Finally, the Committee agrees with the changes proposed for other procedures now followed under the Railway Labor Act.

Respectfully submitted.

WILLIAM J. CURTIN, *Chairman.*

APPENDIX A

COMPARISON OF PROVISIONS OF THE ADMINISTRATION'S EMERGENCY PUBLIC INTEREST PROTECTION ACT OF 1970 AND THE AMERICAN BAR ASSOCIATION'S RECOMMENDATIONS FOR EMERGENCY DISPUTE LEGISLATION

Emergency Public Interest Protection Act of 1970	American Bar Association recommendations
Coverage: Railroad, airline, maritime, longshore and trucking industries.	Same.
Implementing statute: National Labor Relations Act (Taft-Hartley)—all emergency disputes procedures under the Railway Labor Act are deleted.	Railway Labor Act—leaves the Taft-Hartley emergency procedures in effect for all other industries.
Procedures:	
(1) Presidentially appointed board of inquiry to report on whether an emergency will exist.	(1) Notification to the President by the NMB or FMCS (depending on the industry) that a threatened work stoppage could create a national emergency.
(2) Application to a 3-judge court for an injunction.....	(2) The appointment by the President of a Presidential mediation board with the authority to attempt to mediate the dispute.
(3) An 80-day injunction during which the Federal Mediation and Conciliation Service is to assist the parties in negotiation. (a) After 60 days the board of inquiry is reconvened to make a public report on the current status of negotiations. (b) A last offer ballot conducted by the NLRB.	(3) A 60-day status quo period during which mediation shall take place.
(4) Injunction dissolved.....	(4) At the end of the 60 days, the Presidential emergency mediation board recommends one of the following 4 procedures to the President: (a) That the PEMB make public recommendations for settlement of the dispute; (b) That the President appoint a neutral arbitration panel to hear evidence and implement the terms of the final settlement; or (c) Appoint an executive receiver to operate the industry while the parties continue negotiations, with a concurrent suspension of union security and checkoff provisions; or (d) That he take no further action.
(5) President has 10 days to either: (a) Order an additional 30-day cooling off period; or (b) Appoint a special 3-man board to investigate and authorize partial operation of the industry subject to the work stoppage; or (c) Invoke a final offer selection procedure under which both parties would present a complete final contract position; have 5 days to negotiate a settlement and if no settlement is reached, a 3-man board would designate one or the other of the final offers as the more reasonable and it would go into effect; or (d) Take no further action.	(5) The President may adopt the recommendation of the PEMB, and invoke the procedure, or choose one of the other available alternatives.
(6) The President's choice is relayed to Congress which has 10 days to overrule the President's choice.	

APPENDIX A—Continued

COMPARISON OF PROVISIONS OF THE ADMINISTRATION'S EMERGENCY PUBLIC INTEREST PROTECTION ACT OF 1970 AND THE AMERICAN BAR ASSOCIATION'S RECOMMENDATIONS FOR EMERGENCY DISPUTE LEGISLATION

Emergency Public Interest Protection Act of 1970	American Bar Association recommendations
Other provisions:	
(1) Create a 2-year commission to study the labor relations situation in other industries in which work stoppages could cause national emergencies.	(1) Create industry commissions comprised of representatives of management and labor in the industry, with the authority to implement its own changes in its bargaining procedures with an 8 months' period before the above emergency dispute legislation would apply to that industry.
(2) Ends the authority of the National Railroad Adjustment Board and System Boards of Adjustment for grievance handling and provides that contracts in the railroad and airline industries shall have the usual arbitration/no-strike clauses.	
(3) Transfers the mediation functions of the National Mediation Board to the FMCS, changing the name of the NMB to the Railroad and Airline Representation Board, with authority to decide representation cases in these two industries.	

APPENDIX B

Dissent of George E. Bodle

I cannot agree with the majority of the Special Committee in its recommendation that the Association support the Emergency Public Interest Protection Act of 1971. With the modifications suggested by the Committee or without them, essentially the Administration bill, like the proposals made by a majority of this Committee in its report to the Association, would empower the government to intervene in so-called national emergency strikes for the purpose of imposing a settlement upon the parties. The original recommendation of a majority of the Special Committee was to accomplish this primarily through imposing upon the parties to the dispute compulsory arbitration. The principal method proposed by the Administration to accomplish this result is the procedure of "final offer selection."

The flaw in all these proposals is obvious. If a dictated settlement is to be the terminal point of a labor dispute, then the national policy set forth in the preamble of the National Labor Relations Act and Section 2, Title I of the Railway Labor Act of encouraging the practice and procedure of collective bargaining makes little or no sense.

Permanent legislation providing such a revolutionary departure from this policy which has guided our course for over thirty-five years can be justified only if there is incontrovertible proof of the necessity for it. Such a justification entails a finding that there is a real threat of national emergency strikes in the transportation industries (longshore, maritime, trucking, airline, and railroad), and each of them, and that there has been such a total breakdown of the collective bargaining process in each of these five industries that it cannot be relied upon to resolve differences within these industries.

There is no evidence to support these findings in four of the five industries which would be subject to the proposed anti-strike, anti-lockout legislation. Three of the industries included within the ambit of the Administration bill and the Special Committee's recommendations, longshore, maritime, and trucking, are presently governed by the provisions of Title II of the Taft-Hartley Act which provides for an 80-day injunction against a strike or lockout in the event of a threatened stoppage imperiling the national health and safety. Since 1947 the injunctive procedures of the Act have been invoked some twenty-seven times. On only one occasion has it been invoked since the present Administration took office. Even on those few occasions where the dispute was not settled within the 80-day injunctive period, neither the President nor Congress deemed the continuance of the strike serious enough to require additional or special legislation. The Ad Hoc Committee to Study National Emergency Disputes of the Section of Labor Relations Law of the American Bar Association, after an exhaustive study of the effectiveness of Title II, concluded that "this statutory plan (Title II) on the whole has worked remarkably well."

A brief review of the history of collective bargaining in the three transportation industries presently covered by the Taft Hartley Act fortifies this conclusion and demonstrates the lack of any need for new or additional legislation in this area.

1. THE TRUCKING INDUSTRY

There has never been a nationwide strike in the trucking indusrty. Indeed, there has never been a strike of sufficient national or regional impact to require the invocation of the procedures provided by Title II of the Taft-Hartley Act. In short, there is absolutely no historical justification for a conclusion that national strikes in the trucking industry pose such a public peril as to require the passage of the Administration's bill, or any other permanent legislation designed to place in the hands of government the ultimate determination of the terms and conditions of employees in this industry.

2. THE MARITIME INDUSTRY

Since 1947 there have been three occasions, the last in 1962, in which a Taft-Hartley injunction has been issued in the maritime industry. This should be ample proof of the stability of labor relations in the industry and the effectiveness of its collective bargaining. Since only five per cent of the commerce to and from our shores is carried in American ships, it is, in any event, difficult to understand how a strike or lockout in this industry could imperil the national health and safety.

3. THE LONGSHORE INDUSTRY

The longshore industry has had six Taft-Hartley injunctions issued prior to 1966, and one has been issued since that date, in 1968. Most of these strikes were caused by disputes over representation and the appropriate unit for collective bargaining, matters which, in the opinion of the Ad Hoc Committee, were probably within the jurisdiction of the National Labor Relations Board and which should have been resolved through its procedures. The underlying causes of these disputes have been largely removed. The fact that in the past five years there has been only one longshore strike of significance is an indication of the stability of the labor relations in the industry.

The other two industries which would be subject to the Administration bill are governed by the Railway Labor Act. Bargaining in the airline industry is conducted on quite a different basis than in the railroad industry. There is no national bargaining. Bargaining is normally conducted by the unions with each carrier individually. Although there have been infrequent strikes, including the 1966 strike which involved several major carriers, none have endangered the national health or safety or denied any region of transportation to the point where either the President or Congress felt called upon to seek additional legislation. The System Boards of Adjustment which are provided for the airline industry by the Railway Labor Act have functioned effectively, and there is no demonstrated need for their abolition as the Administration bill would provide.

The history of collective bargaining in the railroad industry is admittedly a different story, but it should be perfectly apparent from the above recital that the only possible justification for the Administration bill is the breakdown of collective bargaining in the railroad industry. No justification for it can be found in the history of collective bargaining in the other industries which would be encompassed within the bill's restrictive provisions.

The distinction between the railroad industry and the airline industry, in particular, is one that the Administration, as well as the Special Committee, has failed to grasp. The Administration bill, for example, proposes to abolish not only the National Railroad Adjustment Board but also the Adjustment Boards presently provided by Title II of the Railway Labor Act to determine grievances arising under collective bargaining agreements in the airline industry. The Administration justifies this on the ground that the governmental practice of making arbitrators available without expense to the parties has encouraged recourse to arbitration. It is true that arbitrators or referees are provided at government expense to settle grievances arising in the railroad industry, but the Administration apparently has failed to realize that in the airline industry (the other industry covered by the RLA) this has never been the practice. The carriers and unions have always paid the fees and expenses of the impartial arbitrators who sit on the Boards of Adjustment in the airline industry. Yet

on the basis of this erroneous conclusion, the Administration bill would abolish the Boards of Adjustment in the airline industry as well as the National Railroad Adjustment Board.

The atrophy of collective bargaining in the railroad industry in the opinion of most competent observers has been due, in part, to the long delays in the bargaining process inherent in the procedures imposed by the Railway Labor Act and the chilling effect on collective bargaining of the automatic appointment of presidential emergency boards. An even more significant factor has been the virtual prohibition of the use of economic power by either party as a tool in the collective bargaining process. Freed of the economic pressures engendered by a strike, the parties have been able to avoid reaching agreement on the terms of the contract. Time after time, the exertion of economic power has been forestalled by government intervention. The excuse for this has been that otherwise the country would be faced with a nationwide tieup of the railroads.

The obvious answer, of course, would be to confine strikes to a limited number of carriers. This the railroad unions have been prevented from doing until lately by court injunction. Even where a selective strike was called, the carriers could always make it a national strike by imposing, unilaterally, unacceptable erms and conditions of employment on their employees.

HR 3595, now pending in the Congress, would remove the threat of a national emergency strike in the railroad industry by permitting selective strikes and prohibiting the enlargement of such strikes by the carriers into national strikes. It offers a realistic and long overdue solution to the problems of both collective bargaining and national strikes in the railroad industry. It, instead of the Administration bill, deserves the support of the Association.

Respectfully submitted.

GEORGE E. BODLE, *Member.*

Mr. JARMAN. Thank you, Mr. Williams, for a very effective statement on this problem. Would you care to comment any further on what results we might expect from a practical standpoint from creation of an industry commission or commissions? Do you think, from a practical standpoint, we would stand to achieve more in agreement by the commission approach than through the present procedures in these fields?

Mr. WILLIAMS. Let me come at it in this way: Our committee felt that we did not know whether the industry commissions would be successful in coming up with procedures to put their own houses in order in emergency dispute situations. We felt that they had never been given the official opportunity to do this under a view which looks down the road at Government legislation if they do not get it done.

Now, we have used this device in other areas in the labor field and it has been rather effective. I don't think there is any question but what the provisions of the Taft-Hartley Act, having to do with settlement of jurisdictional disputes by the National Labor Relations Board itself if the unions didn't set up their own procedures for settling these disputes, was a strong stimulus for the unions' setting up their own procedures.

This is what the committee had in mind—to stimulate the industry to get down to business and work out its own procedures for avoiding emergency disputes and, if it didn't, there would be legislation waiting to take over after a reasonably short period for persons in the industry to work out their own procedures.

Mr. JARMAN. Thank you very much. Mr. Dingell.

Mr. DINGELL. Thank you, Mr. Chairman. Sir, I notice you have made recommendations that the legislation embody four possible governmental actions. First is Government intervention in the dispute; second, request that the Presidential Emergency Mediation Board

make public its recommendations for terms of settlement; third, establish a Presidential arbitration board, authorized to issue final award on merits of disputes; and, fourth, place company or companies involved in the dispute under Executive receivership, to be operated at direction of President while parties continue negotiations.

If receivership is chosen, contemporaneously companies in receivership shall cease deducting union dues from employees' pay checks, and so on, which require the employees to join the union shall become inoperative.

I must note several things with regard to your recommendations on page 7. One, as I note it, you have abandoned or rejected the concept of the final offer selection by the President. Am I correct in that interpretation—that the association does not recommend that?

Mr. WILLIAMS. In our committee recommendations, we do not.

Mr. DINGELL. Why?

Mr. WILLIAMS. I will explain in a second. However, when we went over the administration proposal, we accepted the final offer selection advice with modification.

Mr. DINGELL. It does not appear in the statement you have done so.

Mr. WILLIAMS. Yes; it is in the statement. You see, the first part of the statement is official position of the ABA, and later in the statemen, I point out the committee then went on and considered the administration proposals and also recommend adoption of the administration proposals with the suggested amendments which we make.

Mr. DINGELL. What are those suggested amendments?

Mr. WILLIAMS. The suggested amendments begin on page 11 of the statement.

Mr. DINGELL. The copy I have of your statement goes only to page 8.

Mr. WILLIAMS. I am sorry; no wonder we are having difficulty.

Mr. DINGELL. I was trying to figure out what you were saying to us here.

Mr. WILLIAMS. Yes.

Mr. DINGELL. Then let me switch to another point with regard to matters I am discussing. You indicate here on page 7—you suggested that if Executive receivership is chosen, the companies in receivership shall cease deducting union dues from employee's pay checks, and any provisions in the collective bargaining agreement which require employees to join the union will become inoperative.

Mr. WILLIAMS. Yes.

Mr. DINGELL. I am curious about that. Have you recommended there be controls imposed on executive salaries or be termination of dividends during pendency of the strike or have you authorized or would you authorize the President to fix rates for services and so forth? It appears you are taking a long stride in the direction of trying to arrive at equality with regard to the employees, but I notice here, even so, you are imposing some burdens on employers in the receivership but not imposing any commensurate burdens on management.

Mr. WILLIAMS. It is part of our recommendation that the President would have authority to institute changed working conditions for the period of Executive receivership.

Mr. DINGELL. Would that apply to the officers, white collar and directors, or would it apply only to the men who were in the union involved in the strike?

Mr. WILLIAMS. It would not in terms, but, of course, in Executive receivership it is the Government which is operating the railroad, and there are not salaries except as set by the receiver. In other words, the compensation which the company gets is a just compensation, and it does not automatically get across the board everything it now has.

Mr. DINGELL. I see. Thank you. Thank you, Mr. Chairman.

Mr. JARMAN. Mr. Devine.

Mr. DEVINE. No questions.

Mr. JARMAN. Mr. Podell.

Mr. PODELL. Yes; thank you, Mr. Chairman. Perhaps because I may have missed the early comments, I don't seem to fully understand the basic difference between your proposal regarding to the presidential alternatives or final offer and the administration proposal, perhaps you would redefine it for me.

Mr. WILLIAMS. Yes. Mr. Congressman, this is the American Bar Association proposal: There would be no limit to final offer selection at all in the Presidential arbitration board. This would simply be a compulsory settlement process of a board set up to settle the dispute very much as Congress has enacted legislation to do this as to certain narrow aspects of the recent ratilroad industry disputes.

Now, we also have in there the alternative of what we can call fact-finding and recommendations for settlement from the Presidential Emergency Board. These are not binding but have the force of public opinion behind them to try to force the parties to accept the recommendation.

Then we have Executive receivership. And those are three active, ongoing alternatives given to the President in our proposal.

Now, the administration bill gives two other active, ongoing proposals. One is partial operation, which we indicate grave doubts about. The other is the final offer selection proposal. We accept the final offer selection proposal as a fourth alternative. We do not believe it should take the place of either an Executive receivership possibility or of a general President arbitration board not limited to final offer selection, but we feel that it can stand effectively as an additional alternative which the President can use.

Mr. PODELL. I raise this question: Should the negotiating parties, particularly management, realize that the President does have the option of final binding arbitration, why would the negotiating party, management, make any conciliatory efforts prior thereto, figuring that the alternative will be presented in any event? What would be the compelling need for negotiations if, in the final analysis, a decision can be made by a so-called impartial body which would be binding upon the parties? Obviously both parties will sit back and then wait for the final decision to be made.

Mr. WILLIAMS. This is why we felt, in the ABA committee, that there was a need for a broader choice of options than the administration proposal gives. The employer may be faced with Executive receivership, and this may be an option which is chosen by the President, or the employer may not get final binding arbitration and may get only the recommendations for settlement of the factfinding board, and then the matter ultimately again could possible be turned over to Congress if necessary.

There are a substantial number of options that keep the employer as well as the unions off base as to what may happen to them if they don't reach a settlement.

Mr. PODELL. May I speak for a moment to the fourth option of Executive receivership. It is not a final determination. If the option of Executive receivership is selected, it would be temporary. The instrumentality could go into receivership for a period of 30, 60, or 90 days and, after that, revert to its original corporate ownership, isn't that correct?

Mr. WILLIAMS. There wouldn't be such a time limit on it. As a matter of fact, of course, a settlement by a presidential arbitration board will also be temporary in the sense it will expire after a time, probably a somewhat longer time. But this is the use of a device, Executive receivership, which puts substantial pressure on the parties to get a settlement arranged at some time in the future so they can get the business back. The same with the unions.

Mr. PODELL. The pressures and burdens placed upon management are very restricted, in this situation and not really significant. If I were corporate management operating under the possibility of subdivision 4, Executive receivership, I would say, "Well, we will go into receivership for a couple of months, let it simmer out, and then go back to the unions for action again."

Mr. WILLIAMS. Of course, I am not in a position to give you ultimate satisfactory authority, but I can tell you the two management representatives on the committee were opposed to the proposal and opposed it on the floor of the house of delegates when debated, for this reason: They felt, from management's point of view, there was a rather significant pressure on them if this alternative was chosen.

Mr. PODELL. You indicated that fact in your statement. Would you try to set forth the reasons why management representatives oppose your proposal and also reasons why the labor representatives oppose the proposal?

Mr. WILLIAMS. Yes. Management representatives opposed only the alternative of Executive receivership. The two labor representatives opposed any enactment of Government legislation to settle these disputes. They prefer the ad hoc approach of waiting until a dispute arises and then sticking with the current legislation which we now have. They prefer engaging in the same kind of maneuver and concern which has characterized, as you well know, some of the recent railroad disputes.

But, recognizing that the majority of the committee strongly favored the enactment of legislation to handle these disputes if the industry itself did not figure on a way to handle them, they went into the deliberations with the committee members on the various alternatives. The two Labor representatives opposed the compulsory presidential arbitration board.

So that we have had the two management representatives opposing the Executive receivership, the two labor representatives opposing the presidential arbitration board, and, very frankly, the public members thinking we probably have gotten a pretty good balance.

Mr. PODELL. That is a little like the story of a lawyer, when he was young, he lost more cases than he should have, and when he

was an old timer he won more than he should have, and things balanced out. I am not positive that you came up with the best proposal, but I would rather look to the proposal itself rather than the fact that both labor and management oppose it. That does not prove that the proposal is necessarily good.

Mr. WILLIAMS. Of course, Mr. Congressman, that is correct. But I would like to point out these conclusions were based upon many hours of careful deliberations with all of the members of the committee as well as public hearings and executive sessions with Government people. When I stated that we thought we, the public members, were coming out pretty well in the middle, it was not just because there had been this opposition but because of the many hours of consideration of all possible alternatives as we developed our proposal.

Mr. PODELL. Thank you.

Mr. JARMAN. Mr. Harvey.

Mr. HARVEY. Thank you, Mr. Chairman.

Mr. Williams, the size of the railroad carriers in this country differs a great deal. Some are very small with only a few miles of track. Others are very large and extend a good portion of the way across the country. In your judgment is there no carrier, regardless of size, on which a strike should be permitted?

Mr. WILLIAMS. I am now giving a personal opinion although I think it is also the opinion of the committee. We recognize there can properly be strikes in the railroad industry as all other industries. In other words, we did not take the position that there simply can be no right to strike anywhere on the railroads. Our use of compulsory settlement devices or executive receivership was limited to those situations where a determination was made that it was necessary for the public health, safety, or welfare that service be restored.

Mr. HARVEY. Well, I might have missed that in your statement but I didn't see any reference in there to the use of selective strikes or to the defining of selective strike.

Mr. WILLIAMS. That is correct. We considered the use of the selective strike in our committee and rejected going into it as a specific authorization. The reason we did is, I think, because selective strikes are lawful today. We assumed that they were lawful. So that what we were doing is simply considering at what point must we step into a dispute because of its impact on the public, but we were recognizing the legality of selective strikes as such.

Mr. HARVEY. What you are saying, if I understand, is that any strike in the railroad industry is lawful until it reaches the point where it impairs national health or safety. Is that the test that you would use?

Mr. WILLIAMS. Well, the test we use is broader than national health or safety. I will read it again. It appears in the report but I believe it may not appear in the printed statement. The standard we developed was: the work stoppage impairs national security or seriously endangers health, safety, or welfare of a large segment of the public. You are correct; we assume that the strike is lawful until this happens.

Mr. HARVEY. The trouble with that sort of definition, however, is that it does not tell the employees of "XYZ" railway whether or not they and their union can call a strike on that particular railroad; does it?

Mr. WILLIAMS. It does not; that is correct.

Mr. HARVEY. Don't you feel that some effort should be made to define what type of selective strike can be tolerated and what sort of selective strike cannot be tolerated in the country?

Mr. WILLIAMS. I have to talk purely on the basis of personal opinion because we did not answer that specific question in our committee's deliberations. In my opinion I have no objection to attempts to define that. However, I am inclined to feel that any attempts to define it are very problematical and we will find they will tend to break down rapidly. That, however, happens to be a personal opinion.

Mr. HARVEY. Of course, the law is problematical for that matter. What we found in the last strike we had during the month of August was that the purportedly selective strike was not selective at all, but a strike which bordered on being a national strike. the consequences of that strike far exceeded the definition or measurement of selective strike as suggested by organized labor itself.

Mr. WILLIAMS. Precisely why I would personally feel it is better to say all strikes are lawful and indeed they are still lawful until moving into an area where we say: At this point we have to stop it. That is all. In other words, there is nothing improper about a strike, but the Government has to be able to move in at a point and say: All right, work stoppage now must cease.

Mr. HARVEY. It seems to me there are certain areas in which selective strikes can be a proper and valid weapon. There are certain carriers in the country where a strike is not going to impair the national health and safety. It would not bring about the type of problems effecting national commerce in the way the recent UTU strike did, and the consequences, as bad as they might be nevertheless, could be tolerated.

I have the feeling that organized labor itself should welcome the definition in this particular case of these particular areas.

Mr. WILLIAMS. My only concern would be: I would hate to see a definition which now rigidly tied us and kept us, as you indicated in referring to the strikes last August, from moving into the area where we can stop the work stoppage if we must stop it. That is my concern.

Mr. HARVEY. I guess what bothers me about the statement is that I come away with the conclusion that the only recommendations that you have made to solve this very serious problem are the two recommendations—compulsory arbitration and seizure.

We can call them Executive receivership or a Presidential Arbitration Board, but when you come down to it, they are what the Congress has been referring to as compulsory arbitration and what we have been debating as seizure for a good many years.

If you followed the activities and debates that have taken place in both the House and the Senate, you will realize that we are talking about impossible projects. In my judgment, they are not realistic alternatives that the Congress is about to recommend.

Mr. WILLIAMS. I would comment on it this way. There is a third alternative which I think is significant. It now exists but it works sometimes, this is factfinding with recommendations. But, second, the very concerns which you mention were the stimulus for the committee to conclude that we first ought to give the industry the opportunity to set up their own procedures under the pressure that if they do not then the legislation will already exist for the governmental procedures.

Then, finally, I would agree with you that there are very serious pragmatic doubts about the enactment of these two most stringent alternatives.

I can assure you here that the committee in its deliberations felt, doubts or not, we want to recommend what we think is right. There will be certain work stoppages that we simply cannot tolerate and therefore there must be means for final settlement of them.

Mr. HARVEY. You stated to my colleague from Michigan that management itself particularly opposes seizure as an alternative. We are on the committee and we are aware of that. We are mindful, if I am not mistaken, that every seizure case in the history of the United States has resulted in a law suit. If my recollection is correct, every single case has wound up in the courts and some have taken 10 and 15 years and longer before reaching a final settlement. How can the ABA come in and make a recommendation to us like that to solve these disputes? I have trouble, and I am a member of the association, understanding the value of that recommendation.

Mr. WILLIAMS. Again I speak personally, but I think it may be almost speaking for the other neutral members of the committee as well. Let me say this: If the parties want to tie us in litigation in court for 15 years after a seizure, that is too bad and I am sorry the courts are tied up. But the settlement of the dispute to protect the public interest is the most important thing. This was our thinking on the committee.

That is the No. 1 issue. If the parties want to waste time in court fussing around after it is over that is all right because the public is not hurt by it to any significant extent. That is the critical thing.

Mr. HARVEY. I thank you and I congratulate the American Bar Association for coming with any recommendations at all. You should be commended in that regard. Thank you.

Mr. JARMAN. Mr. Kuykendall.

Mr. KUYKENDALL. I want to join Mr. Harvey in thanking you for putting forth all of this work and making recommendations to us. I am sorry to say my thanks will have to stop right there because I would hate to be your client and have you face up to my case as unrealistically as you faced up to this one.

You see, this is not a classroom here and we didn't come here to get a lecture but to get answers, we are pleading for workable answers, not a bald faced classroom lecture; we desperately need help. I believe if your research people read the testimony taking place here in the last 6 weeks you would have heard the committee day after day plead for help and not for recommendations of seizures and compulsory arbitration at the end. We know all about that. We need help.

You even suggested, as one alternative, that you would come back to Congress. We are going to tolerate that. We are here to get rid of this problem. We might not write a law at all and perhaps the bookies would give you heavy odds on it now, but I guarantee one thing we won't write is a provision to bring it back into our laps again.

I am certain that compulsory arbitration, with an outside board writing all of the terms of the settlement, is not going to be part of the settlement and I don't think seizure is either.

I don't care how many different ways you shuffle the 11 men on a football team. If you have the same 11 men on the field you will end up with about the same results. You know, in the superbowl they have a way of finally ending it. They didn't say: play another quarter. They didn't say play another two quarters or another 10 minutes, but say: Play to get it over with. In other words, they had finality in a fair sense. I don't fully understand why it is that any sort of outside board is unacceptable to labor, but they don't want a board even if they could name all of the members themselves.

I have had labor members say that. I don't fully understand why it is true but I know that is the way people in labor feel, so I have to respect that.

These are the facts and I would like to beg of the American Bar Association to do something for us, not just shuffling ideas that have already been floating around the Hill for 20 years, to do some real thinking to get something original about another idea of finality, because all we are seeking here, Mr. Williams, is an equally frightful method of finality.

Now, you get into that matter of seizure. If you seized Penn Central, who would pay the loss? You talk about profits, let us talk about loss. Are the taxpayers going to pay those losses if you seize them? Certainly they would, legally. So this busines of seizure is no great snakes for the taxpayers or for the shipping public either.

In looking to the matter of keeping railroads or airlines running, all I have to say, and I have no questions to ask, I would like for the American Bar Association to do some deep thinking and come up with something original, because I have listened to, I guess, 95 percent of all of the testimony that has been given on railroads in this committee for 5 years and, believe me, as well thought out and as well studied as your statement is, there is nothing in its original and we need that badly.

Thank you, Mr. Chairman.

Mr. WILLIAMS. Would you like me to respond? Or may I respond?

Mr. JARMAN. Yes.

Mr. WILLIAMS. I would like to respond to this extent, Mr. Congressman, because I can assure you the members of this committee feel very much the same kind of frustration and concern that you have stated. I think I can assure you that the committee did do deep thinking this over a number of years, and as I say it held public hearings and it also held a great many meetings and talked to many knowledgeable people. It considered the possibility of one finality program. It considered this very carefully. I am sure, with your interest in this, you are, for example, well acquainted with the "pay-as-you-go" strike proposals of various sorts that fine both parties as the dispute goes on but the parties keep working. We considered those kinds of proposals.

Mr. HARVEY. That is just another road.

Mr. WILLIAMS. I realize that. I will say our committee is quite certain that only one road to finality is dangerous. Because with the one road to finality the parties know exactly what lies ahead and the pressures on them that come from uncertainties as to what may happen to them has been lost. The committee I am quite certain was unanimous on this point.

Mr. KUYKENDALL. How in the world on final offer selection can they know what the road ahead is?

Mr. WILLIAMS. One of the things proposed or approved is final offer selection.

Mr. KUYKENDALL. How can they know what the road ahead is on final offer selection?

Mr. WILLIAMS. I would guess that they can know substantially more closely what the road ahead is on final offer selection than when there are other alternatives that may also be brought in, because they do know that one or the other of their choices are going to be chosen.

Mr. KUYKENDALL. Do you know of any method more frightening to both parties than final offer selection?

Mr. WILLIAMS. I think it depends on the kind of dispute. In some disputes, clearly not and in others clearly yes.

Mr. KUYKENDALL. Would you expand?

Mr. WILLIAMS. I would expand on it simply. I think it depends on the kind of dispute involved. There are certain situations where the final offer selection will unquestionably force the parties into bargaining further than any other device. I don't think there is any doubt about it. What I and the committee was concerned about is in final offer selection, although I say we approved it, is that if you are doing more than just one or two things, like a wage offer or something else, but you are writing a major part of a contract in final offer selection, you may get something that the parties simply cannot live with somewhere in that large list of possibilities in the contract. I think this is the problem.

Mr. KUYKENDALL. You say, danger of this extremity on both sides will cause both to be more reasonable?

Mr. WILLIAMS. I think in most instances, yes.

Mr. KUYKENDALL. You have not given us an example of a case. Are you talking about work rules? Is that what you are talking about?

Mr. WILLIAMS. Work rules is an example, yes.

Mr. KUYKENDALL. Well, it seems to me that practically all of our misunderstanding, at least in the railroad industry, in the last 5 years, since I have been in Congress has been mostly work rules. I have a feeling that both management and labor might be willing to let panels handle money but the work rules is where the distrust is.

It would seem to me, and this is one of the reasons I say I wish your group had examined some of the testimony of both sides. It seems to me this is where labor is most mistrustful of outsiders, that is, in the area of work rules.

Mr. WILLIAMS. No question about that; yes.

Mr. KUYKENDALL. Yes. But, I say you always have to expect that with work rules it might affect labor more than management.

Mr. WILLIAMS. I think work rules are a good example of our concern on final offer selection.

Mr. KUYKENDALL. My point is this. I think this is revealing here. You have come up with a point that you have to have a different alternative because of a technical subject such as "work rules" and bring in outsiders on that subject, where that is the one subject that outsiders are trusted the least. That is a rough one, isn't it?

Mr. WILLIAMS. I agree that is a rough one. I would simply say, in our discussions, that the third party still had to be taken into ac-

count, the public interest. We are going to have to move in areas where the parties are distrustful and do not like it, unless they themselves have worked out the procedures to take care of these things.

Mr. KUYKENDALL. Don't you think that our definition on this committee of the public interest can pretty well just be covered by keeping the railroads running. This committee is not responsible for the economic impact of the settlement. The ICC is, but this committee is not. At least I hope it never becomes so. Our only job is transportation, keeping it running. That is our responsibility to the public, to keep it running. I hope the day never comes that we have to look at the weight of the economic package. Maybe it will, God forbid.

Mr. WILLIAMS. Well, certainly the scope of the work of our committee was broader than this. I would say that the scope of the work of a Presidential emergency board under the current Railway Labor Act certainly has to take into account effects of an economic package.

Mr. KUYKENDALL. Absolutely. But this committee, in setting up a system, should set it up to where it, if possible, rather the economic power of the two sides is left to be brought to bear.

Mr. WILLIAMS. I agree with you certainly on that.

Mr. KUYKENDALL. So, we can't look at a method of settlement in the sense that one side or the other or the public might be at the economic mercy of the other one as long as we consider it eminently fair. We just can't look at the size of a possible settlement 10 years from now under a system, that is, we can only look at its justice, and this is my opinion.

Mr. DINGELL. Will you yield. I am curious, sir, and the question is this: What is the duty of the Government first of all? Is it to write a contract for the parties or settle a dispute or simply to keep the rails running while parties settle their own disputes?

Mr. WILLIAMS. I would be inclined to say I would hate to see the Government get into the first duty, to write a contract.

Mr. DINGELL. Let us agree we have no duty then to write a contract.

Mr. WILLIAMS. No; I have to put a footnote to it, insofar as we may get into economic controls in phase II the Government may write contracts.

Mr. DINGELL. That is a different matter dealing with the whole of society and not with writing contracts.

Mr. WILLIAMS. Fine.

Mr. DINGELL. Let us leave it out and stay with the point before it. So we have rejected item one. What about the second alternative?

Mr. WILLIAMS. I would say the second alternative is obviously far more important than the third. I don't think the Government's responsibility can be discharged just by keeping the rails running. If by keeping the rails running it runs roughshod over American citizens' rights.

Mr. DINGELL. Whose rights are we running roughshod over there?

Mr. WILLIAMS. I don't know particularly——

Mr. DINGELL. Whose rights are we running roughshod if we write the contract, or settle disputes. You are not telling us we are running roughshod over rights of people if we settle a strike.

Mr. WILLIAMS. I would simply say that a governmental view that says, "We just keep the railroads running at all costs."

Mr. DINGELL. I am not saying, "At all costs." Just keep the railroads running, simply say, "We are going to run it." Your receivership proposal recognizes that this is a responsibility of the Federal Government?

Mr. WILLIAMS. That is right.

Mr. DINGELL. I am curious to know whether you think there is anything more that the Congress and Government has to do? Are we supposed to get in settle the disputes and write the contract for the people? If we settle the dispute don't we have to write the contract?

Mr. WILLIAMS. I don't think so.

Mr. DINGELL. All right——

Mr. WILLIAMS. You don't have to write the contract.

Mr. DINGELL. Certainly. We sit down with labor and tell them "You are going to work under these work rules" and the same thing to management. Maybe management does not want the work rules and maybe labor does not. If that be so, we are running roughshod over their rights, aren't we?

Mr. WILLIAMS. I would say that the statement as you make it does not take into account what actually is happening in the settlement of the labor dispute.

Mr. DINGELL. I have watched a lot of labor disputes and we have had a lot go through the committee.

Mr. WILLIAMS. I am sure you have and NMB had that effect, right?

Mr. DINGELL. You make the assertion we are going to run roughshod over millions of people by keeping the railroads running?

Mr. WILLIAMS. I don't think I said that.

Mr. DINGELL. I think we run roughshod over rights of a lot less people if we say all right fellows keep the railroads running than saying all right fellows we are going to sit down an write your contract for you.

Mr. WILLIAMS. I say if the sole concern is just to keep the railroads running, I think that is not enough. I think that the Government's responsibility must also be to set up reasonable and fair procedures for the resolution of the dispute but not to write the contract itself.

Mr. DINGELL. Let us say we buckle down and start going to final offer selection.

Mr. WILLIAMS. All right.

Mr. DINGELL. Let us say we go to compulsory arbitration over a period of years where you have the kind of difficult and heated situation you have with regard to work rules in the rail industry aren't you ultimately going to wind up with the situation where the Government has written almost all of the controversial parts of the contract that exist between management and labor?

Mr. WILLIAMS. My personal opinion and the opinion of the public members of the committee was that you would not.

Mr. DINGELL. Let us go back then over the history of these labor management disputes of the last few years, first with the question of the firemen and that is still around and we were supposed to have settled that and didn't. Then we went through the charade we had with Mr. Morris and his people over in the Senate and were supposed to settle a bunch of manning rules and those are still around to curse us and they are part of the most recent labor dispute. If we keep on

each year we add to the list of unsettled questions that are really decided for the parties over their violent objection and pretty soon we create for ourselves a host of unmet questions.

What I am trying to get at is this. Is it better for us to build that kind of harvest for the future or simply say, "All right fellows we run the roads and when you settle these things you come back and we will give you your railroads back?"

Mr. WILLIAMS. I think that is a valid alternative.

Mr. DINGELL. It is not a valid one but I think the only alternative. The public interest simply says we keep the rails running so the public health, safety, and welfare is taken care of not so we have the disputes building up and building up like steam inside of a boiler. That is where my trouble lies.

Now let me ask you one thing. You have given a definition of when the Federal Government ought to come into the strikes and also I see it your definition would bring the Federal Government into any strike or labor dispute that existed anywhere in the country including a strike or work stoppage on a particular railroad, am I correct?

Mr. WILLIAMS. I don't think this necessarily follows at all.

Mr. DINGELL. It does in my view. I want you to disabuse me because if we are going to write legislation of that kind we ought to, we should know that and it ought to be clear on the record.

Mr. WILLIAMS. The standard we get for protecting national security does not create the problem. If the work stoppage doesn't impair national security there is the standard which says: Seriously endangers the health, safety, or welfare of a large segment of the public. That is the standard.

Mr. DINGELL. Let us take the Podunk and Western. That runs in an area connecting up with a major grain producing area or might have a major lettuce harvest impending or might handle the coal of a particular area or might handle a particular thing like uranium at a time when it is in particular need, then is Podunk and Western going to be covered?

Mr. WILLIAMS. Based upon the hypothetical situations, the Podunk and Western could be covered, yes, but most Podunk and Westerns would not be at most times.

True, if a great deal of coal has to be moved by the Podunk and Western right now and there is no alternative, then it would be covered. I would say, "Yes." But that does not mean it would be covered at other times and in other circumstances.

Mr. DINGELL. Then what you say is that this is not really a standard but it is something that comes into play sometimes and not others.

It sounds to me like you are saying you have a highly subjective matter here.

Mr. WILLIAMS. It is a standard decided by the President on the recommendation of the emergency board as to whether the Government should move, and it would also be subject to judicial review as it was in the steel case.

Mr. DINGELL. Thank you, sir.

Mr. JARMAN. Mr. Skubitz.

Mr. SKUBITZ. No questions.

Mr. JARMAN. If there are no further questions, Mr. Williams, we appreciate your helping us make the record on this important subject.

Mr. WILLIAMS. Again my thanks to the committee and I think we have had an interesting and productive discussion.

Mr. JARMAN. Thank you.

Our next witness is Mr. C. L. Dennis, international president, Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes, with an office in Washington. Mr. Dennis, it is a pleasure to welcome you.

Mr. KUYKENDALL. May I say, Mr. Chairman, particularly when there is not a strike on.

STATEMENT OF C. L. DENNIS, INTERNATIONAL PRESIDENT, BROTHERHOOD OF RAILWAY, AIRLINE & STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS & STATION EMPLOYES; ACCOMPANIED BY JAMES HIGHSAW, JR., COUNSEL

Mr. DENNIS. My name is C. L. Dennis, international president, Mr. Chairman and members of the committee, of the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes and Mr. James Highsaw, Jr., is our attorney, and he will be with me here today. I was originally elected to this position at the 1963 convention of the Brotherhood and reelected at the 1967 and 1971 conventions. The brotherhood is the duly designated representative of approximately 200,000 employees of railroads, airlines, and express companies in the United States subject to the provisions of the Railway Labor Act.

In addition, the brotherhood represents railroad and airline employees in Canada as well as other transportation employees in the United States subject to the provisions of the National Labor Relations Act. I have had the privilege of appearing before this subcommittee on many occasions to discuss with you our common problems. My present appearance is probably the most important of these occasions since you have before you proposals from the administration and others which, in our opinion, would effectively destroy collective bargaining and the rights of employees.

As you are well aware, the labor relations of the railroads and airlines of this country are presently governed by the provisions of the Railway Labor Act. The statute was originally enacted in 1926 and has been amended by the Congress from time to time with respect to particular problems. Major amendments occurred first in 1934 when Congress set up the system of resolving employee grievances and disputes concerning the interpretation and application of collective bargaining agreements by the National Railroad Adjustment Board. In 1951 the statute was again amended to authorize agreements containing union security provisions. Finally, in 1966 the Adjustment Board provisions were amended to make them more equitable to the employees and to provide for public law boards to take some of the grievance workload off the National Railroad Adjustment Board. The legislation now before you proposes major amendments to the statute to deal with disputes concerning the making and revision of collective bargaining agreements.

There is before you, H.R. 3596, which is the bill submitted by the administration to deal with these subjects and H.R. 3595, which is the legislation submitted at the request of the railroad brotherhoods.

There are also before you bills by Congressman Harvey and a number of other individuals to which I shall address myself.

It is my understanding that I have been preceded before this committee by other representatives of railroad and/or airline employees and that it has been made clear to you that these unions are united in opposition to the administration's proposals contained in H.R. 3596, as well as in other legislation before you containing similar proposals, and in their support of the alternative proposals contained in H.R. 3595. I can affirm to you that such are the views of this brotherhood and its more than 200,000 members.

Since the legislation before you is primarily directed at labor disputes arising under the Railway Laobr Act and indeed have arisen in large measure out of experiences of recent years with respect to those disputes. I think it would be useful in understanding the proposals to first briefly review the existing provisions.

The principal purpose of the Railway Labor Act set forth in the original 1926 act and carried through to the present time is to provide for prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions, and to avoid any interruption to commerce, or to the operation of any carrier engaged therein. To this end, Congress placed a duty upon all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements. This duty lies at the heart of the Railway Labor Act.

The remainder of the act with respect to collective bargaining is designed to provide a framework within which reasonable efforts will result in a settlement of all disputes. Thus, the act prohibits a carrier from making any changes in collective bargaining agreements except in accordance with the provisions of the act or in accordance with the provisions of an agreement. Any proposed changes must be served upon the other party in writing and conferences must promptly begin with respect to such proposals. Now, if this were done, you would have a different picture today than what you have; but conferences are not immediately held as intended by the act and the efforts are not put forth to settle disputes. If the parties are unable to agree in such conferences, either party may invoke the mediation services of the National Mediation Board which is then required to mediate the dispute. If the Mediation Board is unsuccessful in its efforts the mandatory procedures of the act have been exhausted. However, if the dispute threatens to interrupt interstate commerce to such an extent as to deprive any section of the country of essential transportation service, the President may appoint an emergency board to investigate the dispute and report thereon. Once the procedures of the act are invoked, the parties are required to maintain the status quo until all mandatory procedures are exhausted. In cases where an emergency board is appointed the status quo must be maintained for 30 days after such board makes its report.

This scheme contains no provision for compulsory settlement in any guise. The policy of this act is one of good faith collective bargaining with the right of employees to withdraw their services or strike after mandatory provisions of the act have been exhausted and an equal right of carriers to put into effect their proposed changes once the mandatory provisions have been exhausted. It is the policy of the

Congress which the proposals before you from both the administration and the Harvey bills would change. These bills would destroy the right of the employee, whereas the proposals supported by the brotherhoods in H.R. 3595 seek to limit the adverse economic effects of strikes in cases where the mandatory procedures of the act have been exhausted without a solution of the dispute. This brotherhood, as well as the other transportation unions, recognize that developments of the last decade have given rise to a situation in which it is desirable to make some changes with respect to the rights of parties to take unilateral action where the mandatory provisions of the statute have been exhausted. However, the brotherhood and the other unions do not believe that any situation exists calling for a complete destruction of their right to strike because no matter in what kind of garment it is clothed, such destruction means the end of effective collective bargaining and the substitution of settlements by some type of governmental fiat.

Such an approach to problems of our country is contrary to the basic principles of a democratic society and constitutes an admission that such principles will not work. This seems at first blush to be an easy solution. Experience, however, has clearly shown that this is a pure illusion.

First, let us take a look at what the administration bill H.R. 3595 specifically proposes. This proposed legislation, which is applicable to airlines, the maritime industry, the longshore industry, trucking, as well as railroads, would repeal the provisions of the Railway Labor Act relating to mediation, voluntary arbitration, and emergency board investigations and reports. It would substitute instead essentially the present procedures of the Labor-Management Relations Act, as amended, to which are added additional features. If negotiations fail to produce a settlement and a strike is threatened, the Federal Government would be able to obtain an injunction for a so-called 80-day cooling-off period. The act would thus extend the principle of the cooling-off period to industries under the Railway Labor Act to which it has not heretofore been applicable. Such has not been necessary because the structure of the act provides a lengthy period of negotiation. If the dispute is not settled during this period of time the administration proposal would give the President the option of invoking any one of three procedures as follows:

First, the President could direct the parties to maintain the status quo for an additional specified period of not more than 30 days during which time the parties would continue to bargain and there would be continued mediation by a board of inquiry and the Federal Mediation and Conciliation Service.

Second, the President could appoint a special board of three members to determine whether and under what conditions a partial strike could be conducted in lieu of a nationwide strike without imperiling the national health and safety. If such board determines that a partial strike can take place, it shall issue an order specifying the extent and conditions of partial operation that must be maintained. The board's order is subject to court review by the Federal district court granting the original 80-day cooling-off period injunction to determine whether or not it is arbitrary or capricious. The board is required to issue its order no later than 30 days from the date of its appointment unless

the parties shall agree to an extension. The proposed bill also provides extensive rules for the conduct of a formal hearing before the board.

Third, the President may direct each party to submit a final offer to the Secretary of Labor within 3 days. Each party may at the same time submit one alternative final offer. If any party does not submit such final offer, the last offer made by it during the bargaining shall be deemed its final offer.

These final offers are to be transmitted to each party and the parties are required to bargain collectively for an additional 5 days thereafter with the Secretary of Labor acting as mediator. If a settlement is not reached during this 5-day period, the parties may within 2 days select a three-member panel to select one of the final offers as the settlement of the dispute. In the absence of agreement on the composition of the panel, the President may appoint the panel. Provision is also made for the conduct of a hearing by the panel during an additional 30-day period after which the panel will select one of the officers as a settlement of the dispute.

The President is not required to choose one of the three options. He may simply make recommendations to the Congress. Finally, either House of Congress may reject the option chosen by the President. Thus the proposal does not by any means relieve the Congress of the burden of becoming involved in recurrent disputes.

It could be argued at first glance that the proposed legislation is not an effort to impose a compulsory governmental engineered settlement but provides a reasonable group of options for the President to exercise to induce settlement. However, I submit to you that such an analysis is not realistic.

In my opinion, the reality is that the only one of the options in which this administration or any other administration so oriented is interested is the third option, with the ultimate threat of a forced settlement. The first option of an additional status quo period of 30 days is highly unlikely to be invoked by an administration because the argument is that the present procedures which provide a much longer period for negotiations have not been successful. I also in all honesty cannot say that I envisage any administration invoking the section option.

No, gentlemen, these supposed alternates are pure window dressing for the third option which it can reasonably be expected will be imposed upon the employees in every instance.

It is difficult to perceive a proposal more unfair to the interests of the working man of this country. Upon the basis of past experience, the three-member panel provided by the third option to select either the so-called final offer of the employees or of the employers as the settlement of the dispute would be appointed by the President. Such panel like any other public office filled by the President will reflect the orientation and thinking of the President and of the administration involved and what is more important, regardless of political label, will reflect the basic economic orientation of our country.

The economic organization of this country is based upon profit motive and it is our experience that this fact makes it an impossibility, except in rare instances, to pick a panel to decide a labor question in terms of "impartality." The so-called impartial or public members of such a panel are most likely to be individuals whose family background, education, and associations have been such that when it comes

to a show down between profits on one hand and the right of a working man to a fair and decent wage, the working man will come in last. Such individuals can only understand with feeling the arguments of the working man and even where an honest effort is made to consider his arguments, it is done only in a cold, intellectual vacuum.

I do not mean by this statement to suggest that every emergency board that has been appointed in the past and that every panel of any sort ever appointed by the Government is biased and prejudiced. That is not the case. Nor is what I have just said true with respect to the arbitration of grievances under well-established rules. This is a narrow function. On the other hand a panel exercising the power conferred by option 3 is in effect deciding broad issues of public policy. My point is that as a matter of general tendency such a panel cannot decide with complete justice to the working man. This situation is accentuated in the administration bill before you because although this bill sets forth several factors which the panel may take into account, the panel is not required to consider these factors and in substance has a free hand to do as it wants.

In addition, anyone who thinks that such a bill will produce effective collective bargaining with a final offer from the employer which could be deemed to be fair and equitable to the employees has not, in my opinion, experienced the grinding mill of labor negotiations. In the case of carriers subject to the Railway Labor Act, problems have arisen in large measure because of the refusal of the carriers to engage in meaningful and realistic collective bargaining. It is this factor which largely explains any failures under the Railway Labor Act. This has in no small degree been the result of the failure of the principal railroad officers to join with their counterparts in the unions in the bargaining process. For example, the recent dispute of the United Transportation Union with the railroads was not settled until the railroad presidents became personally involved—a suggestion which I made to the President when the representatives of railroad labor met with him while this dispute was still in progress. I see no incentive in option 3 for the carriers to engage in the type of bargaining that would produce a reasonable result. It is my opinion that the creation of a Government-imposed solution, which is what the carriers have always sought, will simply mean more of their past strategy. What is needed in this situation to create effective collective bargaining and the solution of disputes is not more Government intervention but less Government intervention.

The proposals of this administration would almost certainly result in an erosion of wage rates, rules, and working conditions of employees. In too many cases, if not all cases, a panel appointed by the President to consider final offers would be confronted with a final offer from the carriers which would almost certainly be unrealistic. Because of what I have already said about the makeup of such panels, the carriers will not be incurring much risk by refusing to make a reasonable offer. There is no reason to suppose that their offers would be any more reasonable than in emergency board hearings. It would be the employees who could not run the risk. Thereafter, the chances of a panel appointed by the President, because of the inherent predilections of its members and the political background of its choice imposing an unrealistic final offer of the carriers would be very great indeed.

Moreover, although the administration bill purports to expedite negotiations, it is actually so cumbersome that it would simply impose delays upon delays in the settlement of collective bargaining disputes. Even if a President by some chance should choose to adopt the second option of appointing a board to determine whether a partial strike could be conducted, the decision of such a board would follow only after a proceeding highly judicial in nature and expensive to the employees, which would turn a public policy problem into an exercise of technical procedures.

Finally, based upon past experience, it is likely that in the further event that such a board should determine that a partial strike could be conducted, the carriers would not accept such decision without exercising the right of court review provided by the proposed bill. Thus, the carriers could obtain restraining orders pending court review which could go on indefinitely. This provision of the bill would, in substance, substitute the judgment of courts as to whether a partial strike should be conducted, a matter which is improper for judicial inquiry, and which the courts are not fitted to properly perform. This legislation is so designed that the second option is an illusion even if a President should purport to adopt it.

Therefore, the administration bill, in the name of dealing with so-called strike emergencies, would simply sell the employee down the river. No employee or self-respecting representative of employees could support such a proposal.

Before concluding my statement on the administration bill, I should also like to place before you my strong objections to the provisions of that bill which would substitute private arbitration for the settlement of disputes concerning the interpretation or application of agreements in place of the settlement of such disputes by the National Railroad Adjustment Board. Such a change would impose enormous financial burdens on unions and will nullify the great advance made by the Congress when it amended the Railway Labor Act to establish the adjustment board procedures.

To the extent that the Board is overburdened, the 1966 amendments authorizing public law Boards has alleviated the burden. The administration proposal would seriously impair the employee's right to a decision of his grievances.

RELATED LEGISLATIVE PROPOSALS INCLUDING BILLS INTRODUCED BY CONGRESSMAN HARVEY AND OTHERS

There are also before this subcommittee a number of other proposals which adopt in one form or another the administration proposal. All of these are subject to the objections I have placed before you.

At this point, I would also like to discuss the proposal sponsored by Congressman Harvey and others which has been thought by some to strike a compromise between the views of the unions and those of the administration. I do not agree.

This legislation would superimpose upon the Railway Labor Act the grant of options to the President of an additional cooling off period, the conduct of a selective strike—with partial operation of a struck carrier or carriers under defined circumstances—and the selection of a final offer from one of the parties by a panel chosen by the President if the parties cannot agree on the makeup of such a panel.

The President may proceed under these options in such order as he may deem appropriate, except that he must initially opt for a selective strike unless he finds that national health and welfare would thereby be immediately imperiled. Such a strike involves not more than two carriers or groups in a region with aggregate revenue ton-miles not exceeding 20 percent of the total revenue ton-miles transported by all carriers in the region.

On the surface, this bill appears to authorize selective strikes although more severely limited than proposed by the organizations. However, the President, acting entirely on the basis of an uncontrolled administrative decision, can bypass the selective strike and proceed directly to the final offer option. Moreover, there is no limitation to keep the President from proceeding to a final-offer option at any time, even 1 hour, after initially proceeding under the selective strike procedure. Indeed, section 304 permits him to do so.

Thus, the obstacles to the final-offer option are no more real than they are under the administration bill. The employee can have no genuine expectation that he will wind up with anything but the final-offer procedure under either the Harvey bills or the administration bill. Thus, the end result will be the same although the path of the employee to the final crossroad is slightly different. Once there, the employee can only expect the same treatment. Both the administration bill and the Harvey bills simply provide for the determination of wages, rates, and working conditions by edict, no matter how they are sliced.

BROTHERHOOD SUPPORTED PROPOSALS

While opposing the administration bill and similar legislative proposals, this brotherhood recognizes that some change must be made in the present situation. As a consequence of court decisions applying the Railway Labor Act, almost all wage and rule movements on the Nation's railroads have in recent years produced the threat of a nationwide railroad strike, giving rise to a situation in which Congress has intervened three times during the decade of the 1960's. The Federal courts have held that where there is a history of collective bargaining on a nationwide basis with respect to a particular subject matter, then collective bargaining must be performed with all of the railroads as a group. Within this framework, practically all wage and rule movements are handled upon a nationwide basis. Once the mandatory procedures of the statute have been exhausted without a settlement of a collective bargaining dispute, there is a confrontation between the employees on the one hand and the whole group of rail carriers upon the other.

However, this brotherhood does not believe that it is necessary to destroy the only effective weapon the employee has to insure good faith bargaining on the part of the carrier—that is, the right to strike—in order to prevent those effects of a strike which in our present economic organization can be said to have adverse effects. This brotherhood, along with the other transportation unions, therefore, support H.R. 3595, which is designe dto alleviate the impact of a strike without destroying the right to strike.

The substance of this proposed legislation is that where the mandatory procedures of the act have been exhausted, the employees may

conduct either a selective strike against one or a small number of carriers, or a broader strike which shall, however, be only a partial strike. Subsection (d) of the proposed legislation defines the maximum limits of what may be called a selective strike so that it would not exceed three carriers or 40 percent of the revenue ton-miles in a region.

The Federal courts within the past year have recognized the validity of a selective strike under the existing Railway Labor Act provisions. However, that decision does not place any limitations on the number of carriers that can be struck. Its only limit is that there be adequate notice of the strike to each carrier involved and that the purpose of the selective strike be to accomplish an overall agreement with all of the carriers involved in the bargaining. Thus, the proposals of the labor organizations with respect to a selective strike already have received judicial confirmation and the present legislation simply spells out the conditions under which such a strike may be conducted. Although this brotherhood was not involved, the application of the selective strike principal in the dispute last summer between the United Transportation Union and the Nation's railroads brought about a settlement of the dispute without the adverse effects of a nationwide railroad strike and without the need of congressional intervention.

Although this brotherhood supports the principle of selective strike, as set forth in H.R. 3595, it is the belief of the organization that the provisions of the proposed legislation authorizing a partial strike against all of the carriers involved in the dispute is a preferable means of protecting the right to strike while at the same time insuring the continuation of essential transportation services.

This proposal would provide very simply that the transportation requirements for the protection of the national safety or health, including, but not limited to, the transportation of defense materials, coal for electricity, and the continued operation of commuter and other passenger trains must be met. The determination of these requirements would be left to the Department of Transportation after consultation with the Secretary of Defense and the Secretary of Labor. These limitations would operate both with respect to a selective strike or an across-the-board partial strike. Thus, the employees would be required, in essence, to provide such transportation services as are essential. Railroads say, as they have in the past, that the partial-strike principle is impossible of practical application. However, this contention must be considered in terms of the railroads' desire for an elimination of the employees' right to strike, while this brotherhood, and the other railroad labor organizations, are willing to attempt to work out with the Congress a reasonable compromise between the needs to protect the employees in collective bargaining and the public needs reflected in continued rail operations.

The legislation proposed by the transportation unions also does not seek to eliminate the right of carrier action to put into effect its own proposed changes in collective bargaining agreements following exhaustion of the mandatory procedures of the Railway Labor Act. This right of the carrier is made subject to only two exceptions:

First, if the changes proposed by the carrier are in response to or in anticipation of proposals made by a union, the carrier would not be permitted to put its proposals into effect unilaterally unless it were struck by the union. This exception is essential to insure the carriers

cannot convert a limited or selective strike into a national strike by the simple expedient of putting into effect unacceptable work rules or other changes. This is precisely what the railroads attempted to do in the recent dispute with the United Transportation Union and were unsuccessful only because of the restraint shown by the employees. Second, a carrier would not be permitted to unilaterally put into effect its own provisions if the latter is not permitted by other provisions of the Railway Labor Act. This exception is necessary to preserve existing law.

Subsection (d) also makes it clear that a carrier cannot shut down its services and lock out its employees on account of a labor dispute. It seems to this brotherhood that a lockout is inconsistent with the carriers' obligation to serve the public with essential transportation and with the right of the crafts or classes of employees with whom there is no dispute to continue to work.

The provisions of subsection (d) also insure that carriers cannot, in effect, escalate a selective or partial strike into a national emergency shutdown in order to pave the way for the seeking of intervention by the Congress. The limitation is necessary in order to assure that a selective strike may be localized or that essential partial operation of the carriers will be maintained in the event of a broader strike.

In addition to the proposals contained in H.R. 3595, this brotherhood believes that the Congress should give serious consideration to an alternative to any kind of a strike by authorizing the President of the United States to take possession and control and operate the rail transportation system or systems involved in an unadjusted labor dispute. This brotherhood has drafted such legislation, the language and structure of which follow essentially that of Executive Order No. 10155, issued by the President on August 29, 1950 (15 F.R. 5785), to take over and operate the Nation's railroads, the continued operation of which was then threatened by a pending rail dispute. A copy of the brotherhood's proposal is attached hereto as appendix A.

The proposed legislation provides an alternative to a strike by authorizing the President of the United States to take possession and control and operate the rail transportation system or systems involved in an unadjusted labor dispute. The bill would authorize the President to act through or with such public or private instrumentalities or persons as he may designate and to delegate his authority.

The bill would authorize the President to utilize the existing managements of any railroad system taken over pursuant to the legislation to continue uninterrupted rail transportation service. The bill also provides for the continued operation of railroads taken over in the usual and ordinary course of business, including the collection and disbursement of funds and the meeting of obligations except that the collection and disbursement of funds shall be for account of the United States. The operation of a transportation system taken over pursuant to the bill would be performed under the terms and conditions of employment embodied in collective bargaining agreements in effect upon the date possession and control is taken.

The unique feature of the bill is the provision for the settlement of the labor dispute giving rise to the taking over of the operations by the President. If such dispute is not settled by agreement between the parties within 30 days after the President has taken over the operation,

the President may provide for the arbitration of the dispute by a panel of three arbitrators, and their decision shall be final and binding upon the parties pending an agreement between them. The possession, control, and operation of any transportation system taken pursuant to the bill shall not be terminated by the President until an agreement is reached between the railroads involved and the employees with respect to the labor dispute.

These provisions are designed to provide a strong incentive to both carriers and employees to engage in meaningful collective bargaining. On the side of the railroads, this incentive arises out of the fact that in the absence of an agreement, the President may take possession, control, and operation of the railroad for the account of the United States and continue such operation until agreement is reached. The bill also provides an incentive to the employees to reach agreement by means of its arbitration provisions which will impose a settlement upon the employees for an indeterminate period until agreement is reached. Thus, both sides to a labor dispute are faced with uncertain risks which must necessarily impel them toward meaningful collective bargaining rather than just the employee under the other proposals I have opposed.

In recognition of the constitutional prohibitions against confiscation of property, the bill provides for the payment of just compensation to any rail transportation system taken pursuant thereto. The amount of this compensation is to be determined by the President. If the amount so determined is not satisfactory to the railroad involved, 75 percent shall be paid to the railroad, which will then have the operation of suing for the remainder of any claim for just compensation which it may have in the U.S. Court of Claims.

It is respectfully submitted that there is a real need for such an alternative proposal. This could easily be incorporated as an alternative for the President along with the other provisions of H.R. 3595. The very existence of such an option would certainly provide a strong incentive to the railroad managements to engage in good faith bargaining which, as I have previously said, is the real crux of our common problem. The issue of unresolved disputes and the right to strike would take care of itself if such an incentive existed. There is no reason in equity and justice why Presidential options should be designed to pressure employee representatives while leaving the railroad managements free to pursue their own obdurate course.

I hope I didn't take too much time, Mr. Chairman.

Mr. DINGELL (presiding). Thank you. We have finished precisely then, at 12 o'clock. I assume you want the suggested legislation included in the record, and, without objection, that is so ordered.

(Appendix A referred to follows:)

APPENDIX A

A BILL To amend the Railway Labor Act to avoid interruptions of railroad transportation that threaten national safety and health by reason of labor disputes and for other purposes:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

1. That Section 10 of the Railway Labor Act (U.S.C. Tit. 45, Sec. 160) is hereby amended by inserting after "Section 10." the subsection designation "First.". Said Section 10 is further amended by adding at the end thereof the following:

"Second. As an alternative to a strike of employees against all or substantially all of the nation's railroads in a dispute in which the mandatory procedures of this Act have been exhausted without settlement of the dispute, the President of the United States may take possession and control and operate the transportation system or systems owned or operated by a rail carrier or rail carriers involved in a dispute concerning proposed changes in rates of pay, rules, or working conditions, but such possession and control shall be limited to real and personal property and other assets used or useful in connection with the operation of the transportation system or systems of said rail carrier or rail carriers.

"(a) The President may operate or arrange for the operation of any transportation system which may be taken under this subsection in such manner as he deems necessary to assure to the fullest possible extent continuous and uninterrupted rail transportation service.

"(b) In carrying out the provisions of this subsection, the President may act through or with such public or private instrumentalities or persons as he may designate or may delegate such of his authority as he may deem necessary or desirable. The President may issue such general and special orders, rules and regulations as may be necessary and appropriate for carrying out the provisions and accomplishing the purposes of this subsection.

"(c) The President may permit the management of a rail carrier whose transportation system may be taken pursuant to this subsection to continue managerial functions to the maximum degree possible consistent with the purposes of this subsection. The boards of directors, trustees, receivers, officers, and employees of such rail carrier shall continue the operation of the said transportation system, including the collection and disbursement of funds thereof, in the usual and ordinary course of business of the rail carrier, in the name of the rail carrier and by means of any agency, association, or other instrumentality now utilized by the rail carrier in accordance with appropriate orders or regulations issued by the President. However, all collection and disbursement of funds shall be for account of the United States.

"(d) Except as the President may from time to time otherwise determine and provide by appropriate order or regulation, existing contracts and agreements to which a rail carrier whose transportation system has been taken under this subsection, is a party, shall remain in full force and effect. Nothing in this subsection shall have the effect of suspending or releasing any obligation owed to any rail carrier affected hereby and all payments shall be made by the persons obligated to the rail carrier to which they are or may become due. Except as the President may otherwise direct, there shall be made in due course payments of principal, interest, sinking funds, and other distributions upon bonds, debentures, and other obligations; and expenditures may be made for other ordinary corporate purposes. However, no payments of dividends on stock shall be made during the period that a rail carrier is in the possession and control of the United States pursuant to the provisions of this subsection.

"(e) The operation of a transportation system taken hereunder shall be in conformity with all Federal and State laws, Executive Orders, local ordinances, and rules and regulations issued pursuant to such laws, Executive Orders, and ordinances.

"(f) Except with the prior written consent of the President, no receivership, reorganization, or similar proceeding affecting any rail carrier whose transportation system has been taken pursuant to this subsection shall be instituted; and no attachment by process, garnishment, execution or otherwise shall be levied on or against any of the real or personal property or other assets of any such rail carrier during the period of such possession and control by the United States; provided that nothing herein shall prevent or require approval by the President of any action authorized or required by any interlocutory or final decree of any United States court in any reorganization proceedings now pending under the Bankruptcy Acts or in any equity receivership cases now pending.

"(g) The transportation system of any rail carrier taken pursuant to this subsection shall be managed and operated under the terms and conditions of employment, including rates of pay, rules, and working conditions embodied in agreements between the rail carrier involved and representatives of such employees in effect upon the date possession and control of such transportation system is taken pursuant to this subsection.

"(h) If the dispute concerning proposed changes in any such agreement or agreements which gave rise to the assumption of possession and control of a transportation system or systems pursuant to this subsection is not settled by

agreement between the parties involved within thirty days after a taking hereunder, the President may provide for arbitration of said dispute by a panel of three arbitrators appointed by the President, one of which shall be a representative of the employees involved, one a representative of the rail carrier or rail carriers involved, and one a neutral representative. Such arbitration shall be final and binding upon the parties pending agreement between the parties settling the dispute which gave rise to the assumption of possession and control pursuant to this subsection.

"(i) Possession, control and operation of any transportation system or systems or of any real or personal property taken pursuant to this subsection shall be terminated by the President when and not before an agreement is reached between the rail carrier or rail carriers and the employees involved in the dispute which gave rise to the assumption of possession and control.

"(j) The United States shall pay just compensation to any rail carrier or rail carriers whose transportation system, real or personal property, is taken pursuant to this subsection for such possession, control and operation to be determined by the President. If the amount so determined is unsatisfactory to the rail carrier involved, seventy-five percent (75%) shall be paid to such rail carrier and the rail carrier may sue for the remainder of any claimed just compensation in the United States Court of Claims.

"2. This Act shall take effect immediately upon its enactment and the legality of any action taken thereafter shall be governed by the Railway Labor Act as amended hereby regardless of when such action was initiated."

Mr. DINGELL. Mr. Harvey?

Mr. HARVEY. Thank you, Mr. Chairman.

Mr. Dennis, on page 13 of your statement, where you discuss the bill that I introduced, in the second paragraph you state, and I quote: "The employee can have no genuine expectation that he will wind up with anything but the final offer procedure under either the Harvey bills or the administration bill."

Now, I differ with the statement. I would point out to you that even in your own statement, on the page preceding that, you point out that under the Harvey bill the President, and I quote again, "The President may proceed under these options in such order as he may deem appropriate except he must initially opt for a selective strike unless he finds the national health and welfare would be immediately imperiled."

Mr. DENNIS. I follow you.

Mr. HARVEY. It was our intention here that the right of selective strike in these instances would be guaranteed to organized labor. Not only that, but labor would have it as its immediate alternative. It does not seem to me that your statement is fair and accurate in that regard.

Mr. DENNIS. I believe you arrive at the same crossroads, I think, that, well, it says, "Moreover, there is no limitation to keep the President from proceeding to a final offer option at any time, even one hour afterwards."

Mr. HARVEY. I say to you that the language is in the RLA at the present time and the language we put in our bill is right from the RLA. We are not trying to give the President any special power here whatsoever that he does not have at the present time.

Let me say to you that we are setting forth a remedy for selective strikes and permitting labor to go into it. It is true that our definitions are a little different than those of H.R. 3595. You permit three carriers in any region and 40 percent of the revenue ton-miles; we say 2 and 20 percent, but nevertheless, it is, of course, a degree in the definition of selective strike.

My question to you is this, isn't the selective strike one of the remedies that organized labor wants?

Mr. DENNIS. The selective strike, or the courts have said we have the right to selective strikes. I don't think selective strikes are the real answer. I think a partial strike with hauling the essential materials that are needed would be much fairer across the board. You know, with selective strikes, the big railroads that are operating may pay to the railroad that are shut down millions of dollars through their mutual aid pact, which they have, and I don't think that selective strikes are the real answer if you want to bring about real collective bargaining at the bargaining table.

Mr. HARVEY. Maybe I misunderstood. Doesn't H.R. 3595 authorize selective strikes almost in the same way as my bill does, but with different degrees?

Mr. DENNIS. Selective strikes, yes; and it also provides for partial strikes.

Mr. HARVEY. For that matter, it provides for a complete nationwide strike.

Mr. DENNIS. Well, partial strike is when you operate all carriers and haul the essential materials. That is foodstuffs and coal and passengers and on every railroad. This would not provide for nationwide total strike. Nobody wants to close the cities down. Mr. Luna and I both testified before the Senate and this committee that we did not want to ever close down the Nation or stop the big powerplants or force the cities to go without coal or heat or any essential materials. We would haul them all on all railroads in a partial strike.

In a selective strike, you strike two or three properties and you try to bring the necessary heat on to settle your national issues.

Mr. HARVEY. And H.R. 3595, which you advocate, would authorize those selective strikes.

Mr. DENNIS. We are asking for either the selective strike or partial strike or a Government seizure of the roads. I think you arrive, well, I agree that you take a little different route, but I think you arrive at the same crossroads and this is what the President is going to do, he is not going to mess around with all of these other options, he is going to go right to the three-man panel and try to get rid of the thing, and there you have compulsory arbitration.

Mr. HARVEY. The difficulty is that H.R. 3595 itself provides no remedy beyond the selective strike or the national strike. You want to call it "partial operation" but the way I read the bottom of page 2 and the top of page 3 of that bill, it will authorize a national strike.

But it provides nothing beyond that. And if the parties are not in agreement at that point, then what is the alternatives? There is no alternative provided in that bill, and I gather that your alternative would be the one suggested in the bill you submitted here, that alternative is seizure.

Mr. DENNIS. No, Mr. Congressman; there really is no alternative for a true collective bargaining, and that is what the RLA was based on and that is what all labor laws are based on. There must be real collective bargaining and when the President of the United States asks me in a conference in the White House along with a lot of other labor representatives "How do we settle these disputes?" I said, "You involve the railroad presidents and then you have the top man at the table when a strike is imminent—and I bet you then get the dispute settled." This was before the UTU strike had occurred and it

was after we settled our case in February 1971. We had settled on February 25 and the UTU took the same settlement we took, the same pattern on wages and on wage steps.

But they had a few more involved rules. We had some rules involved, too. We had two crafts to put together, clerks and telegraphers.

We are in the process of doing it now. We are living up to our part of the agreement we made. It was a big long agreement, you know, on February 25, but now we get hit with the wage freeze and we have a 5-percent increase due October 1 and I don't know whether we are going to get it or not. I don't know what the President's second phase policy is going to be. But we have lived up to our bargain. We have put these crafts together.

We have saved the carrier millions of dollars. But these wage increases are spread out so that they only averaged about 5½ percent a year. That is all the average cost to the carrier was, 5½ percent a year, but still as to our 5-percent increase for October 1, it is highly questionable as to whether we will get it.

Well, it is this kind of thing.

Mr. HARVEY. Are you suggesting that regional bargaining may be better for unions than national bargaining?

Mr. DENNIS. No, I am not.

Mr. HARVEY. You didn't have it in mind when you suggested that the railroad president sit down and discuss it?

Mr. DENNIS. No, I think that the presidents are capable of selecting a committee and that is how they settled the UTU strike after the Y. & N. were signed up. The president got it signed and then the Southern president and the assignee of the Southern Pacific and Penn Central's man, Mr. Moore, had set down with Luna and finally settled the dispute. The presidents of the railroads have to become involved when a strike is imminent or a strike is going on.

Now, why wait until it is going on? They should sit down when it is real collective bargaining, and real collective bargaining contemplates involving top officers of unions and railroad companies.

Mr. HARVEY. I have not had a chance to look at the most recent bill you suggested here to the committee, but I will look at it very carefully.

Mr. DENNIS. I thank you.

Mr. HARVEY. I have this view, and that is H.R. 3595 does not solve the problem. I don't believe that the simple suggestion of a selective strike or a national strike as a solution will ever work, and I do believe there has to be some procedure over and above selective strikes when you reach the point, as we did in August of this year, of coming within a whisker of having the Congress again intervene to settle the UTU strike.

There has to be, then, some machinery, some apparatus, and I certainly would invite your participation and suggestions as to what that apparatus should be. There is no doubt in my mind that there will be a time when either the selective strike or the national strike, will have such consequences that neither the public, nor President, nor Congress will tolerate it regardless of which political party may be in power. At that point machinery may be installed. It may or may not be at that time to the liking of your members.

Mr. DENNIS. Congressman, our reputation, I think, has been that we are not a strike-happy organization, and we try to involve the top officers of the railroads and we have been trying to do that.

We have been meeting with the presidents of the railroads to try to get together on the issues long before you get to the point of a strike. We were negotiating with certain people in the transportation industry at the time the factfinding board was meeting and taking evidence, and we had a proposal which came within a whisker of settling the thing a year before and it should have been settled a year before, that is a year before, when the factfinding board was meeting, and they had met on all of the organizations at the same time. That is UTU and others.

So with just a little help from a few railroad presidents, at that time we would have had a settlement. The settlement would have been no different than it was in the final analysis. It would have been roughly the same thing.

So, a year's time, a strike on some railroads was suffered, and it could have all been avoided with real, true, down-to-earth collective bargaining.

Now, there is no substitute for collective bargaining and good-faith bargaining is going to be the salvation of the railroad industry if it can be established again.

We are trying to do that with the railroad presidents. There is going to be a pretty sizable change in the railroad bargaining team, and I believe that the future may hold a little different situation, and I don't see why, when we have this situation.

Now, you are going to have all of the railroad unions winding up at the same time and this was partially due to the persistent attitude of Bill Usery, the Assistant Secretary of Labor, and I think I helped to encourage him and helped among the labor unions to establish the thought that we should all wind up at the same time as that the public should not have to suffer a railroad strike every 6 months or every year. We should all wind up our contracts at the same time and this is going to be the situation. We have a few little tag ends yet, the signalmen and shopcrafts to be settled.

But I am sure that that will be a great step forward when you have all railroad unions contracts terminating at the same time and it will eliminate much of this trouble that Congress has been confronted with.

Mr. HARVEY. I am sure that is true, but looking at it from the standpoint of one who sits on the committee, I am reminded of the divorce practice I used to do years ago. It was my feeling then that there was seldom a divorce that was not the fault of both of the parties. The same thing can be true, in my judgment, of the efforts of collective bargaining in the transportation industry; that it is not all one way or not all the other.

I know you can speak with real feeling and so can management come forth and speak with real feeling, but I say the public is not going to tolerate it and it may not be tomorrow or the year after, and maybe it won't be until July 1, 1973, but the public will demand a solution that will remove this area from the consequences that they have felt in years in the past. There is no doubt in my mind about that at all.

I do not know whether that solution will be to your liking at that time.

I have no further questions.

Mr. DINGELL. Mr. Kuykendall?

Mr. KUYKENDALL. Mr. Dennis, I am going to read to you about eight little one-liners that all have something in common:

Management likes to bring disputes to Congress.

Labor is for featherbedding.

Management will not bargain in good faith.

Labor has been willing to sacrifice proper way for archaic work rules.

Management will accept any outside panels.

Labor will not accept any outside panels.

The UTU strike was settled only because of the fear of legislation from Congress.

Now, I think you can see what all those have in common. They are all charges that have been made back and forth before the committee in the last few weeks. I think you can also see that this committee can't accept any of them in toto. I don't think the people that made the statement meant that they be accepted literally. So I read those to you to kind of indicate what kind of a struggle that we in the committee have. How many deadlines do we have facing us in the next year, about three or four, don't we? October 1 is one, and I believe there is another.

Mr. DENNIS. October 1 and November 13 will be another deadline if something is not done.

Mr. KUYKENDALL. I am talking about just the normal situation.

If, by some miracle, orderly collective bargaining was resumed, and was successful, such as the August thing finally was successful, I don't know of any other way that you can completely diffuse the pressures from the general public being placed on this committee to do something.

Mr. DENNIS. Mr. Congressman, we have meetings with a group of railroad presidents who represent the entire industry and that is seven: Claytor, Moore, Bailey of Union Pacific, and Johnson of Illinois Central, and Moore of the Penn Central, and the President of the Norfolk & Western and we meet these fellows about every 2 months and they tell us of legislation and they tell us of all of their problems and at the last meeting about 2 weeks ago I told them of this problem on the wage/price freeze and it looked like our 5-percent increase to be effective October 1 was frozen, and I would have to write a brief to the Economic Preparedness Council and ask them to join.

I said: "You fellows know we worked out an agreement and spread this money out in steps, we have changed the rules, which you had requested, and will you join me?"

Mr. Claytor of the Southern Railroad spoke up and said: "Les, we thought you might bring this question up. We can tell you while we don't think we should join you we will write a letter simultaneously with you writing a letter or brief and will tell the Economic Preparedness Committee that we have reached an agreement with the brotherhoods and we are willing, able, and want to comply."

Now, we have, or we continually try to work out our problems with the top people in the railroad industry and I never do quit and these fellows are all human and I think you can get a problem settled with a president of a railroad a lot easier than with a director of personnel.

Mr. KUYKENDALL. I think what you have spelled out here, is awfully gratifying to hear, but I think what you spelled out here is that maybe a situation where either fear, if you want to call it that, or desire for survival, or whatever you wish to call it, has caused both parties maybe to get quite realistic.

Now, let me make an observation, and you might want to comment on this. I have seen some indication in the last year from the labor unions, or presidents of different brotherhoods or representatives or legislative people, and I think there is something in one of your statements to indicate this as well as I remember, I can't remember if it was you or somebody else that said it, but that the railroad brotherhoods are beginning to concentrate more on having the best unions in the country instead of the biggest. I think that bodes well for the industry and when I say "industry" I mean all of you.

I am getting the feeling that there is a turn toward this, and I hope there is.

Do you have anything to say to that?

Mr. DENNIS. I think you put your finger on it.

Mr. KUYKENDALL. In other words, the charges that have gone on for 50 years, I don't care how founded they are, but those charges are real by the people that make them, that you people have been willing to sacrifice pay and welfare of your employees for the sake of keeping the size of your union up, and I hope if that has any basis in the past that it won't in the future.

Mr. DENNIS. We have never stood in the way of progress and we have accepted economic changes and we have accepted automation and accepted technological changes, reorganizational changes, and I testified before the ICC in behalf of the C. & N.W. where they are trying, or they say the employees are trying to buy the C. & N.W. from Mr. Hindeman of Northwest Industries, but the fact of the matter is that management is heading the movment and I guess they are considered employees under the Railway Labor Act but we have faith and confidence in this group of management people and we think that they could operate the railroad if it breaks loose from the large conglomerate. We think they could be a real railroad and we want to help them to be one.

That has been our policy down through the years, and I believe you put your finger on it. The size of our unions have gone down in the railroad industry. This is a problem we are confronted with in the Railroad Retirement Act. We have a problem there on the Commission appointed by President Nixon studying the Railroad Retirement Act? The problem is that simply the number of employees in the industry are shrinking and the number of people taking pensions are increasing and whereas in social security it is the opposite, the number at the base is expanding.

Mr. KUYKENDALL. You know, this committee, incidentally, created the Commission that you are on.

Mr. DENNIS. Yes.

Mr. KUYKENDALL. And I was not aware you were on it and I am pleased you are.

Mr. DENNIS. I guess we will recommend something to you at about July of 1972, but we have about 28 or 30 college professors and economists over there now delving into it.

Mr. KUYKENDALL. That may be too many to get an answer from it.

Mr. DENNIS. Yes; that is probably right.

Mr. KUYKENDALL. Mr. Dennis, I want to ask you a question and you can either say, "I would rather not answer," or you can respond; or, in other words, try to help us in some way.

There has not been a single witness from management, labor, bar association, chamber of commerce, or anybody else that has not sat there and said that the idea of a national emergency, national transportation strike, is now gone, I mean, that it is out of the question. Your legislation recognizes that in the partial strike proposal, and so forth.

So, everybody has come to that conclusion. That is that the people, the President, Congress will not tolerate a national strike.

I have said this to practically every witness, and I think your people will verify that, that the testimony will verify it, and so I will tell you here this: the one thing that this committee, or the two things that this committee are probably going to have to have if legislation ever comes out of this are these: No. 1 is a method and maybe this is all part of the same package, but some sort of finality in case of a national emergency that will not allow the legislation to be dumped back into the Congress' hands.

I would sincerely ask you and your group, no matter how distasteful the thought may be to you, and you can do it privately if you wish, and convey it to us privately, if you wish, but give this some thought, that is as to any original idea, and please don't kick around the old ideas, an idea of a finality method that will cause collective bargaining. I ask you to do it and it does not call for an answer right now.

Mr. DENNIS. Thank you.

Mr. DINGELL. Mr. Skubitz?

Mr. SKUBITZ. Mr. Dennis, if I understand you correctly, you accuse management of not sitting around the table and bargaining in good faith.

Mr. DENNIS. Right.

Mr. SKUBITZ. You suggest that the presidents of the railroads and leaders of labor unions do the bargaining, is this correct?

Mr. DENNIS. I think this should be done when both lawyers representing management and the presidents of unions—because I always sit in our negotiations—and our lawyers have broken off and a strike is imminent, then I think it is time for the presidents of all railroads and the presidents of the unions to get around the table and they do get around the table when they want legislation.

Mr. SKUBITZ. What you are saying is that to get down to real bargaining you have to get the presidents on one side of the table and labor unions on the other.

Mr. DENNIS. Yes.

Mr. SKUBITZ. I want to clear up another point. Once an agreement is reached at the bargaining table, shouldn't that be binding on the railroads and on the brotherhoods?

Mr. DENNIS. Yes; once the agreement is reached.

Mr. SKUBITZ. Once the agreement is reached, why don't——

Mr. DENNIS. Well, once the agreement is reached, then the only people who interpret are arbitrators at First, Third, Second Division of the National Railroad Adjustment Board.

Mr. SKUBITZ. Don't you agree that once an agreement is reached between labor leaders and the presidents, that it should be binding? Why should you go back to your brotherhood and ask for approval any more than the railroad president should turn to the stockholder and get their approval.

Mr. DENNIS. I have never signed an agreement in my life that we didn't get ratified. I don't believe in ratification. I think that the Railway Labor Act, as written, never intended for ratification.

I take the responsibility of representing my union, my people, and I know what they need and want and if I am not big enough to make an agreement and live up to it, then I don't belong there at the bargaining table.

Mr. SKUBITZ. I am glad to hear you say that. You agree with my point of view, then?

Mr. DENNIS. I agree with your point of view.

Mr. SKUBITZ. Once an agreement is reached between you as president of your labor unions and management, it should be final and not necessary to go back to the membership.

Mr. DENNIS. Absolutely, I agree with that.

Mr. SKUBITZ. All right. Thank you.

Now, you charge that any panel that is selected by the President would probably be weighted on the side of management. Would your position be different if there was a Democrat President in the White House?

Mr. DENNIS. I think I say in there "regardless of party or political" and I think I say it right in the statement.

Mr. SKUBITZ. It is not necessary to reread your statement, just restate your position.

Mr. DENNIS. Regardless of political labels; yes.

Mr. SKUBITZ. Thank you.

Do you feel that the National Labor Relations Board today is weighted on the side of management.

Mr. DENNIS. Well, the National Relations Board. I am not too familiar with it. You see, we function under the National Mediation Board and National Railway Adjustment Board and we don't go to the National Labor Relations Board.

Mr. SKUBITZ. I understand, but I thought you might be familiar with the operation.

Mr. DENNIS. We have some members that come under the National Labor Relations Board problems to answer your question truthfully, and I have not had a sufficient amount of experience with the National Labor Relations Board problems to answer your question truthfully, Congressman.

Mr. SKUBITZ. I have one more question.

On page 16 of your testimony, you indicate, that you favor selective strikes, but you also agree that selective strikes should not stop the shipment of goods that are necessary to the national health or safety or defense of this country.

Mr. DENNIS. Right.

Mr. SKUBITZ. Then, you agree that the determination of these requirements to meet the Safety of the country should be determined, by the Department of Defense, is that correct?

Mr. DENNIS. By, I think, the Department of Transportation.

Mr. SKUBITZ. Department of Transportation, Department of Defense, and Secretary of Labor.

Mr. DENNIS. Yes.

Mr. SKUBITZ. Don't you agree the three most important cabinet officers that deal with national health; namely, Department of Agriculture for the shipment of milk, foods, and the Department of Health which deals with the real health of the Nation should be included? Would you be willing to accept the addition of these agencies?

Mr. DENNIS. I am sure we would. We felt that the Department of Transportation and the Department of Defense—we would be willing to go along.

Mr. SKUBITZ. The Department of Defense deals with safety, but we are also talking about health of people and food——

Mr. DENNIS. I agree. I think it would be only proper and fitting that they should be included.

Mr. SKUBITZ. I wish we had more time to go into this.

Mr. DENNIS. I always kind of admired your questions, and I think you ask some realistic down-to-earth questions. I have enjoyed appearing before this committee. I don't like to run to Congress with problems but instead prefer to settle them across the conference table, and I think Mr. Hiltz, if he were here, would probably agree with that remark, that I do make an effort to settle our problems across the conference table. You see, a hired negotiator's hands are somewhat tied when he is sitting across the table, but when you have the president's who are responsible for their railroads sitting over there, this is the way you eliminate and avoid a strike action.

Now, if we can settle with Mr. Hiltz or his successor, whoever he may be, this is by far the preferable course to follow.

I might say that for about 6 months or 8 months during the delay period, there were no negotiations with anybody because we were held up pending the settlement of some other disputes in the industry.

Mr. SKUBITZ. I am glad that you would accept the other agencies because I see a problem. I was thinking both management and labor was ignoring or misunderstood this, that we have gotten away from a society that is scattered in every which direction and our society and people are getting so closely knitted together today that what is done by any little segment of society, transportation, agriculture, coal mining, or anything else, affects the whole picture.

You stop if you stop coal, you stop electric, and perhaps all industry and if the coal miners go on strike we have the same situation. So I think both management and labor are going to have to look at this whole problem with broader aspects as to how it affects the whole Nation rather than affecting their own particular interests.

Mr. DENNIS. I think you have always got to put yourself in the other fellow's shoes, and I have tried to do that since I was a freight handler. I have been in quite a few different shoes over the years. I think that responsible management and responsible labor leaders can settle their disputes. Fellows like Lou Mink, of Burlington Northern Railroad, I don't have too much trouble with him, and we work out our agreements covering mergers and job protection for the people because he will sit down and tell you what he will and will not do and that is it.

Mr. SKUBITZ. You made one statement that it is so hard sometimes to try to negotiate with a public relations officer and I have run into that myself.

Mr. DINGELL. Mr. Dennis, we thank you for your very helpful testimony. It is always a pleasure to have you before us. If there is no further business to come before the committee at this time, we stand adjourned until 10 o'clock tomorrow.

(Whereupon, at 12:30 p.m., the subcommittee adjourned, to reconvene at 10 a.m., Wednesday, September 29, 1971.)

SETTLEMENT OF LABOR-MANAGEMENT DISPUTES IN TRANSPORTATION

WEDNESDAY, SEPTEMBER 29, 1971

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

The subcommittee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. John Jarman (chairman), presiding.

Mr. JARMAN. The subcommittee will please be in order as we continue hearings on legislative proposals for the settlement of transportation labor disputes.

Our first witness this morning is Mr. Andrew J. Biemiller, legislative director, AFL–CIO, with headquarters here in Washington. Mr. Biemiller, please proceed.

STATEMENT OF ANDREW J. BIEMILLER, LEGISLATIVE DIRECTOR, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL–CIO); ACCOMPANIED BY THOMAS E. HARRIS, ASSOCIATE GENERAL COUNSEL

Mr. BIEMILLER. Thank you, Mr. Chairman. For the record, my name is Andrew J. Biemiller, legislative director of the American Federation of Labor and Congress of Industrial Organizations, and I appear here on its behalf. Accompanying me is Thomas E. Harris, our associate general counsel.

Last February the AFL–CIO executive council adopted a statement with regard to the administration's antistrike bill, H.R. 3596, and the alternative proposed by Chairman Staggers, that is, H.R. 3595. In brief, the AFL–CIO supports H.R. 3595 and opposes H.R. 3596. We also oppose H.R. 9989. I ask that the statement of the AFL–CIO executive council which is appended to my testimony be incorporated in the record as a part of it

Mr. JARMAN. It will be received.

Mr. BIEMILLER. Thank you.

In my testimony I will deal only with the general issues with regard to emergency disputes posed by the bills and not with the proposed revisions of the Railway Labor Act embodied in title II of H.R. 3596. That is a highly specialized subject which I will leave to the experts who will speak for the railroad brotherhoods. The AFL–CIO fully supports their position in opposition to title II.

To begin with, we are rather bewildered at the peculiar coverage of the administration bill, H.R. 3596. It would apply not only to labor disputes involving railroads and airlines but as well to "maritime," "longshore," and "trucking," none of which is further defined.

In view of the unfortunately small percentage of shipments that are carried in American-flag ships and of the further unfortunate fact that the Supreme Court has ruled that the Taft-Hartley Act does not apply to American-owned "flag-of-convenience" ships, it is quite apparent that no maritime strike is going to create a "national emergency" under the administration bill.

While the inclusion of the longshore industry in the administration bill is not as completely frivolous as the inclusion of maritime, it is nevertheless somewhat surprising. Mr. George Shultz, when he was Secretary of Labor, sponsored a detailed study of past longshore strikes and concluded that there had been "minimal" economic damage from these strikes and that their effects had been much exaggerated by prior administrations.

The inclusion of "trucking" in the administration bill seems as flighty as the inclusion of "maritime." I have no commision to speak for the Teamsters Union, but any one with the slightest information on the subject knows that no administration has ever found it necessary to invoke the present Taft-Hartley 80-day injunction provisions in the trucking industry. What, then, can be the justification for proposing more stringent emergency procedures for that particular industry?

The spokesmen for the Rail Carriers apparently agree with those for the railroad brotherhoods that railway labor relations should continue to be regulated by special legislation, as has been the case since 1926, rather than by the Taft-Hartley Act. We concur.

As regards substance, the administration bill would add three new alternatives to the present 80-day injunction. These alternatives, of which the President could choose one, but only one, are: (1) an additional 30-day injunction; (2) a procedure whereby a board appointed by the President could authorize a partial strike or lockout; and (3) a new variation of compulsory arbitration entitled "final offer selection," under which the union and the employer would each submit a final offer and one alternative final offer, and an arbitration panel would choose one offer without change or modification.

The proposal for an additional 30-day injunction is too trivial to warrant comment.

As respects the second branch of the administration proposal, unions have long urged that emergency strike bans under Taft-Hartley should be no broader than necessary to safeguard the national health or safety and that partial or selective strikes should be permitted where the national health or safety does not require a total strike ban. H.R. 3595, the Staggers bill, which we support, confirms the right of unions to engage in selective strikes, as defined in the bill, but gives the Secretary of Commerce power to require that operations on struck lines be maintained to the extent necessary to the national health or safety.

However, the proposal of the administration bill in this regard is not satisfactory. It leaves it up to the President and his appointees to decide whether to have a total strike ban or to permit a partial or

selective strike, and the industry involved will always be able to persuade them that anything less than a total strike ban is impossible or impractical or unprofitable for the industry. We have had 24 years' experience to that effect under the present Taft-Hartley provisions. It would be perfectly possible, under the existing provisions, for the Government to seek an 80-day injunction banning a strike only as to those portions of a struck industry whose continued operation was essential to the national health or safety, and unions have repeatedly urged both the executive branch of the Government and the courts to limit national emergency strike injunctions accordingly.

In every instance, however, the industry has been able to persuade the administration to opt for a total strike ban, and the Supreme Court has held that, under the statute, that is a matter within the discretion of the executive branch. (*United Steelworkers of America* v. *United States*, 361 U.S. 39.) The administration bill makes it evident that the same result, that is, a total strike ban, would always obtain under it, for it explicitly states:

> *Provided*, That, in no event, shall the order of the board place a greater economic burden on any party than that which a total cessation of operations would impose.

The testimony of the Rail Carriers has already made it quite clear that, in their view, no limited or partial strike should ever be permissible in their industry under this provision.

As respects the third branch of the administration proposal, that is, final offer selection, we are as much opposed to that as we are to any other form of compulsory arbitration, and we do not care whether it be labeled final offer selection or mediation to finality or what not.

We are likewise opposed to H.R. 9989, the Jarman bill. It provides not only for final offer selection but for the final and binding arbitration with no window dressing of any sort.

We are opposed to compulsory arbitration because we believe that collective bargaining can and should be preserved and restored to full effectiveness in the railroad industry. That means that the right to strike must be preserved and restored, for collective bargaining cannot operate with full effectiveness unless the right to strike exists as a possible last resort. It is the contemplation of this ultimate test of economic strength or, sometimes, the test itself, that induces the parties to reach agreement. Some measure of collective bargaining is possible even where the strike is forbidden and the final resort is to compulsory arbitration or to Congress, but any impairment of the right to strike likewise impairs the effectiveness of collective bargaining. One party or the other is likely to calculate that compulsory arbitration will work to its advantage, and that means no real collective bargaining.

For this reason we are also opposed to H.R. 9089, the Harvey bill, although we recognize that it is substantially less objectionable than H.R. 3596 or H.R. 9899. The Harvey bill amends the Railway Labor Act rather than bringing rail and air carriers under the Taft-Hartley national emergency provisions, and, as we have stated, we consider that the better approach. Moreover, it provides for selective strikes and does not contain the proviso in the administration's bill that such a strike may not place a greater economic burden on any party than total cessation would impose. It thus has a real rather than a sham provision for selective strikes.

However, while the Harvey bill does require that the President proceed first with the selective strike alternative unless he finds that the national health and safety would be immediately impaired, the bill does contain, as a third alternative, the final offer selection provision drawn from the administration bill. As we have stated, we regard this simply as a form of compulsory arbitration and are opposed to it.

As we see it and as the railroad brotherhoods see it, the rail carriers have undermined collective bargaining by undermining the right to strike. The Congress views a nationwide strike stoppage as unacceptable, and the carriers have succeeded in recent years in transforming their labor disputes into industrywide shutdowns in order to insure the intervention of Congress. The carriers have done this in two ways. When the railroad unions have sought to engage in selective strikes so as to minimize the impact on the public and the likelihood of congressional intervention, the rail carriers have gone into court and secured injunctions prohibiting the unions from striking at all unless they strike nationwide. A decision of the U.S. Court of Appeals for the District of Columbia last spring finally vindicated the right of the unions to engage in selective strikes in at least some circumstances, but we believe that the Staggers bill, H.R. 3595, is nevertheless needed to settle that issue once and for all, and to define with precision the exact reach of the selective strikes which are to be sanctioned.

The other device by which the rail carriers have transformed disputes into nationwide shutdowns so as to secure congressional intervention is by proposing harsh and retrogressive changes in working conditions whenever they are faced with or anticipate union demands. Then, after the procedures described by the Railway Labor Act have been exhausted, the carriers unilaterally put these proposals into effect simply for the purpose of provoking a nationwide shutdown. The Staggers bill would outlaw this tactic also.

We believe that once the possibility of selective strikes is effectively guaranteed, the carriers and the unions will have the incentive to settle their disputes through collective bargaining. Certainly we think that this proposal should be tried before resort is had to increased Government compulsion, as contemplated by the administration bill and some of the other bills before the committee.

I note that in his testimony before this committee, Mr. Stephen Ailes, the president of the Association of American Railroads, expressed his opposition to permitting selective strikes and cited the UTU's strike this summer as demonstrating their perniciousness. On the other hand, Mr. John P. Hillz, Jr., the chairman of the National Railway Labor Congress, who accompanied Mr. Ailes, said that there are situations where a strike should be permitted and that "the Florida East Coast Railway strike is a good example." In that instance, as the committee no doubt knows, the railroad, aided by illegal State court injunctions, has succeeded in operating in the face of the strike. Evidently it is the view of the carriers that a selective strike is all right as long as it is unsuccessful. We are for collective bargaining and the right to strike, win or lose.

I have not commented on some of the other bills before the committee, but I believe that our view of them will be quite evident from this statement of our general policy.

I thank the committee for this opportunity to appear.

(The statement of the AFL–CIO executive council, referred to, follows:)

STATEMENT BY THE AFL–CIO EXECUTIVE COUNCIL ON THE RAIL ANTISTRIKE BILL, BAL HARBOUR, FLA., FEBRUARY 18, 1971

The Administration has once more sent to Congress the anti-strike, so-called "Emergency Public Interest Protection Act." The bill is exactly the same as last year.

We opposed it then and we oppose it now.

Railroads and airlines, now covered by special legislation tailored to those industries, would be brought under the coverage of the national emergency provisions of the Taft-Hartley Act. The Administration proposal would add three new emergency antistrike procedures to the 80-day injunctions now provided by Taft-Hartley, and the new procedures would apply to maritime, longshore, and trucking as well as to railroads and airlines.

The three new devices which would be added to the 80-day injunction are (1) an additional 30-day injunction (2) an authorization for partial operation only, such as moving essential goods, and (3) a new variation of compulsory arbitration, entitled "Final Offer Selection," under which the union and the employer would each make a final offer, and an arbitration panel would choose one or the other without change or modification.

The labor relations of rail carriers and airlines have, since 1926, been regulated by special legislation applicable only to those industries, and never by the Labor-Management Relations Act. We think that the considerations which have led Congres to deal separately with these industries still obtain; and while we agree, as detailed below, that revisions are needed in the Railway Labor Act, we flatly oppose compulsory arbitration of contract terms, no matter how novel the disguise.

We see no justification, either, for imposing special emergency procedures on the maritime, longshore and trucking industries. Certainly no maritime strike would warrant even the invocation of the present Taft-Hartley provisions. The inclusion of the longshoring industry for special treatment is likewise curious, inasmuch as a study sponsored by former Secretary Shultz concluded that there had been "minimal" economic damage from past longshore strikes, and that their effects had been much exaggereated. And we are at a complete loss as to why it is proposed to subject trucking labor relations to special coercive procedures, for no Administration has ever found it necessary even to seek an 80-day Taft-Hartley injunction in that industry.

As respects the Railway Labor Act, we believe that the so-called crises, which have in recent years several times lead to Congressional intervention, are solely attributable to the fact that the carriers have succeeded in blocking through the courts every attempt at a selective or partial strike, thus transforming every impasse into a nationwide strike or lockout. They have done this obviously and deliberately to provoke Congressional intervention.

We believe that the soundest solution is to revise the Railway Labor Act to make it clear that unions have the legal right to strike a particular carrier or carriers; and that the railroads have no right to transform these limited disputes into nationwide strikes or lockouts. We also favor allowing the government to require limited operation of struck lines to insure the continued movement of passenger trains and essential commodities. Legislation along these lines has been introduced by Senator Williams and Congressman Staggers, and it has our support.

We do not support any proposal for compulsory arbitration of contract terms in private industry, even under such a euphemistic label as "Final Offer Selection" or "Mediation to Finality." It is a violation of the basic principles of democracy to compel employees in private industry to work on terms which are imposed on them by the government.

If the time has come when rail workers are no longer to be viewed as citizens employed by private industry and are denied the right to strike, then the Congress should immediately move to nationalize the nation's railroads.

We believe that if the railroad workers are nationalized, then the companies must be nationalized.

In sum, we believe:

1. The so-called rail crisis have been deliberately provoked by management to insure governmental intervention denying workers their rights as free men.

2. Amendment of the law, as we have suggested, to permit selective or partial strikes, would end the artificially created national emergencies.

3. If this alternative is not adopted, then complete nationalization of rails must take place.

Mr. JARMAN. Mr. Biemiller, we appreciate the succinct statement of your organization's position on these legislative proposals. Mr. Murphy.

Mr. MURPHY. Thank you, Mr. Chairman. I also want to congratulate Mr. Biemiller on a very comprehensive statement in this regard and also for pointing out that longshore and trucking industries would also be included under certain provisions that this committee is now considering.

Mr. Biemiller, in 1963, the House Merchant Marine Committee considered for 8 months legislation that required compulsory arbitration in the maritime idustry, and, as I recall, the committee felt that they should table that proposal because it just did not have the tools and it was not the approach that would bring about economic resolution of the labor industry problem in that area.

I am sure the committee will carefully consider including these other industries under this legislation that we are considering at this time. I certainly appreciate your statement, and, of course, we are looking forward to the other witnesses that we will hear. Thank you, Mr. Chairman.

Mr. JARMAN. Mr. Harvey.

Mr. HARVEY. Thank you, Mr. Chairman. Mr. Biemiller, we welcome you here this morning. I wish to thank you for a very thoughtful statement. I have been trying to find out the answer to one question with regard to H.R. 3595, the Staggers bill. I ask, first of all: Do you have a copy of that in front of you, by chance, sir?

Well, maybe I can ask the question without your looking at it.

Mr. BIEMILLER. Our counsel has it.

Mr. HARVEY. Let me ask: Do you feel that the language of H.R. 3595 would permit both selective strikes and a national strike as well?

Mr. BIEMILLER. Mr. Harris.

Mr. HARRIS. No, I don't think it does permit a national strike. It leaves the law where it is on that.

Mr. HARVEY. We have had a sharp difference of opinion. We had Mr. Hickey with us the other day, and I asked the same question of Mr. Hickey, and I will repeat it for you and give you what he said.

I said:

Let me interrupt you here, and I hate to interrupt, but time is short. H.R. 3595 seeks to define a selective strike, but then it would permit a national strike without question, isn't that correct?

Mr. Hickey answered:

That is correct.

Again I asked the question yesterday and got a different answer.

May I refer you to the bill in front of you, to the language at the bottom of page 2 of the Staggers bill. This is the bottom of page 38 of the committee print.

It says, at the bottom of page 38, and reading the last sentence:

The employees represented by such representatives may strike subject to the limitations and obligations of partial operation imposed by subsection (e) of this section.

Subsection (e) is at the bottom of the page, and it provides for the Secretary of Transportation and other Secretaries to get together and decide what sort of partial operation they should have. It has nothing to do with the type of strike you can have or anything of the sort, so it is no limitation whatsoever.

To go on, it says:

> They may strike all of the carriers to whom such proposal was directed or selectively strike any of such carriers or carrier systems without concurrently striking other carriers to whom such proposal was directed.

Now you are a lawyer and I am a lawyer—but the way I read it, that would permit not only selective strikes as defined in H.R. 3595, but permit anything up to and including a national strike as well. Isn't that correct?

Mr. HARRIS. That is my reading of it, yes.

Mr. HARVEY. You would understand it the same way?

Mr. HARRIS. I agree with you, sir, and with Mr. Hickey.

Mr. HARVEY. Well, let me ask Mr. Biemiller this question: If this is the case and we are going to permit anything up to and including a national strike in H.R. 3595, why do we go about bothering to define what a selective strike is?

Mr. BIEMILLER. Because of the fact, first of all, that when the bill was introduced, the courts had ruled constantly that no selective strike was possible legally and that, secondly, notwithstanding the decision of this year, we still are of the opinion we would like to have statutory authority for selective strikes, which, we think, are obviously more tolerable to the Congress and to the people at large than the so-called general strike would be.

The Congress has also made it clear they are going to fight general strikes in the industry.

Mr. HARVEY. I am on your side in this respect, for I happen to believe Congress should define selective strikes so you know in what area you can legitimately operate. I also feel they will serve as a valuable weapon.

It is meaningless to define them in the fashion they are defined in H.R. 3595. However, as any three carriers in any region, and up to 40 percent of the revenue ton-miles, if the unions can still conduct a national strike we contradict the definition already inserted in the bill.

Mr. HARRIS. There are several purposes that the definition would nevertheless serve. The court of appeals decision in the UTU case did not give the unions unlimited right to engage in selective strikes. It put on certain restrictions, such as that the selective strike must be seeking a nationwide solution where there was a history of nationwide bargaining.

That makes the legality of the strike depend to some extent on the way the union formulates its proposals or conducts its collective bargaining. The Staggers bill, I think, would get away from that.

Also, the court of appeals decision—and I should say that the Supreme Court denied review—leaves in doubt the right of the railways, right of the carriers, to lockout. That subject is dealt with in the Staggers bill.

The court of appeals decision suggests that where the unions engage in a selective strike, the carriers may be entitled to engage in a nation-

wide lockout in response. The Staggers bill, as I understand it, would make it clear that they do not have that right.

Also, the Staggers bill deals with when and under what circumstances the carriers could unilaterally put their proposals into effect; and, as Mr. Biemiller's testimony indicated, they have historically used counterproposals as one way of forcing a nationwide strike and thus producing congressional intervention; so that the definition of selective strikes does have a bearing on all of those issues.

Mr. HARVEY. What you say is that H.R. 3595 was drafted with a view of correcting the situation brought about by the court decisions; is that correct?

Mr. HARRIS. No; I think the court decision gives us substantial relief, and it was the carriers, not the unions, that asked the Supreme Court to review it. But I think the Staggers bill would clarify some areas left in doubt by the court decision.

Mr. HARVEY. Let me ask you this question, or again of Mr. Biemiller here: Are the unions willing to accept a definition of selective strikes and live with that definition and abandon their right to a national strike?

Mr. BIEMILLER. No, the bill does not say we would abandon the right to a national strike. If you look at the resolution passed by the AFL–CIO Executive Council in February of this year, you will note we say: If you are going to completely deny the right of a national strike, it is then time to nationalize the railroads; if you are going to nationalize rail labor, you might as well nationalize the entire industry.

What we are asking for is a clarification of the right of the selective strike as a weapon in collective bargaining.

Mr. HARVEY. Again, you say you are not willing to abandon the right and you cite the AFL–CIO resolution, but again I am confused, because, when Mr. Hickey was here a few days ago, he told us—and I quote him—that a national strike was "impractical," and he said it was a "futility."

All it seems to leave is a legal right which may or may not be exercised. Therefore I wonder why we don't match the law with the facts and have a definition of "selective strike." I think you have a rightful claim to that definition, as I said here many times. You very properly should know in what area you can exercise it or cannot exercise it.

But it seems to me you should be willing to, as I say, match the law with the facts. Do you care to comment on that, Mr. Biemiller?

Mr. BIEMILLER. Mr. Harris will comment on that.

Mr. HARRIS. Well, I think that while the Staggers bill does leave the law unchanged as respects nationwide strikes, the unions are well aware, if they are involved in such a strike, that there is a history of congressional intervention in those situations.

Mr. HARVEY. Well, that is what I was going to get to next. What we are concerned with here, those of us who believe the Staggers bill has some merit as well as those that don't believe it has any merit at all, is what do we do after the limits of a selective strike even under the Staggers bill are exceeded? This happened in the UTU strike. What do you recommend at that point?

Mr. HARRIS. As the statement indicates, we believe that something like the Staggers bill would restore vitality to collective bargaining. If something like that is activated, we do not anticipate any nationwide shutdowns.

Mr. HARVEY. I don't think that is a fair answer, and I will say, as a matter of history, in August of this year I pointed out to this committee and on the floor of the House how the strikes that had been called at that time exceeded not only the limits of selective strike in the bill I introduced but also vastly exceeded it in the bill that Mr. Staggers had introduced; I can say to you, you came within a whisker of having intervention at that time. I can tell you that I was at the White House. They had prepared a statement and it was coming into Congress in a matter of days or hours. It would have asked intervention by Congress. That is what we are trying to get away from.

I say this because we would appreciate whatever contribution you can make in answer to this question.

Mr. HARRIS. Of course, nothing like the definition in the Staggers bill was the law at that time, and if that is passed, it seems it will put unions under considerable compulsion to observe the definition of "selective strikes" in the bill. If they don't, they will certainly act with the knowledge that what you say is so, that the White House and the Congress are going to move into the situation.

Mr. HARVEY. But then we have not improved ourselves, have we?

Mr. HARRIS. Yes, you have improved yourselves, because, by making clear the right to engage in selective strikes by taking from the railroads the right to respond with a nationwide lockout and so on, you greatly increase the likelihood that collective bargaining will operate to solve the problems, and you greatly increase the likelihood you won't face this nationwide shutdown problem.

Mr. HARVEY. What if the unions do exceed, as they did in August, the limits of the national strike. Instead of affecting only 40 percent of the revenue ton-miles in a district, they affect 60 percent. Even if they affect 60 percent as they did in late August, they have not violated a law, because the Staggers bill says they can conduct a national strike if they want to.

Mr. HARRIS. At that point, the carriers will be free to respond with a nationwide lockout and the matter no doubt will be put back before Congress. What we are saying is, we believe that the Staggers bill will revive collective bargaining, that it will avoid putting these matters back before Congress and that we think that some effort to preserve and revivify collective bargaining should be made rather than move to some scheme of Government and compulsion—compulsory arbitration or something like that.

Mr. HARVEY. Well, you have not enumerated any scheme other than nationalization of the railroads. I can't believe in every dispute we get into that the Government should have to step in and either nationalize or seize the railroads. There should be some other mechanism.

Mr. HARRIS. We propose nationalization as a possible alternative to compulsory arbitration. We were not proposing that as a solution for particular disputes.

Mr. HARVEY. You are not recommending, then, seizure as one of the alternatives in any particular case?

Mr. HARRIS. No. The council's statement does not make that proposal.

Mr. HARVEY. I recognize Mr. Biemiller's statement did not enumerate that as one of the alternatives, but it has been recommended here in the past, and I wondered if it was your recommendation also.

Mr. BIEMILLER. It is not a part of the council's statement.

Mr. HARVEY. I congratulate you on a fine statement, much of which I am in accord with. I am disappointed however, and I want you to know it. You people have some of the finest minds in the country today. If you could put some of these minds to work, there could be something given to this Congress, some means or mechanism of solving the disputes when they exceed the limits of the selective strike as defined. We need something that will not throw it back in the laps of Congress, because we don't want it.

Mr. BIEMILLER. Nor do we.

Mr. JARMAN. Mr. Metcalfe.

Mr. METCALFE. Thank you, Mr. Chairman. I would like to delve into an area you did not cover, and from the statements you made in answer to my colleague, I am concerned about what was the rationale involved when you drew up this very fine position paper, stated so succinctly, and which addressed itself to the various bills. Were you concerned about the recent strikes and the possibility of additional strikes and the possibility for a national strike, or were you concerned about proposing legislation so that we may be able to find a solution to this problem so that every year or every Congress we won't be confronted with it?

I know that you answered Congressman Harvey that that was not a part of the statement. I am cognizant of the fact that I am going beyond the statement, but at the same time, I am curious to know to what levels were you directing your recommendation and your analysis of the present major bills that are before us.

Mr. BIEMILLER. Mr. Congressman——

Mr. METCALFE. Did you understand the question, Mr. Biemiller?

Mr. BIEMILLER. I am afraid I don't.

Mr. METCALFE. Let me say succinctly, were you thinking about immediate solutions to our present problems or were you thinking about long-range answers to the problems so we are not confronted with this every 2 years or every session of the Congress?

Mr. HARRIS. We are thinking about a long-range solution. It is our hope and belief that the Staggers bill would provide one by getting the parties back into collective bargaining and giving them an incentive to settle their own disputes without Government intervention.

We do urge the Congress to make this further effort to restore collective bargaining before it considers anything else.

Mr. METCALFE. You say, "before it considers anything else," and you are assuming that it might consider and that this is not the end in and of itself?

Mr. HARRIS. If it works, it is the end. If it passes and works, as we think it will, it will be the end.

Mr. METCALFE. Well, it still leaves an area for us to be concerned about. Thank you very much, and thank you, Mr. Chairman.

Mr. JARMAN. Mr. Kuykendall.

Mr. KUYKENDALL. It is good to have you, gentlemen. That is one thing about it, sir; we have to make them work.

Mr. Biemiller, roughly how many different unions do you represent here on the Hill?

Mr. BIEMILLER. You mean the AFL–CIO? About 125.

Mr. KUYKENDALL. Would you give me your own quite off the top of the head feeling about why national transportation is different from a national manufacturing operation like the automobile industry or something like that? Representatives of both management and labor have expressed their belief in there being a different set of circumstances. Please give me your feeling as to why national transportation is a different situation as regards labor than a national manufacturer, let us say.

Mr. HARRIS. Well, that is a matter of long history. When the Railway Labor Act was passed in the mid-twenties, the industry was already organized and the bill was very largely a product of agreement.

Mr. KUYKENDALL. Will you yield right here, sir?

Mr. HARRIS. Yes.

Mr. KUYKENDALL. I am sorry I didn't make myself clear. This is not a lawyer question, and I don't want it answered by a lawyer. I want to know why the industries are different, not the labor-management relationship; I am not interested in the Railway Labor Act, because it is in the record many times in the last 6 weeks, but I want to know the difference in the industry itself that makes it different.

Mr. HARRIS. That is what I am going to tell you, if I may.

Mr. KUYKENDALL. All right.

Mr. HARRIS. As I started to say, the bill was a product of agreement between the two sides. It did not, therefore, deal with the problems of organizing and very little with the problems of defining bargaining units. What it was concerned with and is still concerned with is two things. One is the resolution of grievances.

Mr. KUYKENDALL. Sir, that is not what I am interested in hearing. I know all of that. I want to know what is the difference in manufacturing and transportation and its effect on the American people, not effect on management and labor—the effect on the American people. How are they different?

Mr. HARRIS. They are different in that they have a long and different history of labor relations.

Mr. KUYKENDALL. I am not talking about labor relations but about the consumer. Why are they different? You can't stockpile services from a railroad, can you?

Mr. HARRIS. You can't what?

Mr. KUYKENDALL. You can't stockpile services from a railroad, can you?

Mr. HARRIS. Sometimes, to some extent.

Mr. KUYKENDALL. Very little, particularly not truck lines and things like that. You can stockpile automobiles and steel, but nobody on this committee or any other committee would even consider discussing legislation to prevent a national strike in autos, steel, or aluminum industries; it has never even been discussed.

Mr. HARRIS. I don't know what you mean by that. The national emergency provisions of Taft-Hartley have been invoked.

Mr. KUYKENDALL. And when it is all over, they can have a national strike?

Mr. HARRIS. At the end of the 80-day injunction, the President makes a report to Congress.

Mr. KUYKENDALL. Yes, and they can have a national strike?

Mr. HARRIS. Yes, if Congress does not stop it.

Mr. KUYKENDALL. There has never been discussion about Congress stopping a national auto strike that you know of?

Mr. HARRIS. No. But there has never been a national auto strike, either. That may be the reason.

Mr. KUYKENDALL. All right, even if there were, because the American public is not affected to the extent that it is a national transportation strike?

Mr. HARRIS. Well, the last time the steel strike was in the Supreme Court, the Court debated the issue of whether the impact on the national economy was sufficient reason to invoke the national emergency provisions.

If you had a nationwide auto strike, you might have the same question.

Mr. KUYKENDALL. But that has not been discussed here. That is primarily because, is it not true, that in a transportation strike, the outside parties involved—in other words, the public, which we are primarily responsible for—have been generally affected a long time before either party in the strike is affected?

Mr. HARRIS. I don't know about that. I would say that a man who depends on his weekly paycheck to survive is affected quite quickly when he goes on strike.

Mr. KUYKENDALL. It is not true that in the railroad industry the ones that get unemployment compensation while they are out on strike—that, in many cases, both management and labor are covered with income during a strike?

Mr. HARRIS. That provision, I believe, was adopted as part of a way of preventing wildcat strikes, which had been something of a problem in the railroad industry.

Mr. KUYKENDALL. I know about this, but I say this: Isn't it true that in a railroad strike that both management and labor have considered income during that strike?

Mr. HARRIS. Well, I am not familiar with what the management strike insurance or mutual aid provisions may be. I know there are some——

Mr. KUYKENDALL. Yes, there are some.

Mr. HARRIS. In Eastern Airlines. I am not familiar with the details.

Mr. KUYKENDALL. And the level of that income, sir, is such that the impact on the parties is delayed somewhat, but the impact on the general public is not delayed?

Mr. HARRIS. I would say that that is not true. The impact on the general public obviously is delayed, and it obviously gives us this situation: There will be variances according to the particular situation and locality.

Mr. KUYKENDALL. I would like a debate between you and the lettuce growers in California to see how much delay there is and effect on the general public. They testify here, too.

Mr. HARRIS. Yes; and if they testify about a strike of the farmworkers, they would tell you the impact on that was immediate and disastrous.

Mr. KUYKENDALL. But they had control over that. What I am leading up to is this——

Mr. HARRIS. Well, they don't have control if the strike is successful; then the workers have control.

Mr. KUYKENDALL. They can give in any time they want to. They can settle any time they want to. They can give them what they want and settle it tomorrow. Can't they, any time they want to, so they have control. They may not have control over the settlement, but they can sure stop the strike any time they want to surrender. And management can always do that, and so can labor.

But what we are looking for here, the industry bill, the Jarman bill gives management a gun to point right at you, but it does not give you a gun. The Staggers bill gives you a gun; it does not give the other side a gun. This committee is not going to pass either of these bills as such, and they are not going to pass the administration bill, either, because it is as unacceptable to the committee as the first two bills I mentioned are.

So what we are interested in here in the committee is primarily this: I know that representing the nationwide unions you can't come in here and say the things that all of the other labor witnesses have said, and that is, that a national transportation strike is not acceptable. All of the other labor witnesses have said it; they are on the record; every single one of them said it.

How can you say something for one part of your representation and can't say it for another?

But what we are seeking here is this: a method of finality, and I am on record as absolutely supporting the selective strike provision of the Harvey bill, to define it as you want; but when this thing gets out of hand, I think it is time we all go ahead and accept the fact, as your colleagues in labor have said, that the national transportation strike is not acceptable.

Mr. HARRIS. I think we have recognized repeatedly it is not acceptable to the Congress.

Mr. KUYKENDALL. How about the American people?

Mr. HARRIS. Well, I am sure they don't care for it, either.

Mr. KUYKENDALL. Well, isn't it best, then, that we go ahead and face up to it?

Mr. HARRIS. We are well aware that a nationwide rail strike of any duration will produce Government intervention.

Mr. KUYKENDALL. Isn't it practical, then, for you to help us to recognize a method of preventing this without having to come to Congress every time it happens?

Mr. HARRIS. That is what we think the Staggers bill will do.

Mr. KUYKENDALL. You admit it is entirely possible it will come to Congress?

Mr. HARRIS. If a rail union does not confine its strikes to whatever the definition of a selective strike is, and then a strike gets broader, and the carriers engage in a nationwide lockout, it would be their right and it is clear it would be back in Congress.

Mr. KUYKENDALL. It is no different from what it is right now. The court decision made that difference.

Mr. HARRIS. The difference is that the Staggers bill—permitting and defining "selective strike"—would give the parties some opportunity or some incentive to bargain collectively; this is lacking in a situation where the carriers can immediately produce a nationwide shutdown and congressional intervention.

Mr. KUYKENDALL. Giving incentive is not the law.

Mr. HARRIS. I beg pardon.

Mr. KUYKENDALL. You said it gives them some incentive.

Mr. HARRIS. Yes.

Mr. KUYKENDALL. But there is no legal compulsion to this incentive. They can still, if they wish, go right straight to the Congress.

Mr. HARRIS. Well, as a matter of fact, there is a legal requirement under the existing law that both parties bargain collectively and in good faith. This provision is enforceable in the courts. The trouble is that if the carriers can produce a situation which results in a nationwide shutdown, they know that Congress will intervene, and if they hope that that will result in a settlement more favorable to them, they will produce that situation. The Staggers bill would undercut their option to produce that situation.

Mr. KUYKENDALL. You have accused management of being entirely responsible for national bargaining?

Mr. HARRIS. No; I didn't say that.

Mr. KUYKENDALL. That is the way it came out.

Mr. HARRIS. Both the carriers and rail unions, in fact, favor national bargaining.

Mr. KUYKENDALL. Okay.

Mr. HARRIS. There is quite a range of issues.

Mr. KUYKENDALL. Your record is now clear.

Mr. HARRIS. What I was talking about was simply nationwide strikes or lockouts, not nationwide bargaining.

Mr. KUYKENDALL. Just yesterday Mr. Dennis gave us some plans for the future which have actually encouraged, with concurrence of both sides, nationwide termination dates, and I was going to try to get your testimony and that of Mr. Dennis yesterday kind of in line because they seemed to conflict.

Mr. HARRIS. No; there is a wide range of issues on both the carriers and unions preferring nationwide standards.

Mr. KUYKENDALL. We don't hear about the agreements of them very often in this committee.

Now, the last question, and this is something we sincerely wish that you would give us some help on, and I want to repeat, in closing, Mr. Harris' plea, and I think you gathered, from reading the testimony and going over it, just about what things this committee is likely to do or not to do if it passes any legislation at all; I think you are well aware, as of this moment, particularly of the next couple of deadlines being settled peacefully without coming here, and probably the chances of any legislation coming out at all would be lessened.

This is a fact of life. It is not any threat or plea or bait or carried on the end of a stick or anything else. You know that as well as anybody. But I think we are also aware that any method that is proposed that does not have a finality set up somewhere involved that will make collective bargaining almost mandatory, that we are going to end up again back in this Congress, and I don't know about you two gentlemen, but the tempers of this Congress and the general public are such that in a moment's time—and I say "in a moment," talking about a moment of history—you could end up with some legislation just like that recommended by the bar association yesterday, that the only finality was seizure and compulsory arbitration, and that is not acceptable to anybody.

So what we in the committee are really afraid of is if we don't get the help of every party involved in trying to reach a middle ground, that we are going to get an almost instantaneous impulsive piece of legislation some of these days that nobody is going to end up being benefited by, particularly organized labor.

I am afraid of that, I think we are getting that close to it back in August. I really mean that. That is the reason we really need your help, Mr. Biemiller, privately, if possible, in working out some ideas to help reach a middle ground on this overall problem.

Mr. BIEMILLER. If I am correctly informed—and I believe I am—the representatives of the brotherhoods who appeared here made it clear they are perfectly willing to discuss this matter.

Mr. KUYKENDALL. I asked every one of them the same question, and you know it.

Mr. BIEMILLER. And so are we perfecty willing to discuss the matter.

Mr. KUYKENDALL. Thank you, Mr. Chairman.

Mr. JARMAN. Thank you very much, gentlemen, for being with us.

Our next witness this morning is Edward L. McCulloch, vice president and national legislative representative of the Brotherhood of Locomotive Engineers, with offices here in Washington.

STATEMENT OF EDWARD L. McCULLOCH, VICE PRESIDENT AND NATIONAL LEGISLATIVE REPRESENTATIVE, BROTHERHOOD OF LOCOMOTIVE ENGINEERS; ACCOMPANIED BY HAROLD A. ROSS, CHIEF COUNSEL

Mr. MCCULLOCH. Thank you, Mr. Chairman. My name is E. L. McCulloch. As national legislative representative for the Brotherhood of Locomotive Engineers, I am here to present the brotherhood's position concerning the several bills on emergency transportation disputes being considered by this committee. As I am sure you are aware, the B of LE represents the vast majority of locomotive engineers and a substantial number of firemen-helpers on the railroads in the United States.

Accompanying me today is Mr. Harold Ross of the firm of Ross, Kraushaar & Bennett, Cleveland, Ohio. Mr. Ross is chief counsel of the Brotherhood of Locomotive Engineers and is recognized as an expert on the requirements of the Railway Labor Act and the procedures of collective bargaining. At the conclusion of my testimony, we will endeavor to answer any questions you may have regarding our prepared statement.

Recognizing the limits on the committee's time, I am presenting this morning only a summary of our prepared statement but urge you, if you have not already done so, to review the extensive evidence that has been judiciously prepared by our president, C. J. Coughlin. At this time, I would request that the prepared statement be entered into the record.

Mr. JARMAN. The committee will receive your long statement in its entirety, and you proceed in the order you prefer.

Mr. MCCULLOCH. On May 13, 1971, BLE reached an agreement on wages and rules. This goal was achieved without any Government intervention. There was no mediation or an Emergency Board. This agreement was reached without the threat of a strike. Since many of the

so-called work rules were involved in our dispute, the obtaining of this agreement was not an easy task. There were many hours and days of negotiations.

The BLE's negotiating team claims the attitude of the negotiators on both sides and the initiative of the labor team led to the formulation of the settlement; although not providing finality to all of the alleged problems of the industry, the agreement does provide machinery for discussing them and possibly resolving some of them in the interim period. Furthermore, the agreement, while not satisfying the desires of either party, did reach a conclusion on immediate matters and does provide a large measure of industrial peace for at least an additional 2 years. The point is, collective bargaining did work, and one should not lose sight of the fact that collective bargaining also worked in the vast majority of other negotiations in this round of bargaining in the railroad industry.

We concur in the position of the Railway Labor Executives Association in support of H.R. 3595 and unalterably oppose H.R. 3596 and similar bills which would replace the collective bargaining system with a form of compulsory arbitration.

Obviously, some persons view the present labor relations situation in the transportation field as an appropriate first step in destroying all collective bargaining and in totally eliminating the right to strike. We believe those persons should present the issue in its pure form. They should state they are for compulsory arbitration of all labor disputes in all industries. The arguments in support of compulsory arbitration and elimination of the right to strike in the transportation industry will, at some point, apply equally to all of the major or essential industries, such as steel, automobiles, and communications.

The reason the issue has not been drawn in that fashion is quite clear. Every labor organization in every industry and every member plus every thinking citizen would be opposed to that kind of program. Therefore, there is a basic question which must be answered. Should collective bargaining, as it has evolved with the right to strike as contained in the Norris-LaGuardia Act, be abolished? Conversely, should we substitute therefor an alternative weapon in the arsenal of procedures available to the executive branch which imposes the value judgment of a third party in such disputes, meaning, therefore, to us a variety of compulsory arbitration under a Madison Avenue label?

Our people want to be treated like human beings and not like a card out of a computer. We are therefore faced with this choice in our present democratic and free enterprise society. If we wish complete security against strikes, we must necessarily substitute Government dictation of wages, hours, and terms of employment and also must restrict the freedom presently accorded the various forms of business enterprise. Further, our society must be ready to tolerate direct confrontations between the Government and that portion of the public contesting its judgments or have the machinery available to prevent expressions of this dissatisfaction. Conversely, if we wish to maintain some semblance of a democratic government and of a free enterprise system, we must continue to foster a large measure of economic self-determination, which in itself requires collective bargaining by unions equally as strong as corporate management; and we also must be willing to accept some measure of discomfort resulting from work stoppages. It would seem to us that only the last course can be selected.

Collective bargaining has brought the light of democracy into the workaday world. It has provided the worker with dignity—he has a role, through his elected representatives, in deciding the wages and conditions under which he works. It has meant he is not a slave to third-party decisions. Deprive an employee of any role in changing or protecting his contract and it would not be long before discontent, dissatisfaction, and an urge to rebel rise within him.

Let us be realistic; not every provision of every agreement achieved through collective bargaining satisfies every member of a labor organization. But it is a far different thing for an employee to hear his representatives' explanation of why there had to be some concession on this or that issue, why this rule had to be changed or that pay increase deferred, than to have the same employee completely frustrated in his search for an explanation because the decision was made by a Board or court composed of professors or lawyers unknown to the worker. As the committee knows, only the railroad industry has continually and adamantly supported compulsory arbitration. We see no valid reason for having singled out the transportation industry for this discriminatory treatment.

Every country that has tried compulsory arbitration has found it unsatisfactory. Parties to the disputes do not feel the moral responsibility to live up to the arbitrated award that they feel for collective bargained contract. In addition to creating havoc in labor-management relations, compulsory arbitration will not accomplish the purpose for which it is designed. It will not end strikes and lockouts. A law can only make an activity illegal; it cannot prevent persons from engaging in that activity. In whatever form, the procedures of compulsory arbitration have worked only when the rank and file employees were willing to accept the decision rendered.

On the other hand, the performance for resolving disputes under the Railway Labor Act has been rather good in comparison with the record of other industries in the United States covered by Taft-Hartley. This is particularly evident when one considers the number of major contract disputes and also the minor interpretation disputes that are handled each year to a final resolution without work stoppages. And this can be clearly seen when one compares the Railway Labor Act record against the work stoppage in all industries. The statistics on this point are set forth at pages 17 through 19 of our prepared testimony. Contrary to the Secretary of Labor, we do not believe that other industries have been more successful in resolving their disputes than the railroad industry under the Railway Labor Act.

The problem arising out of the proposed bills, such as H.R. 3596, was recognized by one of our contemporary labor relations experts, who has said:

> No one as yet has devised a way to ban strikes without also destroying collective bargaining. . . . Compulsory arbitration is the only alternative ever offered as a replacement for collective bargaining when strikes are banned.

And the answer as to why this is always the proposed solution is simple. The proponents of this type of legislation view strikes as arising out of the procedural forms incorporated in labor law. We have strikes, so the labor relations procedures must be faulty.

However, the advocates of the administration bill have failed to look at the history of the Railway Labor Act and to ascertain the situations to which those procedures were to be applied. They have also failed to find the causes of labor unrest, the causes which tax the procedural machinery. If they would look at those causes, they would see that the proposed solutions cannot eliminate the causes which have brought into play the use of economic self-help. Our specific objections to H.R. 3596 and similar bills are detailed in our written submission. Since counsel for the Railway Labor Executives Association, of which BLE is a member, has testified on those points, we see no need to reiterate them.

The sole examples of work stoppages that have been used by the supporters of the administration bill are the several nationwide rail strikes in which Congress intervened. As we see it, the major claims being made to the committee is that passage of H.R. 3596 will get Congress out of the business of having to pass legislation on these individual disputes. However, instead of limiting Government intervention, as is asserted in the purpose clause of H.R. 3596, the pending legislation is dependent upon more governmental intervention and longer periods of delay through the addition of successive layers of administrative and judicial procedures.

The purported breakdown of the major disputes procedures in the railroad industry has flowed first from the railroads' strategy in recent years to foster "obligatory" industrywide bargaining and then from the easy availability to the railroads of Government intervention insulating them from the necessary pressures to reach an agreement.

At the time of the original enactment of the Railway Labor Act, bargaining in the industry generally took place on a carrier-by-carrier basis. As long as this procedure was followed, the record of dispute settlements was very good. When a work stoppage did occur, its limited nature provided little, if any, demand for special legislation. When the parties desired to bargain on a broader base, they did so through prior agreement and, on occasion, committed themselves to termination procedures. The present situation came about as a result of the railroads' campaign for industrywide bargaining. At the urging of the carriers, the judiciary entertained orders not only requiring the unions to bargain industrywide but commanding them to engage in strikes on a nationwide basis only. From that easily came ad hoc legislation by the Congress.

In the airline industry, where there has been little industrywide bargaining, the system has continued to work in the sense that there has been no need for congressional intervention.

It appears to the BLE that H.R. 3595 would create the necessary conditions for a return to those aspects of bargaining in the railroad industry that enabled the procedures of the Railway Labor Act to work for so many years. Also, it is the only alternative that could prevent the effects of industrywide strikes and yet permit free collective bargaining and free enterprise to remain alive in the railroad industry.

Finally, with the courts having reverted to the original intent of the act in the Delaware and Hudson case, H.R. 3595 can be the vehicle to codify that principle and to provide a definitive meaning of a selective strike. Furthermore, in the event of a selective strike, it would

prevent a national emergency being provoked by a nationwide lockout by those carriers which are not subjected to the strike. In addition, it should reverse the trend by railroad management—as well in certain instances the employees representatives—of not seeking to resolve their own labor disputes on the local property. Basically, we are saying the existing procedures will work, as they originally did, when confined to the problems of each railroad. Common logic dictates that the individual railroad can best decide the conditions under which that particular railroad can adequately operate and that direct dealings between that management and the representative of its employees better enable them to appropriately dispose of their problems.

Since the basic concept of H.R. 3595 is in line with these principles, BLE supports it and believes it should be enacted and allowed the test of time.

Mr. Chairman, that concludes my summary, and I have a personal comment and a copy of an address by Frederick R. Hagemann, Jr., I would like to put in the record at this time.

Mr. JARMAN. The committee will be glad to receive the address of Mr. Hagemann.

Mr. MCCULLOCH. Thank you, Mr. Chairman.

Mr. JARMAN. Now, you had referred to a personal comment.

Mr. MCCULLOCH. If it pleases the committee and to conserve time, I would request that my comments be placed in the record.

Mr. JARMAN. Without objection, Mr. McCulloch, the lengthy prepared statement of the Brotherhood of Locomotive Engineers, the address by Mr. Hagemann, Jr., and your personal comments will be placed in the record at this point.

(The testimony resumes on p. 695.)

(The material referred to follows:)

STATEMENT OF E. L. MCCULLOCH, VICE PRESIDENT AND NATIONAL LEGISLATIVE REPRESENTATIVE, BROTHERHOOD OF LOCOMOTIVE ENGINEERS

I am E. L. McCulloch, National Legislative Representative and Vice-President of the Brotherhood of Locomotive Engineers. I am authorized to present the position of BLE's President, C. J. Coughlin, and for the 38,000 members of the Brotherhood who are currently employed as locomotive engineers and firemen (helpers) on the railroads of the United States. As the duly designated bargaining representative for the craft of locomotive engineers on most of the railroads in the nation, the BLE represents 97% of the individuals employed as locomotive engineers. The BLE also holds the contracts for the craft of locomotive firemen (helpers) on several major railroads as well as a substantial number of smaller railroads.

On May 13, 1971, BLE reached an agreement on wages and rules for those individuals. This goal was achieved without any government intervention. There was no mediation or an Emergency Board. This agreement was reached without the threat of a strike. Since many of the so-called work rule issues in our dispute were similar to those in another dispute with which the Committee is aware, the obtaining of this agreement was not an easy task. There were many hours and days of negotiations. Much more time was expended by the BLE negotiating team in its own discussions and in formulating proposals. The point is: Collective bargaining did work. Of course, it is difficult to precisely define the reasons why it did work in this instance. And one should not lose sight of the fact that collective bargaining also worked in the vast majority of other negotiations in this round of bargaining in the railroad industry.

In BLE's case, our negotiating team claims the attitude of the negotiators on both sides and the initiative of the labor team led to the formulation of the settlement. Although not providing finality to all of the alleged problems of the industry, the agreement does provide machinery for discussing them and possibly resolving some of them in the interim period. In short, the agreement pro-

vides the kind of problem resolving machinery that many industrial relations experts believe removes pressures on collective bargaining at the termination of the contract. Furthermore, the agreement, while not satisfying the desires of either party, did reach a conclusion on immediate matters and does provide a large measure of industrial peace for at least an additional two years.

As a member of the Railway Labor Executives' Association, BLE fully supports the position taken by the Association; that is, we do support H.R. 3595 and unalterably oppose H.R. 3596 or any measure, which nullifies collective bargaining or gives it secondary priority in the legislative scheme of labor relations law. We believe that H.R. 3596, and the other bills purporting to create some finality in labor negotiations seek to replace the collective bargaining system for the creation of the law of the shop with compulsory arbitration under a new label. In our opinion, compulsion in "major contract disputes", whether its vehicle be an arbitration board, a final offer selection panel, a labor court, or a wage control board, cannot and does not ultimately work. The proponents of final termination legislation are merely changing the confrontation between management and labor to one between the government and the employees or the industrial managers, depending upon the economic philosophy of the incumbent administration. Given differing circumstances, one wonders whether they would still favor this position. Nevertheless, it is doubtful that anyone wishes to fix the lines so firmly as they are under most of the bills, so that neither party can back away from the type of dramatic conflict that can be envisaged.

There appears to be three reasons asserted in favor of the final termination legislation. First, Congress has been involved in legislating upon five railroad disputes since 1964 and should get out of this business for once and for all times. Second, major railroad strikes, as well as in other transportation industries, threaten more hardships, reprisals and economic losses than even lengthy, extensive strikes in the automobile, steel and construction industries or by municipal employees handling waste disposal or water utilities. Third, certain cities or areas are severely hurt economically by a cut off of rail service during particular seasons. As to the very first point, Congress created this problem by the method used in intervening in the operating brotherhoods' work rules dispute of 1959–1964 and by the subsequent ad hoc legislation in the other four situations. With this experience and having laid appropriate ground work, the negotiators for the railroads found it advantageous to their position. Knowing that their disputes would eventually end up before Congress, they engaged in conduct to achieve that end. The second and third claims are both part of the so-called "damage" argument. In the first instance, it is argued that we cannot tolerate a railroad strike, and the situation is apparently viewed from the vantage of the essentialness of the industry and the quantity of the strike and the length of time. Thus, only a two-day tie-up of railroad transportation would be tolerated, whereas the "lesser damage" of a steel strike or coal strike would permit a strike of ninety days in the former and thirty days in the latter. Any way it is viewed, the need to prevent interruption of the supply of essential goods and service would, under this argument, be applicable at some point to all of the major or essential industries. The third argument rejects any inconvenience resulting from any strike regardless of the limited area affected. Under this argument, a steel strike, which would affect a steel town, like Youngstown, Ohio, should be prohibited, although a strike of one and possibly two railroads would not affect it as much and would not necessarily be barred. The reverse would be true under the second argument.

However, a closer look at all the arguments indicates the true nature of the discussions in which Congress is now engendered. As on member of this Committee has stated during these hearings, we ought to try to settle the railroad problem, and if we start small and can find the right formula, then we will have no difficulty at that point in spreading it to other industries. This is an observation coinciding with the provisions of H.R. 3596 which would create a Commission to determine whether its provisions should be extended to other industries. At other points in these hearings, certain members have used terminology suggesting that the problem is being viewed as a revolution, that industrial warfare must be combatted with an arsenal-of-weapons approach, and that there must be a cease fire period, partial or limited warfare, and ultimately unconditional surrender. And some have gone so far as to attack the Administration's bill because the use of the alternative weaponry available cannot be escalated by application in seriatum.

In addition, the questioning which has revealed the last view, also establishes that the final offer selection method would be used in almost all cases,

so that it can be stated without qualification that the right to strike has only been purportedly reserved by H.R. 3596 and like pending bills.

Therefore, there is a basic philosophical question which must be answered. In view of the above evaluation, we believe this question should be posed in its purest form. Should collective bargaining, as it has evolved with the right to strike as contained in the Norris-LaGuardia Act, be abolished? Conversely, should we substitute therefore an alternative weapon in the arsenal of procedures available to the executive branch, which imposes the value judgment of a third party in such disputes, meaning therefore to us a variety of compulsory arbitration under a Madison Avenue label?

We are therefore faced with this choice in our present democratic and free enterprise society. Is the major goal of our labor policy the preservation of a large measure of free enterprise through economic self-determination requiring collective bargaining by labor unions which are equally as strong as the corporate managers; or is the important goal the need for direct government regulation to prevent strikes from interrupting the supply of essential goods and services? As noted by the United States Court of Appeals for the District of Columbia in the postal workers dispute, without the ability to strike or to threaten a strike, unions would be ineffective or would wither away in that there would be few risks in disagreement. Therefore, those who ask for complete security against strikes would in effect abolish collective bargaining and substitute government regulation of wages, hours and other terms and conditions of employment. On the other hand, the preservation of free collective bargaining does require some payment in the form of strikes with accompanying inconveniences, economic losses, and a certain amount of suffering. No individual likes to make hard choices, but if required to do so, that latter selection has more going for it than the former and is the only choice which can be made in a free and democratic society.

With this issue in mind, I would like to present our reasons for opposing the so-called final offer selection method or compulsory in general terms and then to present our specific objections to H.R. 3596. In doing this, I think it is well to note at the outset that simple answers may enjoy a certain political advantage, which does not make them right.

Let us turn first then to the general grounds that we have for our opposition. On the one hand, collective bargaining has brought the light of democracy into the work-a-day world. It has provided the worker with dignity—he has a role, through his elected representatives in deciding the wages and conditions under which he works. It has meant he is not a slave to third party decisions. Deprive an employee of any role in changing or protecting his contract and it would not be long before discontent, dissatisfaction and an urge to rebel rise within him. Let us be realistic; not every provision of every agreement achieved through the collective bargaining process satisfies every member of a labor organization. But it is a far different thing for an employee to hear his representatives' explanation of why there had to be come concession on this or that issue, why this rule had to be changed or that pay increase deferred, than to have the same employee completely frustrated in his search for an explanation because the decision was made by a board or court composed of professors or lawyers never heard of by him.

On the other hand, the adoption of compulsory arbitration or of a final offer selection panel as contained in H.R. 3596 would result in havoc in labor-management relations. The overriding fault in the suggested plan would be the destruction that would result to the collection bargaining process. There would be no collective bargaining even though the draftsmen of H.R. 3596 suggest that it will encourage the parties to make every effort in good faith voluntarily to adjust and settle their differences. Having the machinery of compulsion available, representatives of both labor and management would be forced to use it, rather than be second-guessed by their constituents. Introduction of third-party procedures into labor management relations excuses negotiators from their responsibilities.

The perfect examples of the use of third-party procedures in labor-management relations have occurred in the railroad industry. Both the operating brotherhoods' work rules dispute of 1959–64 and the shopcrafts' dispute of 1969 proved impossible of solution under the normal processes of the Railway Labor Act because collective bargaining was not given a chance. In both cases, the third-party, the Government, was on record as being unwilling to tolerate a nation-wide railroad strike; accordingly, the industry awaited a legislated "solution" rather than engage in constructive negotiations. As R. H. McDonald has stated in his discussion of the work rules dispute:

"[T]he compulsory arbitration procedure it [Arbitration Board 88–108] imposed was forced upon the employee parties unwillingly and without their consent, while at the same time the arbitration procedure was being actively solicited by the management parties, who must have felt that they would thus be in a position to obtain special advantages in accomplishing the desired changes in the existing work rules subject to this dispute." Eastern, W. & Southeastern Carriers' Conference Comms., 41 Lab. Arb. 673, 698–99 (1963).

Collective bargaining cannot exist in the atmosphere created by the government's intervention in the disputes discussed above, for this atmosphere took away labor's economic weapon, the right to strike. This would be the atmosphere created by the establishment of compulsory arbitration. Labor-mangement relations must consist of give-and-take decisions made by men with a genuine knowledge and understanding of the issues and who are free from outside influences; rather than by outsiders who would be obliged to attempt the impossible—to cram a working lifetime of specialized knowledge and understanding into a space of a few days or weeks of hearings. This is particularly true in the railroad industry since most negotiations involve work rules and many extensive contractual provisions concerned with the peculiar language and situations arising from the operations in the industry.

Another problem would exist with the passage of H.R. 3596. Compulsory arbitration in any form does not eliminate strikes. Parties to a dispute settled by compulsory arbitration do not feel the moral responsibility to live up to the arbitrated award that they feel for collectively bargained contracts. The consequences of such a situation could be disasterous in maintaining industrial peace. Compulsory arbitration or an injunction by a labor court could cause intense dissatisfaction among workers. Although a strike would be illegal, they would express their discontent in the most available manner—by engaging in "unauthorized" slowdowns and sick leaves, by engaging in wildcat walkouts, and by protesting and demonstrating. The labor organizations like the BLE, described as one of the best disciplined of all trade unions, would lose control of their members. The organizations would be obliged to respect the decisions of third parties or be fined into immediate bankruptcy, but the individual workers would rebel and their organizations would be powerless to protect them. Robbed for their reason for being, some unions would undoubtedly disappear. In addition to creating havoc in labor-mangement relations, compulsory arbitration in major disputes will not accomplish the purpose for which it is designed. It will not end strikes and lockouts. A law can only make an activity illegal; it cannot prevent persons from engaging in that activity. This is exactly the situation with reference to compulsory arbitration and strikes and lockouts. And we suggest that much of this is already occurring in the United States.

Furthermore, since 1904, Australia has had a system of compulsory arbitration. An analysis of the Australian system can lend valuable insights into the process and problems of the arbitration method in general. In Australia, each of the six Australian states has its own arbitration mechanism. In addition, at the Australian federal level, there are two distinct components to the arbitration machinery, the Conciliation and Arbitration Commission and the Commonwealth Industrial Court. The first stage of compulsory arbitration in Australia occurs when an unresolved dispute is referred by law to the Conciliation and Arbitration Commission. This Commission is composed of laymen supposedly experienced in labor-management relations. If conciliation fails, the Commission renders its award by establishing the contract provisions which were in dispute. By law, the parties are bound to accept the award and abide by it during the life of the contract. By its very nature, the system of compulsory arbitration permanently enjoins either side from engaging in a work stoppage to protest the contract provisions.

Although the Australian law says no strikes or lockouts can occur, individuals may choose to ignore the law. For this reason, the Commonwealth Industrial Court was established. This body enters into the dispute when one of the parties refuses to accept terms proposed by the Conciliation and Arbitration Commission. By establishing a second body to enforce awards of the compulsory arbitration machinery, the Australians have effectively separated the judiciary from the functions of conciliation and arbitration. If one or both parties are unwilling to accept the arbitrated award, the Commonwealth Industrial Court may order compliance or may render a court order preventing either side from contravention of the award. Should this fail to produce compliance, the court may deregister the union or the employer who is breaking the law. This has the effect of legal

"black balling" of the organization. In addition, the court may fine the union and management officials or the unions and industries themselves. If a strike or lockout does occur, the court is empowered to jail those who have caused the work stoppages.

Despite the adoption of this compulsory arbitration procedure in 1904 there have been a large number of small strikes and strikes of national emergency proportion in Australia. Considerable differences exist between strike activity in Australia and in the United States. Australian workers participate more widely in strikes. On the average, 14.7% of Australian nonagricultural workers are involved in strikes as compared to only 6.8% of American nonagricultural workers. However, the strikes in Australia tend to be of shorter duration. Eight times as many Australian workers are involved in strikes of one day or less than are American workers. These conclusions have held true over many years. During the pre-war period of 1927–1940, twice as many Australians went out on strike as did American workers. However, these Australian strikes caused only half as many days to be lost as did the United States strikes. (Industrial and Labor Relations Review, January, 1955, pages 170–171.) Thus, in Australia, although strikes are illegal, they still occur. Why they are not prevented by the compulsory arbitration mechanism is a complicated question. As a practical matter, workers are able to engage in short strikes without fear of government retaliation. The workers know that it would not be feasible for the government to punish the vast number of workers who engage in the extremely large number of short strikes that occur. The government does not wish to expend its energy and resources in punishing workers who have caused no serious harm.

In general, the majority of strikes in Australia last one day or less. The reason for these short strikes lies in the local basis of union activity. Because compulsory arbitration and the political nature of Australian unions have weakened the collective bargaining on a local level, the rank-and-file worker often finds himself with a grievance for which he has no method of solution. In the United States, most union-management arrangements provide mechanism for peaceful resolution of grievances. Few unions have established grievance procedures in Australia. Instead, the workers exert the pressure of "wildcat" walkouts upon their employer. This is usually enough to bring the grievance to the attention of both higher labor and management officials and to start remedial action.

One of the prime reasons suggested for the passage of H.R. 3596 is the prevention of strikes which would harm the national health, safety, or welfare. However, the Australian experience indicates compulsory arbitration can only make such strikes illegal; it cannot prevent them.

An example in Australia is the eight-month strike in the copper industry that was settled in May, 1965. While the strike was in progress, one of Australia's largest exports was not being produced. Copper had to be imported from other nations. Australian business lost $85,000,000 in foreign earnings. There was not even enough copper for domestic consumption. The nation had to pay out an additional $62,000,000 to import the copper it needed during the strike. Other losses included workers' wages and profits to companies which depended upon the domestic supply of copper. Thus, under compulsory arbitration with the strike banned as illegal, a strike of tremendous proportions was successfully conducted for over half a year. Even if the workers and their union leaders were severely punished for breaking the law, this would not recoup the losses that accrued to the nation. Nor is it certain that severe punishment for these individuals would deter other dissatisfied workers from following the same path.

On the subject of collective bargaining and compulsory arbitration, Arthur J. Goldberg said in a speech made January 9, 1967:

"I do not believe a radically new approach is needed. And specifically, I am convinced that compulsory arbitration is not the answer * * * [C]ompulsory arbitration as an accepted and uniform method would be totally alien to the American temperment. Indeed, experience abroad has demonstrated that it will not work in any free society.

"The system we have now, evolutionary as it is, reflects the genius of American democracy in the industrial fields. I believe the same judgment can be made of it as Churchill once made of democracy itself, when he said that it is the worst system of government ever devised—except for all the others."

It appears from an examination of the Australian compulsory arbitration system that this is not the answer for labor-management relations. This is especially true under the circumstances in the United States where it is evident that neither labor nor management see compulsory arbitration as the solution to our problems in the labor relations area.

It can be said generally that neither labor nor management, nor the experts in labor-management relations, seek compulsory arbitration but rather look for methods to improve the collective bargaining processes. To reach this conclusion, one need only examine the statements of these individuals involved in labor-management relations on a day-to-day basis. W. Willard Wirtz, former Secretary of Labor, said that there is "ritual unanimity of labor, management, and 'labor expert' rejection in this country of the idea . . . of 'compulsory arbitration'." Wirtz, *Choice of Procedures Approached to National Emergency Disputes, Emergency Disputes and National Policy*, 149–162 (1955). And as recently as January 10, 1967, Mr. Wirtz said:

"If collective bargaining were not strong enough or mediation not important enough, to stand the statement of the truth in a particular case, then these processes would not work—and the *penalty* would be some form of compulsion." (Emphasis added).

Theodore W. Kheel said in 1961:

"The opposition of management and labor to compulsory arbitration as a national or state policy is so deep-rooted, except in a few industries subject to public relations, that there is little chance that it will be imposed in the foreseeable future."

Mr. Kheel said further in a speech made January 19, 1967:

"But no one as yet has devised a way to ban strikes without also destroying collective bargaining, and Congress is not about to scuttle the bargaining process. Compulsory arbitration is the only alternative ever offered as a replacement for collective bargaining when strikes are banned."

Joseph A. Beirne, President, Communications Workers of America, AFL–CIO, said in a speech made January 13, 1967:

"In this dynamic American economy, the collective bargaining process is essential to our hope for progress and growth. Throughout the past decades, this mechanism of negotiation between labor and management has creatively produced a large variety of sociological innovations that have benefited, directly or indirectly, an overwhelming majority of the American population."

R. Conrad Cooper, then Executive Vice-President-Personnel Services, United States Steel Corporation, said in a speech made January 13, 1967:

"I want to make a plea on behalf of collective bargaining in a free society. Too little evidence of its practice is seen today."

Virgil D. Day, Vice-President-Personnel and Industrial Relations Services, General Electric Company, said in a speech made January 9, 1967:

"In current pressures to 'do something quick' about public inconveniencing strikes, I hope we can join together in persuading Congress to proceed on the basis that collective bargaining is useful machinery for reaching agreements, and that we need to improve the function of the machinery, the uses to which the machinery is put, rather than scrap it or, worse, prevent it from functioning properly."

The late Walter Reuther, President of the United Auto Workers, said in a speech made on January 13, 1967:

"I have great faith in the capability of free men, our free institutions and in free collective bargaining. I believe that we can improve it, we can strengthen it, and I think we can make it equal to the complex challenges that we face in the future. And I believe that collective bargaining could provide a new and decisive dimension to our overall effort as a free society to try to translate and transform the 20th century technological revolution into a 20th century revolution of human fulfillment."

And on Labor Day, 1969, President Nixon made this persuasive argument:

"In an increasingly complex society, one in which so many elements depend so heavily on one another, the process of collective bargaining must be strong and effective and exercised with self restraint on both sides. But this process cannot work unless the participants are free to reach their own decisions. This Administration will always respect that freedom.

These are the thoughts and ideas of many people, including a number of those most intimately involved in labor-management relations. There is no universal demand for compulsory arbitration. Actually, the railroads have long been the limited breeding ground for the strongest pressures toward the adoption of compulsory arbitration. The industry produced compulsory arbitration in 1916 and 1963, and even today the only significant pressure for compulsory arbitration emanates from this industry—though airline management now appears to have

picked up the same theme. Railroad management has refused to adopt the procedures of collective bargaining. Railroads would rather have courts issue temporary restraining orders at the least hint of a strike rather than negotiate in good faith with labor representatives. The carriers' confidence in the availability of court orders in this respect removes their incentive to negotiate a settlement. Furthermore, negotiators for the railroads knowing that their disputes will eventually end up before Congress attempt to achieve that end. In the past, this has proven advantageous to their position. It is impossible to conceive of an efficient, economical transportation system without collective agreements which the workers have helped determine. Top railroad management nevertheless continue to cry for "final and binding arbitration" of major disputes, which position is taken in H.R. 9989 submitted at their request. They are almost alone among corporate managers in this position.

I have discussed collective bargaining versus compulsory arbitration in general terms, and I would like to mention the specific problems which would arise if H.R. 3596 were adopted as law.

The legislation proposed by the Administration's bill goes much too far to remedy the defects which it states now exist under the Railway Labor Act. If enacted, H.R. 3596 would seriously jeopardize the legitimate interests of railroad labor.

Although the Administration's bill states in its purpose clause that the present procedures tend to encourage unwarranted resort to governmental intervention rather than the utilization of collective bargaining processes to resolve disputes, no where within the bill does one find proposed procedures to limit governmental intervention and, in turn, require solution through the pure processes of collective bargaining including the right of labor to exercise the right to strike, an indispensable part of that process. Instead, H.R. 3596 requires more governmental intervention and longer periods of delay through the successive layers of boards of inquiry, court reviews and injunctions, Presidential intervention, special boards and final offer section panels for the resolution of a national emergency dispute. Not only does the Administration's bill apply to major disputes, but it also deals with arbitration of minor disputes, as we use those terms under the Railway Labor Act. In sum, these steps must be considered institutionalized governmental intervention.

Another fallacy of H.R. 3596 is its second premise or finding that present procedures for dealing with disputes in the transportation industry have proved insufficient to prevent disruption of transportation services. We do not believe this conclusion can be substantiated in the trucking, maritime, longshore and airline industries, and shall leave the rebuttal to that argument to the organizations representing labor in those industries. The facts in the railroad industry are also to the contrary. Up to this year, there had been only four instances of intervention by the President of the United States or the Congress in the forty-five years history of the Railway Labor Act.

Furthermore, up to June 30, 1970, there had been created only 236 emergency boards, of which 57 were created in the period of enactment of the original Railway Labor Act of 1926 to its amendment in 1-934. Except for the aforementioned interventions, agreement was reached by collective bargaining following the recommendations of the emergency boards. Of further importance is the information derived from the following breakdown of those emergency board cases:

Emergency boards:	*Percent*
122—Involved 1 railroad only	51.2
33—Involved 1 airline only	14.0
22—Involved from 2–5 railroads	9.7
1—Involved 3 airlines	0.4
4—Involved railroads in 1 region	1.7
1—Involved railroads in 2 regions	0.4
31—Involved railroads in all regions (includes 3 involving short line railroads only)	12.7
5—Involved from 5–13 air carriers in all regions	2.1
17—Involved the Railway Express Agency	7.2
236—Total	100

An analysis of the issues before these boards reveals that up to the last 15 years the disputes were limited to individual properties or carriers. Further, as previously shown the emegency board procedures were rather effective in assisting the bargaining processes in those instances. However, as the carriers attempted to broaden the issues and to seek industry-wide bargaining, the collective bargaining procedures were affected, the emergency board features had less effect, and then first in 1963, then in 1967, again in 1969, 1970 and 1971, Congress has become involved. In short, the tendency toward industry-wide bargaining, which was forced upon the rail organizations by management, appears to be one of the causes which has led to the breakdown in the procedures embodied in the Act. In addition, our study shows that the heaviest volume of threatened strikes and accordingly the greatest number of emergency board cases occur during or after periods of military conflict which correspond with inflationary times.

As the Committee is aware, there are hundreds of disputes each year in the railroad and airline industries. Most of these disputes are settled through collective bargaining without even the intervention of the Mediation Board. However, several hundred disputes are annually referred to the Mediation Board. The interesting point is that very few of these cases, actually only 2.8%, ever result in work stoppages of 24 hours or more. This is made clear in the following table for the eleven-year period of 1959–1969 which was contained in the Board's publication entitled "Administration of the Railway Labor Act by the National Mediation Board, 1934–1970."

Fiscal year	Mediation cases			Work stoppages			Percent of cases involving stoppages		
	Railroads	Airlines	Total	Railroads	Airlines	Total	Railroads	Airlines	Total
1									
1959	165	83	248	3	9	12	1.8	10.8	4.8
1960	153	73	226	4	4	8	2.6	15.5	3.5
1961	177	52	229	10	5	15	5.6	9.6	6.6
1962	152	53	205	5	1	6	3.3	1.8	2.9
1963	133	66	199	4	0	4	3.0	6.1	2.0
1964	198	54	252	5	1	6	2.5	1.8	2.4
1965	188	48	236	4	4	8	2.1	8.3	3.4
1966	200	36	236	3	1	4	1.5	2.7	1.7
1967	181	61	242	0	4	4	0	6.5	1.7
1968	212	72	284	3	2	5	1.4	2.7	1.7
969	306	37	343	6	4	10	1.9	1.2	2.9
Total	2,065	635	2,700	47	35	82	(1)	(1)	(1)
Average per year for period 1959–69	188	58	246	4	3	7	2.1	5.5	2.8

Note Stoppages less than 24 hours not shown.
1 Not available.

Source: NMB annual reports, 1959-69.

In the fiscal year ending June 30, 1969, there were only ten strikes in both the railroad and airline industries which lasted over 24 hours. These statistics are a far cry from the proclamation contained in H.R. 3596 that present procedures for dealing with disputes have proved insufficient to prevent serious disruptions in the rail industry composed of over 650,000 employees.

The error in this assertion becomes more apparent upon comparison of these disputes with work stoppages in industries *not* covered by the Railway Labor Act. Below we have inserted two tables taken from the Bureau of National Affairs' "Labor Relations Yearbook" for 1970 (p. 513), the source being the Bureau of Labor Statistics.

WORK STOPPAGES RESULTING FROM LABOR-MANAGEMENT DISPUTES[1]

Period	Number of stoppages: Beginning in period	Number of stoppages: In effect during period	Workers involved in stoppages: Beginning in period	Workers involved in stoppages: In effect during period	Man-days idle during period: Number	Man-days idle during period: Percent of estimated working time[2]
1961	3,367		1,450,000		16,300,000	0.11
1962	3,614		1,230,000		18,600,000	.13
1963	3,362		941,000		16,100,000	.11
1964	3,655		1,640,000		22,900,000	.15
1965	3,963		1,550,000		23,300,000	.15
1966	4,405		1,960,000		25,400,000	.15
1967	4,595		2,870,000		42,100,000	.25
1968	5,045		2,649,000		49,018,000	.28
1969	5,700		2,481,000		42,869,000	.24
1970[3]	5,600		3,300,000		62,000,000	.34

[1] The data include all known strikes or lockouts involving 6 workers or more and lasting a full day or shift or longer. Figures on workers involved and man-days idle cover all workers made idle for as long as 1 shift in establishments directly involved in a stoppage. They do not measure the indirect or secondary effect on other establishments or industries whose employees are made idle as a result of material or service shortages.

[2] The figures for idleness as a percent of estimated total working time for 1961 through 1970 are revised to include agriculture and government. The results are lower than would be the figure derived from the previous method.

[3] Preliminary estimates.

Source: Bureau of Labor Statistics.

WORK STOPPAGES—MAJOR ISSUES AND DURATION: 1967 TO 1969

[Includes Alaska and Hawaii. Issues data based on stoppages beginning in year; duration data on stoppages ending in year]

Major issues and duration	Work stoppages: 1967	Work stoppages: 1968	Work stoppages: 1969	Workers involved[1] (1,000): 1967	Workers involved[1] (1,000): 1968	Workers involved[1] (1,000): 1969	Man-days idle during year (1,000): 1967	Man-days idle during year (1,000): 1968	Man-days idle during year (1,000): 1969
MAJOR ISSUES									
All issues	4,595	5,045	5,700	2,870	2,649	2,481	42,100	49,018	42,869
General wage changes	2,116	2,544	2,829	1,850	1,550	1,264	30,300	35,852	27,473
Supplementary benefits	62	93	71	16	40	16	238	487	320
Wage adjustments	248	248	292	99	86	144	830	513	1,256
Hours of work	7	6	7	2	1	1	5	6	16
Other contractual matters	47	89	88	41	48	15	321	760	259
Union organization and security	586	513	593	114	112	250	6,450	4,151	7,466
Job security	232	180	190	105	143	76	1,150	1,570	2,273
Plant administration	701	726	882	488	461	513	1,660	4,508	2,848
Other working conditions	104	142	226	51	68	99	281	461	443
Interunion or intraunion matters	470	475	500	102	136	101	892	697	499
Not reported	22	29	22	3	4	1	14	14	16
DURATION									
All stoppages	4,583	5,045	5,690	2,860	2,657	2,362	38,400	53,575	37,312
1 day	579	540	726	254	202	237	254	202	237
2 to 3 days	659	685	807	746	251	301	1,240	511	596
4 to 6 days	651	692	756	223	284	324	726	946	1,038
7 to 14 days	953	1,047	1,111	461	511	416	2,710	3,486	2,652
15 to 29 days	715	847	952	268	286	384	3,680	4,151	5,196
30 to 59 days	570	690	792	522	754	372	9,600	17,012	10,154
60 to 89 days	224	283	272	262	179	140	11,000	8,148	6,236
90 days and over	232	261	274	120	190	188	9,200	19,121	11,203

[1] Workers counted more than once if involved in more than 1 stoppage during year.

Source: Department of Labor, Bureau of Labor Statistics; June or July issues of Monthly Labor Review, and annual bulletin, Analysis of Work Stoppages.

From these statistics in all industry, we can see that from 1961 to 1969 to number of stoppages has increased by ⅔rds, the number of workers involved has more than doubled, and the man-days idled in establishments directly involved in a stoppage has been multiplied four times. The second table indicates that toward the end of the decade the number of work stoppages concerning wages is almost equal to the total number of stoppages on all issues in the first year of the decade. We believe these statistics establish that (1) the performance for resolving disputes under the Railway Labor Act has been far better than the record in all industries and (2) the major cause for the breakdown in the labor relations machinery has resulted to a large extent from the government's inability to control the inflationary pressures created by certain policies engaged in toward the end of the decade. Conversely, the high marks that the Secretary of Labor has given other industries doesn't hold water. Taking these statistics as a whole, the administration's bill would necessarily have to be the first step, as we previously said, for changing the entire philosophy of collective bargaining applicable to all industries.

Consequently, it is fair to observe that the underlying assumption of need for the drastic legislation proposed are simplistic and false. The overconcentration of the Administration on the few isolated instances of Congressional or Presidential intervention have blinded its appreciation of the overall efficacy of the Railway Labor Act. Fundamentally, this stems from a failure to perceive the causes of labor unrest. Rather, the problem has been viewed solely from the standpoint of procedures with an assumption that they are at fault. If one were required to catalogue the causes of major labor disputes, we would have to contain in that list the inflationary forces; rank-and-file unrest, including the resistance to change in many productivity-work-rules disputes and the failure of management and lack of cooperation of government to provide adequate job insurance and retraining programs; imposition upon the collective bargaining process to accomplish too much, *i.e.*, social and welfare gains; jurisdictional disputes; governmental interference; inability of existing governmental agencies and the failure to follow defined time limits; the attitude and initiative of the parties, wherein we would include lack of authority in the negotiators (both from the standpoint of ratification on the part of some unions and the subsequent approval of the chief executives of the railroads); and the accumulation of local grievances on railroad properties due to design or the lack of authority in the subordinate official personnel to dispose of them prior to exhaustion of all grievance handling machinery. As one can see, most of these causes are not even attacked or even mitigated by the so-called new procedures. The real reason for this is simple. This is the one point at which the Administration, as well as the general public, have the least understanding of what to do. And, really, the only solution that they have been able to present out of their frustration is the typical final all-or-nothing approach.

Thus, let us examine the cure proposed by the Administration for dealing with the major disputes in the railroad industry and, in particular, the resolution of national emergencies.

PROPOSED SECTION 6 CHANGES

Any consideration of the emergency disputes provision of the proposed legislation must start with the notice provisions of Section 6. Under this section, as it would be amended by the Administration's bill, parties are to go from the present procedure of open-ended agreements to the system common in industries subject to Taft-Hartley where contracts have fixed termination dates. But this is not all that Section 6 as amended does. Deleted from its provisions are the status quo requirements of present law. Section 6 now contains the important provision that "rates of pay, rules or working conditions shall not be altered by the carrier until the controversy has been finally acted upon" as required under the Act.

However, no corresponding status quo requirement is contained in proposed Section 6. The only freeze on terms and conditions in proposed Section 6 is the requirement that for a period of sixty days after notice of intended modification or termination or until the expiration date of this agreement containing such terms and conditions, whichever occurs later, no change may be made. This raises problems.

Suppose the parties do not reach agreement within the sixty days contemplated by revised Section 6. What are the rates of pay, rules and working conditions in effect upon expiration without a new agreement? True, the alternative procedures

when applied appear to reestablish the former terms and conditions of employment, but there can be a very definite hiatus between the termination of the former agreement and the status quo as set by the use of those procedures.

Take another problem. In *Manning* v. *American Airlines, Inc.*, 329 F. 2d 32 (2d Cir., 1964) the carrier sought to discontinue a check-off agreement upon passage of a fixed expiration date in the agreement establishing the check-off. The union resisted the cancellation on the basis of the status quo requirements of Section 6. The carrier contended Section 6 was inapplicable because the agreement contained a fixed termination date. The court held with the union on the grounds that regardless of the termination date in the agreement the intended change by the carrier brought the matter within Section 6 and with it the requirement that the status quo be maintained until compliance with all the requirements of the section. What becomes of the law established by this case in the light of the Administration's removal of the status quo requirements?

Take an even more important recent decision of the Supreme Court of the United States. In *Detroit & Toledo Shore Line R. Co.* v. *Transportation Union*, 24 L. Ed. 2d 325 (Dec. 1969), the Court held that under the status quo requirements of Section 6 of the Railway Labor Act which forbid a carrier from taking unilateral action altering rates of pay, rules or working conditions while a dispute is pending before the National Mediation Board, a railroad may not make outlying work assignments away from its principal yard even though there was nothing in the parties' collective agreement which prohibited such assignments. It therefore upheld the issuance of an injunction against the carrier's effectuation of the change pending negotiation. What becomes of the benefits of this decision to railroad labor? Presumably they would die upon the elimination of the status quo requirements of Section 6 since there are no counterpart requirements in the proposed new Section 6 aside from the sixty-day period.

In the light of the foregoing, suppose a Section 6 notice by a carrier. After the expiration of the sixty days or the agreement, whichever is later, the carrier will put its notice in effect. If the employees strike, there is grave danger that they will be enjoined, at least by the District Court. Even if the Court of Appeals reverses, months or years may pass. Moreover, carriers may in the absence of the restraint imposed by the *Detroit & Toledo Shore Line* decision of the Supreme Court do what they there attempted—fail to serve a Section 6 notice but unilaterally put into effect a change in rules or working conditions. If the employees strike, the carriers would claim the dispute is a minor dispute subject to arbitration under newly proposed Section 3, First (i) and seek injunctive relief.

There are other problems presented by proposed Section 6.

The manner of transfer to a fixed date system is complex. The date for service of the first sixty-day notice shall be set by agreement. But if the parties are unable to agree, then the date shall be fixed by arbitration under Section 3, First(i) of the Railway Labor Act. The arbitrator shall take into consideration the "probable intention" of the parties as revealed by custom and practice. The date may not be set more than two years after enactment of the Act.

There is the gravest danger that *no* Section 6 notice, *including a wage notice*, could be brought to a bargaining session for two years. Consider: the parties bargain to fix a date. If they cannot agree, an arbitrator must be appointed, etc. Ultimately the arbitrator rules. Only then "may" the notice be served. Presumably a notice served prior to the award would be invalid. If the arbitrator sets the date at less than two years, there might be a court challenge to the award. But let us dismiss this possibility. The process in any event would take months, and when we add whatever time the award would allow, plus the sixty days itself, it is clear that the two years or the better part of that period would pass, particularly if a carrier was anxious to stall.

Finally, there is the problem caused by the Administration bill's elimination of the Norris-LaGuardia Act and the effect of this on Section 6 notices served by unions to prevent unilateral changes. The carrier seeks its injunction. Heretofore, Norris-LaGuardia was a protection in this area. Now it will no longer be applicable.

Section 403 of the proposed Act states that the Norris-LaGuardia Act "shall not be applicable to any judicial proceedings brought under or to enforce the provisions of this Act." Since the Act amends the Railway Labor Act and the national disputes section of the Labor-Management Relations Act, the argument will be advanced that Norris-LaGuardia is dead for purposes of Section 6 and probably for all Railway Labor Act purposes.

Note that the inapplicability is total. Even Section 8 of the Norris-LaGuardia Act (29 USC § 108) is inapplicable. Thus, a carrier may obtain an injunction without making "every reasonable effort" to settle a dispute. Likewise Section 7 (29 USC § 107) will not apply. There will be no opportunity to show unlawful acts. The sole restriction will be the usual equity standards for the issuance of injunctions. Presumably, we will revert to "government by injunction" with all the evils we knew before 1932. Indeed the courts will have additional sanction for intervention because the proposed Act creates rights of court review in several key instances. Moreover, carriers may use Section 401 (suits by and against representatives) as an additional basis for intervention by injunction.

NATIONAL EMERGENCY PROVISIONS

As has been shown, the Administration's bill eliminates the existing procedures for resolving emergency disputes under the Railway Labor Act (Section 10) and substitutes the existing provisions of Title II of the Taft-Hartley Act (proposed as Part A) plus a new set of procedures contained in Part B of this Title.

Dealing first with Part A, the President may invoke these provisions whenever there is a strike or lockout, threatened or actual, which affects "an entire industry or a substantial part thereof." Presumably a strike against any major carrier could be deemed to affect a "substantial part" of an industry. The President would appoint a board of inquiry to investigate the issues and ascertain the facts by holding hearings and report to him but without making any recommendations. If no agreements resulted through the board of inquiry, the President then could direct the Attorney General to seek an eighty-day injunction. Transportation industry cases would be heard by a three-judge court with a direct appeal to the Supreme Court. After the injunction is granted, the parties are directed to make "every effort" to settle the dispute. If there is still no settlement, the board of inquiry is then reconvened and is required to report to the President within sixty days as to the position of the parties and the employer's last offer. If the dispute still is not settled, the National Labor Relations Board is directed to take a vote among the employees with respect to the last offer of the employer. This step is to be taken within fifteen days. The National Labor Relations Board then reports to the Attorney General within five days and thereafter the District Court is to dissolve the injunction. The employees are then free to strike. The President reports to Congress and includes in his report the findings of the board of inquiry, the results of the NLRA balloting and his recommendations.

We now move to the second level under proposed Part B of the LMRA. Under Section 214 of the Labor Management Relations Act as it would be amended, "within ten days" before the injunction is dissolved, the President may move into the controversy and *may* select any one of three choices. The choices are an additional thirty-day cooling-off period (§ 217); partial operation (§ 218) or final offer selection (§ 219). Presumably this would be during the period that the NLRB was taking its vote among the employees. At any rate, it is clear that the President is to act *before the injunction is dissolved*. Among the choices open to the President is the choice *not* to select any of the three options given to him. If this is his choice, then he is to submit a supplemental report and recommendation to Congress. If the President selects one of the three choices, then he is to give appropriate notice to Congress. Congress may reject the choice, and in that case the President is to make a supplemental report or recommendation to Congress (§ 216). If Congress does not reject the Presidential choice, then the President will proceed to implement his choice.

Under Section 217 (additional cooling-off period) the President may direct the parties to maintain the status quo respecting terms and conditions of employment. There will be bargaining for an additional thirty-day period with the mediatory assistance of a board of inquiry and the Federal Mediation Service. If this does not result in an agreement, presumably the injunction will be lifted and the employees may strike. It should be noted, however, that the proposed legislation nowhere provides specifically for lifting of the eighty-day injunction after the expiration of the thirty-day cooling-off period.

The second of the three choices is "partial operation" under Section 218. The President appoints a special board which is instructed to make a determination* whether and under what conditions a partial strike or lockout would ap-

*The proposed Act appears to use the words "determination" and "order" interchangeably. Usually only "orders" are specifically subject to court review. There may be litigation over this question.

pear to be sufficient in economic impact to encourage the parties to make continuing efforts to resolve the dispute. The board may determine that a partial strike or lockout cannot take place in accordance with such criteria. It so, it shall so report to the President. Presumably, although this is by no means clear, the parties have a right to court review of such determination. The Act is silent as to what is the next step. Is the union entitled to a lifting of the injunction? We reach an anomolous situation: a board could determine that a partial strike should not be permitted. Presumably neither would a full strike be permitted. The result may be that the union is deprived of any bargaining power whatsoever.

On the other hand, the special board might issue an order permitting a partial strike and lockout for 180 days. The 180 days apparently starts from the date of the order and thus comes after the eighty-day injunction, the ten days allowed the President to make his choice and the thirty days allowed the board to rule. An order allowing a partial strike or lockout is "conclusive" unless found "arbitrary or capricious" by the District Court. Suppose that the court does hold that the order is arbitrary or capricious. What happens then? Does the matter go back to the special board for a new order, or does this mean then that the employees are entitled to a full strike? Are they entitled also to a lifting of the injunction?

The last of the three choices is "final offer selection" under Section 219. The parties are directed to submit a "final offer" and an alternate final offer. There follows five-day bargaining and if that does not succeed in resolving the dispute, then the parties are directed to spend two days trying to agree upon the members of a final offer selector panel. If they are not able to agree upon the members, then the President is authorized to appoint the members of a panel. The panel is directed to hold informal hearings. During the informal hearings the government has no right to participate. The hearings shall be completed within a thirty-day period. The panel at no time shall engage in an effort to mediate or otherwise settle the dispute in any manner other than that prescribed by Section 219. From the time of its appointment until the panel makes its selection, there shall be no communication by the members of the panel with third parties. The panel may not compromise or alter the final offer that it selects. Selection of a final offer shall be based on the content of the final offer and no consideration may be given to and no evidence shall be received concerning the collective bargaining in the dispute, including offers of settlement not contained in the final offers. The panel should select the most reasonable, in its judgment, of the final offers submitted by the parties, taking into account five factors set out in Section 219(k). These are: (1) past collective bargaining contracts; (2) comparison of wages, hours and conditions of employment with wages, hours and conditions of employees doing comparable work; (3) comparisons of wages, hours and conditions of employment as reflected in industries in general and in the same or similar industries; (4) security and tenure of employment with due regard for the effect of technological changes on manning practices, the public interest and other factors normally considered in the determination of wages, hours and conditions of employment; and (5) the public interest and other factors normally considered. The determination of the panel is conclusive unless found "arbitrary and capricious" by the District Court. Once again the proposed legislation does not spell out what happens if the District Court finds the selection to be arbitrary and capricious. Does it send the matter back to the panel for another trial? Does the court itself make the selection?

Although three new procedures will be available, only one of them is likely to be regularly employed by the President. That one is "final offer selection." The purported justification for offering the President three choices is that it is designed to keep the parties guessing as to which one he will employ and therefore encourage the parties to collective bargaining. The fact is that an executive confronted with what is regarded as a national emergency dispute will be under pressure to terminate the dispute and thus would be impelled to the "final offer selection."

A. *Additional Thirty-Day Cooling-Off Period.*—First let us consider the additional cooling-off period of thirty days. This follows an eighty-day cooling-off period. If the parties have been unable to resolve their dispute in an eighty-day period, it is unlikely that an additional thirty-day period would effect a resolution. A President faced with this fact and knowing that at the end of the thirty-day period a strike or lockout may occur probably would reject this choice.

B. *Partial Operation.*—The second choice, partial operation, presents even greater complications. Only two criteria for its use are specified: first, whether a partial strike or lockout could take place without imperiling the national health or safety; and second, whether the partial strike or lockout would have a sufficient economic impact to encourage the parties to resolve the dispute. These criteria are broad—and vague. Moreover, they look in opposite directions. To the extent a strike or lockout does not imperil national health or safety, it is unlikely to have sufficient economic impact to encourage settlement. To the extent it has economic impact, it is likely to imperil national health and safety. Application of these contradictory criteria involves extensive and complex inquiry into market considerations, competition, and other economic consequences of partial operation on the employer, the union and the public. The Board is required to make its determination within thirty days and hold a hearing in relation thereto. Even with the assistance of experts and consultants provided for by the Act, it would be difficult to arrive at an intelligent decision within he thirty days provided. If a partial strike or lockout were permitted, there would be a long period—up to 180 days—of tension. If the dispute were not settled, then the President doubtless would ask Congress for an *ad hoc* solution. Should the Board determine that a partial lockout or strike is not feasible under the criteria, once again the President probably would ask Congress for an *ad hoc* solution.

There is an additional objection to the partial operation provision. This provision represents the first explicit recognition by Congress of a right by the railroads and airlines to lock out employees. A lockout involves a shutdown of the facilities. Such a shutdown cannot be reconciled with an obligation under law to provide transportation services to the public. In effect, the partial operation provision constitutes a repeal by implication of vital provisions of the Transportation Act. Moreover, such a provision would provide support for the carriers' contention that all operations may be shut down during a collective bargaining dispute.

C. *Final Offer Selection.*—The third choice, final offer selection, is the one which the President is likely to choose in every case. It has the strong attraction of bringing a dispute to an end. The basic assumption underlying this choice is that it offers an equal threat to employers and unions. It presumes that it will encourage the parties to arrive at a settlement by negotiation. Should the negotiations fail, it presumes that each party's final offer would be "realistic," that is, sufficiently fair to make it attractive to selectors, but with just an edge of advantage for the side making it. Less would make it unacceptable to the selectors; more would be needless sacrifice. It is conceivable that the union's final wage offer is less than the carriers; and, in this dilemma, which should they choose.

Consider for a moment the complications which could arise under the game of Russian roulette. The typical pattern of bargaining in the railroad industry in recent years has been that when a union presents its wage package the railroad serves demands for sweeping rules changes. Accordingly, a Board that chooses an offer which in its opinion represents the fairer offer is apt to be making decisions not only with relation to a wage package, but also with relation to rules. In the operating crafts, such as locomotive engineers, wage issues are rarely presented in a pure form, but often involve questions of differentials, mileage components, arbitraries, and operating rules. Under the present system, they are not all raised at the same time. With the fixed termination date on all collective agreements, however, the entire package would be open. If industry-wide bargaining in a craft became the norm, the complicity of this feature would be compounded by the differences in the rules on each property which differences arose from the distinctive features of each railroad. But the decision of the Board with relation to the final offer selected must be made within a period of thirty days from the time the President directs the parties to submit their final offers to the Secretary of Labor. In point of fact, because of the three-day interval (for submission of offers) the five days (set aside for bargaining after the parties receive each other's offers), and the two days set aside for selection by the parties of the three-member selection panel, the Board is left with only twenty days to make a decision on these complex matters, assuming it convenes immediately upon selection by the parties or the President.

Demands which were only casually referred to in the negotiations might well be included in the final offer, and as to these demands the parties would come to

the hearing without any collective bargaining on the issues and inadequately prepared to meet the issues involved. In order to be prepared, it would be necessary for a railroad union to assume that every demand made by the carrier in its counnter-offer might well be included in its final offer, and accordingly prepare testimony for presentation to the Board during its hearings on all such issues. This would place an intolerable burden upon a union. Apart from this, at least in the railroad industry, the Board would be presented with problems involving changes in work rules which call for an exceptionally high degree of experience and understanding of railroad jargon.

There are other important objections. "Final offer selection" does not take into account the fact of life of trade unionism. The leaders of a trade union represent a constituency. That constituency measures the effectiveness of their leaders primarily in terms of what they achieve in the collective bargaining process. The expectations of the constituency may be unrealistic but they play an important role in the initial bargaining demands. In almost all instances the members of a union will accept in a collectively bargained settlement substantially less than the initial demands. But it is naive to assume that the leadership can afford to take responsibility for making an offer far below the initial demands—an offer which may become the final offer selected.

It should also be noted that the panel selectors are not free to exercise their own discretion. In fact, they are forbidden to engage in mediation and prohibited from receiving suggestions from third parties. They are limited solely to choosing a contract offered by one side or the other. Neither contract offered may be fair. Neither contract offered may reflect the balancing of interests which should be the hallmark of a collective agreement. They are not given authority to change the contract proposals submitted. Irrespective of what the evidence shows, the only determination they can make is that one offer is fairer than the other. But this determination is not the same as a determination that the offer is a fair and a reasonable resolution of the conflicting interests of the parties.

The Administration contends that the final offer selection "does not contain those aspects of compulsory arbitration which are inconsistent with free collective bargaining." This assertion is based upon the fact that the offer selected represents the offer of one of the parties rather than a decision imposed by the selectors or an outside agency. True, but this a vice, not a virtue. One party is saddled by law with his adversary's draft of a collective bargaining agreement. He must accept this agreement. He must accept it under compulsion of law. It is the use of governmental power to enforce a unilateral decision of one of the parties to a labor dispute—the antithesis of collective bargaining.

EVALUATION OF PROPOSED CHANGES IN MINOR DISPUTES PROVISIONS

There are a number of important objections which legitimately may be made to the legislative changes sought by the Administration in the handling of minor disputes in the railroad industry.

First, the proposed Congressional findings do not support the alleged legislative purpose. In Section 2(b)(5), Congress declares its purpose and policy to assure so far as possible that no strike or lockout in the transportation industry, or a substantial part thereof, will imperil the national health of safety—"by amending the Railway Labor Act to eliminate reliance upon governmental machinery or intervention for adjusting grievances. . . ." Accordingly, the proposed bill eliminates government-sponsored grievance arbitration and substitutes private arbitration by the parties.

However, as anyone with an understanding of the Railway Labor Act knows, the settlement of minor disputes has not had any bearing on national or local strikes or lockouts in the railroad industry, at least since the *Chicago River* case in 1957. Since the carriers may refer minor disputes to the NRAB unilaterally they can and do avoid strikes over such disputes. Indeed, over our objection in the courts, the carriers have often been successful in submitting what would be "major" disputes to the NRAB, thereby enjoining strikes over matters which ought not to be enjoinable under the Railway Labor Act. Moreover, even if strikes over minor disputes were not enjoyable they could hardly result in national emergency disputes since such disputes involve the employees of one carrier only. In short, grievance and minor disputes have no bearing on national or local emergency disputes in the industries covered by the Railway Labor Act.

Accordingly, whatever may be said about industries outside the Railway Labor Act where grievance and contract interpretation disputes are not subject to compulsory arbitration, there is no need for altering the Railway Labor Act scheme of settling minor disputes, at least on the purported ground that such change is essential to avoid national emergency strikes or lockouts. The findings upon which the proposed amendment is based are palpably erroneous.

Second, no industry other than the railroads and airlines has the federal government imposed compulsory arbitration of minor disputes. Even the proposed bill does not impose it in the non-Railway Labor Act industries. Compulsory arbitration of minor disputes in the railway labor field had its genesis in the 1934 amendments. Those amendments were proposed by the government and supported by both the railroad labor unions and the carriers. There is no rationale justification for requiring compulsory arbitration of minor railway disputes while, on the other hand, amending the Act to remove the existing quasi-governmental machinery for handling those disputes. If, unlike in other industries, the government continues to require compulsory arbitration of minor disputes, the existing machinery should also be retained.

Third, only four years ago, Congress had before it the overall question of the workings of the NRAB. Congress determined only to create P.L. Boards in order to expedite decisions. It also made other changes not here relevant as to the finality of money awards and review of awards. No one suggested to Congress and Congress at that time did not contemplate scrapping the entire Adjustment Board procedures. There was no need for such change then and there has been no evidence offered to support such dissolution now. In its most current report the NMB has given no indication whatever that the method of handling minor disputes under the Railway Labor Act is not functioning well. See Thirty-fifth Annual Report of the NMB, 1969, pp. 43–47. On the contrary, NMB observed that in 1969 the NRAB disposed of 1,724 cases while receiving only 978 new cases and that P.L. Boards during 1969 had disposed of 1,652 cases (*Ibid* at 45 and 47). Thus, even if the government were to argue that the change from public to private arbitration ought to be made because of the delays incurred in the Adjustment Board proceedings the fact is that the delays have been materially reduced. Moreover, there is no assurance whatever that in shifting from the NRAB and P.L. Board systems to private arbitration that there would be any reduction in the delays incurred in the arbitration process.

Fourth, there are numerous other problems created by the proposed legislation. Some illustrations follow:

(a) Section 202(b) of the proposed bill provides that disputes pending before the NRAB may be removed "by the grievant" to the private arbitration process if the dispute is not then being heard by the NRAB. Who is the grievant? The employees? Ordinarily, submissions to the NRAB are made not by the grievant but by the union representative on his behalf. Can the union remove submitted cases to the private arbitration process under the proposed bill?

(b) Section 202(b) does not expressly state that the awards rendered in private arbitration shall be final and binding. While it is probably intended that the awards of private arbitrators are to be final and binding, an argument could be made that this was not the intent of the bill. For example, Section 3, First(m) of the Railway Labor Act expressly provides that awards of the NRAB "shall be final and binding upon both parties to the dispute." However, that section relates only to awards of the Adjustment Board and the Adjustment Board passes out of existence with the proposed bill. Moreover, the proposed bill provides with respect to private arbitration that such "arbitration shall prevail with respect to such disputes until such time as the collective bargaining agreements between the parties contain no-strike, no-lockout clauses and provisions for grievance machinery terminating in *final, binding arbitration.*" (Emphasis supplied.) It might therefore be argued that until such time as the parties agree to final and binding arbitration of disputes the awards of private arbitrators are not final and binding.

(c) The proposed legislation does not specifically amend Section 3, First(p) or (q) of the Railway Labor Act except to the extent that the amendment to Section 3 First(i) abolishes the NRAB and P.L. Boards. Section 3, First(p) provides that the unions may seek enforcement of awards against carriers in the district courts and that on the trial of such enforcement proceedings the findings and orders of the Adjustment Board "shall be conclusive on the parties" and further that the union shall be allowed a reasonable attorney's fee if it prevails on the merits. This subsection also provides that the court may not set aside an order of the NRAB "except for failure of the division to comply with the require-

ments of this Act, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order." Under the proposed bill, it seems clear that the entire section on enforcement will drop out of the picture—even though it is not expressly repealed by the proposed legislation—because the premise of the present language is the enforcement of orders of the Adjustment Board which is dissolved. This repeal may be of serious consequence to the unions and encourage the carriers to drag their heels on otherwise valid claims. The standards for the limitations of judicial review of awards rendered by the NRAB under the Railway Labor Act have been long and painfully established in the courts. There have been numerous cases on the scope of review. In substance they hold that it is very limited. See *Gunther v. San Diego and Arizona E. R. Co.*, 382 U.S. 257 (1965).

Similarly, under Section 3, First(q) unions or carriers may seek review of adverse NRAB awards in the district courts. While the courts are given power to affirm the order of the Board or to set it aside in whole or in part or may remand the proceeding to the Board for such further action as it may direct, on such review the findings and orders of the division of the Board "shall be conclusive on the parties" and the court may not grant relief except for the same limited reasons set forth in Section 3, First(p). These limitations on judicial review with respect to NRAB awards are not made applicable to awards rendered by private arbitrators under Section 202(b) of the proposed legislation.

(d) While technically not within the scope of this portion of our analysis which deals with minor disputes, attention should also be drawn to the fact that Section 402 of the proposed bill repeals entirely Section 5 of the Railway Labor Act. Section 5, Second of the Act imposes the duty on the NMB of interpreting the specific terms of mediation agreements. Since 1934 the NMB has disposed of 116 cases under this provision of the Act. Thirty-fifth Annual Report of the NMB, 1969, p. 44. Under Section 202(g) of the proposed bill all functions of the NMB which in the judgment of the President are primarily related to mediation shall be transferred to the Federal Mediation and Conciliation Service. The question arises whetther the NMB's interpretative function under Section 5, Second of the Railway Labor Act is to be transferred to the Federal Mediation and Conciliation Service. Even if it could be considered as a transferred function, where in the amended Railway Labor Act is there any provision or authority for interpretation of mediation agreements since Section 5, Second is repealed?

In summary, we raise the following objections to the Administration's bill. The status quo provisions contained in present law should be strengthened rather than eliminated as proposed by H.R. 3596. The proposed mechanism for converting from open-end agreements to fixed expiration dates could delay for two years the right of a union to demand even wage changes. The elimination of Norris-LaGuardia's applicability to any judicial proceedings under the new law will prejudice Section 6 notices served by unions to prevent unilateral changes by carriers and invites the resurrection of unrestricted "government by injunction."

The Administration's proposals for resolving emergency disputes are based upon invalid and unsupportable findings; would unavoidably cause more rather than less delay in the resolution of such disputes; violate the premise upon which they purport to be based of encouraging more collective bargaining by introducing more rather than less governmental intervention; expressly invite the courts into the negotiating process at several crucial points, thus opening the door to injunctions, appeals and attendant delays; and realistically apprised the so-called three choices of action dissolve into one, the final offer selection, which is an unacceptable method for resolving disputes.

Viewed as a whole, the intricate and time-consuming provisions for resolving emergency disputes are undeservedly punitive and oppressive. They appear to rest on the supposition that strikes in the transportation industry result from hot-headed actions by impetuous union representatives. By way of illustration, the Administration's bill selects as one of its three methods of resolving emergency disputes the "cooling-off" concept—as though the Government was dealing with a brawl over trivia.

The realities are quite different. Railroad labor disputes of national consequence arise out of serious economic issues, particularly today when inflation ravages paychecks. Strikes are not lightly called because they are grave undertakings and union leaders are conscious of their serious responsibilities and obligations to the public as well as to the employees they represent. They are also aware—as they are entitled to be—that the strike remains labor's ultimate resort and that the right to strike, after all other prescribed means have failed

to resolve a dispute, has been preserved under the Railway Labor Act and, at least theoretically, under the proposed legislation. But the right to strike is considerably weakened under the Administration's bill because it is circumscribed with a maze of new procedures promising greater delays with almost unlimited judicial intervention.

Whether we like it or not, it is a fact of life, today as perhaps never before in our generation, that people tend to over-react when they must act. There is a real danger that if the Administration's bill becomes law it will tend to thwart settlement of emergency disputes. What real inducement is there for carriers to settle under legislation which offers so many avenues of escape to echelons of inquiry boards and panels plus the courts standing by as guardian angels to rectify any action which they may conclude is "arbitrary or capricious?" Such an arrangement is not only unfair legislation—it is dangerous because it will encourage carriers to proscrastinate and then go to the courts, spawn suspicion, frustrate unions and embitter employees.

In addition, the proponents of H.R. 3596 fail completely in showing that minor disputes in the railroad industry cause strikes or lockouts which imperil national health or safety. There is no justification for amending the Railway Labor Act so as to substitute compulsory private arbitration in this area. The 1966 amendments to the present provisions have served their purpose. In fact, the proposed revision of the minor disputes provisions would appear to have as their major purpose the elimination of the judicial enforcement and review provisions of Section 3, First (p) and (q) of the Railway Labor Act, which Congress enacted in 1966.

With respect to the miscellaneous provisions contained in Title IV of H.R. 3596, Section 401 and 403 are entirely objectionable in not only changing the existing labor relations law philosophy in the railroad industry but also in improperly involving the judiciary in labor relations matters and creating the possibility of burdening the judicial process with additional litigation when it is presently overtaxed to administer its existing case load. Section 401, a counterpart of Section 301 of Taft-Harley, would precipitate a flood of litigation since it permits court actions by carriers against unions for alleged violation of agreements or arrangements in the district court where the union maintains its headquarters or in any district where its offices or agents are servicing members.

Section 403 prohibits the use by any court of the restraints against injunctions contained in the Norris-LaGuardia Act in any judicial proceedings brought under or to enforce the provisions of the Railway Labor Act. Such a provision can only be viewed as completely anti-labor. The courts have already severely limited the application of the Norris-LaGuardia Act in cases brought to require compliance with affirmative requirements of the Railway Labor Act, but the purpose of the Administration in doing away with it entirely insofar as the Railway Labor Act is concerned can be viewed as nothing short of an effort to give the courts unrestricted power to issue injunctions.

Having raised our objections and comments on H.R. 3596 and other bills with similar intent, we believe it in order to describe our reasons for supporting H.R. 3595.

First, passage of H.R. 3595 would create the necessary conditions for returning to those aspects of labor relations in the railroad industry which existed at the passage of the Railway Labor Act and which caused the procedures in the Act to work for so many years. Second, it is the only alternative that would reduce the alleged serious and adverse affects of emergency disputes, the sole basis of the recent rash of legislation, and yet provide a palatable alternative permitting some semblance of free collective bargaining and free enterprise to remain alive in the railroad industry.

As the information and statistics we have supplied establish, collective bargaining in the railroad industry at the time of the passage of the Railway Labor Act was on a local or carrier basis. Since the parties directly involved in the dispute met with each other, many of their disputes were resolved through the processes of the Act. Even in those instances where the Section 10 or emergency board provisions were invoked, the board's activities dissipated most of these head-to-head confrontations. And in the very few cases where agreement was not reached on that basis, there was no true serious interruption to commerce or adverse effects upon the public. Basically, we are saying that the Act did work when its procedures were confined to the problems of each railroad, for common logic dictates that the individual railroad can best decide the conditions under which that particular railroad can adequately operate, and that direct dealings

between management and the representative of its employees enable them to appropriately dispose of their problems. In short, there is nothing basically wrong with the Railway Labor Act in itself. We believe the history in the airline industry, particularly the collective bargaining individual air carriers and the Air Line Pilots Association, is a further testimonial to the basic soundness of the Act.

If there has been a breakdown in collective bargaining in the railroad industry in recent years, it has stemmed from the tendency to deviate from the spirit and intent of the Act to bring about what has been termed "obligatory" industry-wide bargaining which was never intended under the Act, and from the easy availability to rail carriers through government intervention through the issuance of court orders and injunctions or by Presidetial or Congressional intervention.

The first point may be exemplified by the first steps in our own negotiations which were concluded on May 13, 1971. As you all know, the processes of the Act are activated through the service of a Section 6 notice. A General Chairman serves that notice on his railroad; or the railroad may serve a notice on the General Chairman of a partimular organization. Under the Act, a conference is to be held by them on the property within 30 days after the notice is served. In our dispute, however, where an individual chairman served notice, some railroads, including one of the largest merged railroads, refused to recognize the formal notice and did not establish the initial conference. On the rest of the railroads, the conferences were only long enough to inform the General Chairman that that railroad had given its power of attorney to the Chairman of the National Railway Labor Conference, Mr. J. P. Hiltz, Jr. A number of the General Chairmen requested Mr. Hiltz to meet with them; but they were informed that all bargaining regarding wages and operating rules must be done on an industry-wide basis.

During the subsequent conferences at the national level, it became apparent that though the National Railway Labor Conference demanded that our negotiating team represent all committees on all items involved in the settlement of the current issues, which could have effects on hundreds of different agreements and practices, the representatives of the individual carriers were never able to agree on just what authority they had given their negotiators at the national level or what issues they had fully transferred for handling by their Washington labor experts.

Furthermore, at the initial stages of the meetings between the BLE and the NRLC, the carriers merely threw across the table an offer which was in substance an enlargement upon the work rule propositions recommended by Emergency Board No. 178 as its proposed settlement for another organization in a matter that was outside the purview of the existing dispute involving the BLE.

Even though we ultimately reached an agreement between ourselves, the fact remains that the carriers created a significant number of obstacles as a barrier to meaningful collective bargaining. By consistently keeping the Carriers Conference Committee at the bargaining table through various proffers and counter-proposals which were made item by item, we were finally able to reach a period of time when the carriers' attitude had changed in that they could no longer cope with the intricate turns which had been taken in their grand strategy. In other words, they had been estranged from their usual lifeline so that they were willing to meet and treat.

Assuming that an agreement had not been reached, this organization would have been faced with other problems which have been encountered by us and the other organizations. After the many months of attempting to progress our notices, we would have been forced to participate in mediation sessions before the National Mediation Board. This again, along with the probability of the appointment of an Emergency Board, has allowed the carriers to evade their obligations rather than providing for the prompt and orderly settlement of these contract disputes. With this lapse of time, the so-called "cooling-off" period can be considered a "heating-up" period. The initial period of time may be considered as being charged against us, but there is no reason to permit the Mediation Board to hold on to a dispute for more than 30 days. Unlike the Federal Mediation and Conciliation Service, the Mediation Board can retain jurisdiction for months and even years. As an aside, we suggest that Congress may wish to resolve this problem by providing definite time requirements, particularly applicable to the mediation process.

Finally, assuming none of these procedures led to an agreement, the organizations, after having been involuntarily required to bargain on an industrywide basis, would have been required by the Federal courts—at least until the *Delaware & Hudson* decision in April of this year—to engage in national strikes, thereby creating the emergencies about which there have been complaints by the members of this Committee.

Now that the courts have applied the law as it was written and intended to be applied, H.R. 3595 will statutorily codify that principle and will provide the definitive meaning of a selective strike. Further, it will properly prevent those carriers, which are continuing to operate, from creating a nationwide emergency through a national lockout. Most importantly, it will reverse the trend by railroad management of not seeking to resolve their own labor problems. We point, for example, to the most recent dispute where the Chicago and North Western Railway, and also the Central of New Jersey, were able to satisfactorily work their way out of the same problems by individual handling. Since the pattern principle has become a fact of life in this industry, the agreement on North Western, while tailored to its specific needs and requirements, bears in all major respects similiarity to our agreement as well as the August settlement of another organization. In the event the carriers and the organization involved in a future dispute desire to carry out nation-wide bargaining, it is a valid assumption that the agreement to do so would include a provision for terminal disposition of that dispute.

Since H.R. 3595 is in line with the philosophy upon which our federal labor relations law has been built, we believe it should be allowed the test of time. It is the only alternative that has been raised which will preserve the free collective bargaining system and which is in accord with our other democratic institutions. Surely, compulsory arbitration does not fit that description. Compulsory arbitration may be the substitute in a completely regulated industry in a society which dictatorially enforces its commands. The Brotherhood of Locomotive Engineers does not believe that we live in that kind of environment, that we need that kind of government, or other the average citizen wants or will accept that kind of government.

ADDRESS MADE BY H. FREDERICK HAGEMANN, JR.

"I would like to trace a little history of our country to see where we have come from and why we are in the situation in which we find ourselves today.

"The American Revolution was a unique revolution. Prior to that time, for hundreds of years, men had been struggling to determine who would control the government. The type of government, regardless of the outcome, always was some kind of dictatorship or other form of authoritarian government. But here was a revolution which resulted in the statement that all men were created equal as to opportunity and were endowed by their Creator with certain inalienable rights: life, liberty and the pursuit of happiness. Here was a revolution that had definite implications. It had spiritual implications in that people acknowledged that the Creator was the sovereign and not the government. It had economic implications in that if you had the rights endowed by the Creator to life, liberty and the pursuit of happiness, it followed that you also had the right to sustain your life and substantiate those rights through the fruits of your labor and also the right to retain as private property the rightful fruits of your labor.

"These principles were implanted in the Constitution and the Bills of Rights and if you are familiar with these documents, as I am sure you are, you will find that they largely contain provisions for protecting the individual from the government. The original founders of this country looked upon government the way they looked upon fire. They thought fire was fine in the fireplace, but they did not want fire up and down every stairway and widespread in every room. They definitely wanted it contained. They did not want the government to be responsible for their welfare or their prosperity. They were perfectly willing to be self-reliant and to assume the responsibility for their existence themselves. This country and its citizens for about 100 years were known all around the world as being self-reliant. The whole basis of our American economy was the principle to each according to his ability and not the socialistic principle and program of from each according to his ability to each according to his need.

Much has changed in the last thirty years. Never forget that your freedom must diminish to the precise extent that the government gets larger. This is the Law.

PERSONAL REMARKS BY E. L. MCCULLOCH, VICE PRESIDENT AND NATIONAL LEGISLATIVE REPRESENTATIVE, BROTHERHOOD OF LOCOMOTIVE ENGINEERS

I would like to express my personal feelings to this Committee. I would like to emphasize that the problems before us are not altogether institutionalized. The problems of free collective bargaining, compulsory arbitration and final offer selection, cannot be confined to big union verses big management with the government caught in the middle. The resolution of our problems will, in fact, determine whether the individual working man remains free of government dictation of his wages, rules and working conditions. You cannot take away the right of a union to strike and still contend that the work force, many of whom are your own constituents, are free Americans. Strikes are the direct expression of the individual and reflect a dissatisfaction with existing conditions and amounts to an individual decision that substantially effects the welfare of not only the union member but that of his entire family. I make this point to emphasize that the legislation before us goes far beyond the question of union verses management. It reaches right into the private life and constitutional rights of the individual workers. Industrial peace is not hard to come by. It can be achieved by any society that is willing to sacrifice the freedom of the work place.

Mr. JARMAN. Does that conclude your statement?

Mr. MCCULLOCH. Yes, sir; it concludes my summary of the BLE's prepared statement.

Mr. JARMAN. Mr. Metcalfe.

Mr. METCALFE. No questions.

Mr. JARMAN. Mr. Devine.

Mr. DEVINE. No questions.

Mr. JARMAN. Mr. Harvey.

Mr. HARVEY. Thank you, Mr. Chairman. I called and got a copy of your statement. I took it home with me last night and sat up reading all 45 pages of this long statement. I certainly wish to compliment you on it. It is, beyond a doubt, one of the best statements we have had submitted to this subcommittee and one of the most comprehensive.

I might say I for a long time have heard about the experiences they have had in Australia with the labor courts and so forth, and I was interested in that portion of it where you recited that experience.

It is a very fine statement and you are to be complimented for it.

Mr. MCCULLOCH. I think our president, Brother Coughlin, did an excellent job and should be complimented.

Mr. HARVEY. Whoever did it put a lot of work into it. I am still bothered by the same things, however, after reading your statement as I was bothered about when questioning Mr. Biemiller a few moments ago. You were in the room at the time and heard my questions to him. So I will say to you pretty much the same things. No. 1, I am bothered that H.R. 3595 seems to permit both selective strikes and a national strike. I gather that is the way you read the bill as well; is that correct?

Mr. MCCULLOCH. Yes.

Mr. HARVEY. Of course.

Mr. MCCULLOCH. As I recall, the question to which you refer was addressed to Attorney Hickey testifying in behalf of R.L.E.A., and as he stated, we are not in a position to advocate the elimination of labor's right to strike nationally. However, we do recognize the problems resulting from national strikes even for short durations. Also, that they may not be permitted by Congress. Nevertheless, under certain circumstances, national strikes may be ideal from labor's point of view. In

our statement we address ourselves to this problem and suggest a provision for the terminal disposition of negotiations handled on a national basis.

Mr. HARVEY. Would you agree with Mr. Hickey that a nationwide strike is impractical, that "futility," as he described it.

Mr. MCCULLOCH. No; I wouldn't. I would rather refer this question to our general counsel.

Mr. Ross. We don't go along with the adjectives; however, we agree that the BLE does not intend to, nor does not wish to, engage in nationwide rail strikes. I think that has been made clear in the statement presented to the committee.

As a matter of fact, Congressman, during the last round of negotiations, the BLE attempted to limit itself in this regard. We never reached that point, but what I am driving at is this: that at the inception of the round of negotiations in January 1970, the BLE's general chairmen individually served notices on their individual properties and attempted to bargain locally with each of their carriers for this one purpose, the strike problem, and, in addition, the fact that they recognized in that round of negotiations there were going to be a number of work rules involved which would have different effects on each of the railroad properties.

Some of the railroads would not be concerned with some of those changes, and they should not be a problem in the parties' reaching their agreements; however, although we attempted to go in that direction, the carriers would not go along with it, and, in each instance, the local officials would tell the general chairman, when he came in to bargain with regard to the notices, that the power of attorney has been transferred to the carriers' national railway labor representatives and "we are not going to do any bargaining down here; our power of attorney is gone," so everything was transferred by the railroads up to Washington.

In many instances also the railroads did not even meet at the first conference with the general chairmen to discuss the problems and try to reach an agreement. We tried to get around the problem so that Congress would not be confronted with it as far as our negotiations were concerned but we were not successful in that direction; however, we were successful in reaching a national agreement.

Mr. HARVEY. Let me direct this question to Mr. McCulloch, because time is short and we have another witness. Let us look back for a minute to the month of August and recall that the strike that took place then did exceed the limits of "selective strike" as defined either in my bill or the Staggers bill, H.R. 3595. It had, in fact, just before settlement, escalated to the point where it affected some 60 percent of the revenue ton-miles in some regions of the country. Now, we are approaching then a national strike at that point.

My question is this: What mechanisms can you recommend to Congress for settlement of a dispute at that time short of coming to Congress? The UTU dispute almost came to Congress last month. We don't want that to happen. The White House does not want it to happen. But there are no tools that the President has, no tools that anyone has, to settle such a strike at that point.

What can you recommend to the Congress, what means other than enlarging the strike from a selective strike to a national strike and

throwing it in the laps of Congress, what can you recommend to us for settling it?

Mr. McCulloch. Well, first off, the economic balance between the parties should determine the boundaries of the strike. Also, I think it would be very unrealistic to assume that any legislation written would not provide a boundary or a definitive explanation of what constitutes a selective strike.

Mr. Harvey. Well, I am in agreement there.

Mr. McCulloch. Even if there were no boundaries, certainly Congress cannot claim irresponsibility where labor is concerned, not in the railroad industry.

Mr. Harvey. You missed the point. I am in agreement we should define "selective strike". Whether we agree on a definition, I don't know, but we should define it. What bothers me is that the Staggers bill not only defines "selective strike" but it goes on to say, that a national strike or anything up to a national strike, is permitted.

My point is: What do we do then? We want a solution to the problem and don't want it back in Congress. I have a feeling even after reading your fine statement, that you really didn't come to grips with that.

Mr. McCulloch. It is very difficult to answer and, of course, that is why we are struggling with it. We feel that when the situation comes to this, first, let me say, it goes back to the initial time of the section 6 notices. As was explained by counsel, it is shortly after that time the question of whether these section 6 notices or the dispute is going to be handled on a national basis or rail-by-rail basis or some basis smaller than a national strike. And I think, if you are going to look at a method for preventing national strikes, you have to look somewhere in this area. If it is determined that they are to be handled on a national basis there should be some agreement between the parties as to the disposition of that dispute. This way you will not be confronted with ad hoc legislation.

Mr. Harvey. We certainly conclude in the committee that there is no disposition either on the part of management or labor to have other than national handling of rail disputes. I questioned management's witnesses and labor's witnesses, and all of them confirm that single thing—they want a national handling of the disputes.

As I gather, it would be intolerable for some unions that worked out an agreement over here to pay certain amounts and to have working alongside of them men receiving a lesser amount. If your position is different from that, I would certainly like to know it.

I can say to you that certainly the reason we had the rail dispute here in our laps so many times is because of national handling. We have had the airlines but once, in my recollection, in the last several years. They do not have national handling.

Mr. Ross. If I may interject, I think a close reading of the presented statement indicates we go in the direction you are talking about now; that is our position. I think that is why I went to all of the procedural problems we had in the 1970 rounds of negotiations, that we were attempting to confine those problems to a property-by-property basis; but as far as the railroads, the locomotive engineers, are concerned, they wanted to handle everything in Washington.

Mr. HARVEY. I disagree with you there. I don't want to review all the witnesses over the last 10 days, but we have not had a single labor witness testifying they wanted anything but nationwide bargaining in the railroad disputes. I will ask our counsel on this testimony; I don't want to misstate it.

Mr. ROSS. I think that is what they said; I agree. A lot of the smaller unions couldn't function, I gather, and that is what I read in the testimony and transcript. However, what I say to you: As far as this organization is concerned, locomotive engineers, we did go in the other direction, and we were foiled in that attempt.

Mr. HARVEY. I understand. I thank you for your statement, and let us say that this record is going to remain open, and any contribution you can make relative to the problem I mentioned, this committee will welcome.

Mr. MCCULLOCH. Thank you, Mr. Harvey. We will give this matter our deepest consideration, and any ideas we come up with will certainly be presented.

Mr. HARVEY. Thank you, Mr. Chairman.

Mr. JARMAN. Gentleman, thank you very much.

Mr. METCALFE (presiding). The next witness will be Mr. Paul Hall.

Mr. Hall, you know you are permitted to submit your statement in the interest of time—that is, if you care to do so—and it will be incorporated into the record.

STATEMENT OF PAUL HALL, PRESIDENT, SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, AFL–CIO, AND PRESIDENT, AFL-CIO MARITIME TRADES DEPARTMENT

Mr. HALL. Mr. Chairman, as you suggested, if it is permissible we will submit our written statement for the record and make a few comments.

Mr. METCALFE. Let the record so show that you have submitted a statement, and it shall be placed in the record following your brief comments.

Mr. HALL. Thank you, Mr. Chairman.

My name is Paul Hall, president of the Seafarers International Union, as well as the Maritime Trades Department of the AFL–CIO. And with me is my colleague, a vice president of the Seafarers Union, and also administrator of the Maritime Trades Department, O. W. Moody.

I appreciate the opportunity, Mr. Chairman, of appearing in front of this distinguished committee, and making the comments that I am about to make.

First of all, relative to H.R. 3596, as the previous witnesses have testified, we, too, are opposed to this particular bill, and for pretty much the same reasons, Mr. Chairman. I don't intend to try to go into the technical details of this bill, and I am not a legislative expert, nor familiar with the legality of various clauses, and neither am I a lawyer, other than being a "sea lawyer" of sorts. But I am opposed for myself and the people I speak for.

To get on a philosophical note rather than a technical note, we regard any move in any area of compulsion, whether as to arbitration or anything else, as an erosion of the rights we are supposed to have in this country of ours. We feel that any further erosion of the rights

of individuals is not good. One of the great assets in this country is the freedom of the people that are in it.

On the question of compulsory arbitration, it is very interesting to note the various points of views that have been expressed by people, some of them quite surprising.

For example, Senator Barry Goldwater, a few years ago, took this position on compulsory arbitration, and his opposition to it was because if you go for compulsory arbitration relative to labor disputes, this would mean in the final analysis there would be compulsion across the board—possibly not on wages as we have already seen for a short time, but as to quality of work and finally, possibly, to the place of employment. Once you go into the area of compulsion you set precedents.

Even the National Association of Manufacturers, Mr. Chairman, testified a while back that they opposed compulsion and they opposed it on the basis that it would violate the American concept of freedom in our life adjustments, and violate the American concept of freedom under which the Government is the servant, rather than the master, of the people. These would be two areas that ordinarily you wouldn't think of taking this attitude on compulsory arbitration.

In our society, and you know this much better than I, Mr. Chairman and members of this committee, we have a type of society in which there are component parts and each has a vested interest or interests in its own right, but which all have a common interest in working together. One of those component parts of our society is, of course, the labor movement, working people, and working class.

We have the Government, the public, and we have management, and to have a proper society and have it work properly, as this country's history has proven, things have to even out pretty well as to strength, but once you start cocking the dice against any part of this society which would handicap any part of the society in any sense, putting it in an unfair position under this system of Government, then you are tampering with the very structure of democracy, at least in my opinion.

In this manner, you may very well bring about a situation that nobody would want. You know, I have heard some of the testimony this morning, and it is interesting that they have not touched on some of the things I regard as important to these questions you are talking about.

I regard some of the problems in rail that you have talked about as simply the manifestation of the real illness that afflicts that industry. I have heard them talking about the operating area of railroads. In my opinion, the management structure leads in great part to the kinds of problems we are talking about.

The kind of law that now governs—the Railway Labor Act—this type of thing, is pretty old and cumbersome, and yet with all the advantages that railroad management has had in this respect, look at what has happened to them.

I noted with interest, for example, a lot of considerations they have had over the past and I noted, for example, the first Department of Transportation Secretary left the Government and went directly as president to the Illinois Central. This, to me, is an indication of what I believe is the pampering of private management in its very weakness. I am not suggesting labor does not have problems, or does not con-

tribute its share of errors, but when you examine errors that both parties have made and look at a suggested treatment as to both parties, relative to what might be their weakness, it always strikes me as being very unfair that you start off on the basis of the people who work for a living.

I heard no great talk about mismanagement of the great transportation industry relative to management, which brought about the bankruptcy of great lines and full deterioration of those lines, and I heard no such talk about compulsion on them or anything else.

You know, too, I think some of us, Mr. Chairman, and I was listening to the gentleman on the rostrum here about "What are we supposed to do?" and suggesting possibly it is inconvenient that the Congress has to deal with these matters, and, of course, I would suggest it would be inconvenient, but, you know, the very essence of a democracy is that it is not perfect, it is not perfect.

You know, the people of Italy were worried about—some people in Italy were worried about their trains running on time, and there was a fellow that came along that told them he would make them run on time and never be confronted with not only a national crisis in Italy, but wouldn't even be confronted with the proposition of a train that was late. The fellow who sold them that bill of goods was Benito Mussolini. He got the trains running on time, but in the process he took the people's rights.

But in our kind of society, obviously we will have errors and mistakes and discomfort. There is no question about it. Yet when you boil it down, in the railroads, even though management has moved time after time to create a national crisis, I suggest to you that this Nation has not been greatly overwhelmed or irreparably harmed by it.

Also, Mr. Chairman, as I consider this type of bill and how it deals with subject matter, you include the industry I come from maritime—maritime, meaning ships.

Now, generally speaking, as to the welfare of the country, it is a national situation if there is a general strike, as Mr. Biemiller pointed out. But in maritime we are dealing with an industry that has suffered from neglect at the hands of labor and management and Government, all three. We are only moving 5 percent, no more, of our imports and exports of this Nation, coming down from some 34 percent in 1936. That is only 5 percent, yet you have included maritime as a potential national problem in case of a general strike.

Mr. Chairman, the American-flag industry, and that is who you are talking about, in this case maritime, the American-flag industry right now, and I hate to say this because I am a seaman and represent seamen, it could shut down today, and it wouldn't have a very great impact. Yet it is included in this legislation.

This is what I always hate to see about compulsion. Sometimes people get a fixation about it and want to rush in and do things that are causing a temporarily unpleasant situation, when in the long run it is not that bad.

You take the longshore industry. You heard the previous testimony. You have had a number of injunctions under the Federal Procedures and Taft-Hartley, that did hit the longshoreman. Yet Mr. Schultz, now adviser to President Nixon, when he was Secretary of Labor,

testified publicly that those strikes in which the longshoremen had been involved had not constituted a national calamity, or emergency relative to the economy of the country, or in any other fashion.

Interesting now, Mr. Chairman, there are longshoremen on strike on the west coast for, I think, some 92 days, but the President has not seen fit to move under powers given to him. He obviously does not think it is a national calamity, not at all.

So, I would suggest, Mr. Chairman, simply from a point of philosophical matter, that we look at this thing rather carefully. I don't want to pretend to tell the Congress of this United States what to do. I have a great deal of respect for it and certainly they have been a friend of our industry, but I would suggest that in seeking answers to the problem, maybe it is best that it continue like it is. Maybe it is best that the Congress do precisely what it has done in the past, by dealing with such problems on an individual case basis by intervening with special legislation, rather than to make new laws.

Mr. Chairman, I wind up on this: Let's take a look at the history of this country and the world with respect to compulsion. You can't really expect to compel people to do anything they essentially do not want to do. They won't do it. Even under the most insufferable conditions, under all kinds of guns, sometimes they just won't do what people say they should do.

Mr. Chairman, in 1940, a professor at the University of Wisconsin, an expert in the public employee sector, wrote a book dealing with strikes in the public services and he cited some 1,000 strikes that had taken place in previous years in public service. Yet, Mr. Chairman, in every single area of every single strike, it had been illegal to commit such strikes, but those strikes did occur. That didn't make it good, bad, or indifferent so far as I am concerned, but these are the facts of life.

You have seen waves of strikes throughout the country where it was legally improper to do so, but it was done. Man's most valuable thing he owns is his right to work, or to withhold his service, or to exercise his physical capacity to do or not do a job. It is a difficult thing to legislate.

I suggest in spite of all of the talk that periodically runs through the Halls of Congress and through this whole society about compulsory arbitration, I know of no strike that has been any more than an inconvenience. I know of no instance where there has been truly a real great danger arising out of a particular strike.

Suppose a general strike might happen? Well, it should seem to me if you are going to suppose a theoretical problem which does exist at the moment, and to conclude that the answer is to take away the right that is guaranteed by this Constitution of ours, by passing laws to deprive people of that right, then I think that is being a little too fast.

I think to sum up, Mr. Chairman, in the period of time when Harry Truman seized the rails or the steel industry, I am not sure which, the Supreme Court made a decision on it and ruled against the President on the basis that the important thing is the concept of what we consider our constitutional rights, not what happens to be expedient for the moment.

I happen to think that was a great decision and I think that in a capsule, it gave us this whole issue of compulsory arbritration.

So, Mr. Chairman, those are the few brief remarks I wanted to make. Again, not wanting to get into details and technicalities of law, but simply stating a point of philosophy I have on the matter, and that of the people whom I represent, and instead submitting the details for the record.

Thank you.

(Mr. Hall's prepared statement follows:)

STATEMENT OF PAUL HALL, PRESIDENT, SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, AFL–CIO, AND PRESIDENT, AFL–CIO MARITIME TRADES DEPARTMENT

Mr. Chairman and Members of the Subcommittee: My name is Paul Hall. I am President of the Seafarers International Union of North America, AFL–CIO, which represents American seaman on all of our nation's ocean coasts, the Great Lakes and the inland waterways of the United States.

I am also President of the AFL–CIO Maritime Trades Department—the constitutional department created by the AFL–CIO to represent trade union interests in the maritime field. It is in these capacities that I present my views.

We appreciate this opportunity to present our views on the variety of pending legislation in the area of national labor disputes in the transportation field, Mr. Chairman.

We of the maritime industry have a direct interest in the coverage of the proposed bill, H.R. 3596. While the primary thrust of the proposed legislation is aimed at the unions in the rail industry, H.R. 3596, as proposed, would specifically cover not only rail and airline labor-management relations, but those of the "maritime," "longshore" and "trucking" industries as well.

With respect to the American-flag ocean-borne fleet, I would like to point out at the outset that it is impossible to visualize any labor-management dispute that could have a national impact. Our fleet has grown so small that today it carries less than 5 percent of all of our nation's imports and exports. It is the neglect of our fleet, rather than its labor-management relations, that threatens our nation today with a "national emergency."

As to the effect of the proposed legislation on other segments of our country's transportation system—rails, airlines, trucking and longshoring—I am confident that witnesses expert in those fields will fully inform the Subcommittee of the potential impact such legislation would have in their particular areas.

As a trade unionist, however, I can say that we are totally committed in our opposition to any legislation that would erode the tradition of free collective bargaining that has made our nation strong, has kept her free and protected each of us against the tyranny of economic repression through government regulation.

We fear that the doctrine of free collective bargaining is endangered by provisions in H.R. 3596. The threat is most apparent in the three new alternatives to the present 80-day injunction provisions of the Taft-Hartley Act.

The first would add an additional 30-day injunction. In our view, this would accomplish nothing except to enhance the classic failure of the original injunctive legislation.

The second would create an involved procedure in which the President could appoint a Board that could permit a partial strike or lockout. In our view, this proposal is simply unworkable.

The third alternative would have the union and management submit a final offer, plus one alternative final offer, from which an arbitration panel would pick one without change or modification as the settlement contract. We view this as a "winner-take-all" form of compulsory arbitration that would inflame unrest in labor-management relations.

We find this proposal to be a gimmick that is nothing less than poorly-disguised compulsory arbitration. We simply cannot find much difference between the process of issuing a compulsory arbitration award based on arguments and facts—even though that award may not adopt specific proposals of either party—and, on the other hand, selecting the "most reasonable" offer from among the "final" and "alternate final" offers.

Each forces the negotiating parties to act against their own best interests under the threat of outside intervention. Each carries with it the promise of compulsion. Neither permits free collective bargaining. At this point, in fact, neither party is negotiatnig with the other. Everyone is trying to negotiate in order to please some remote arbitration board.

This process has been termed "Final Offer Selection" and "Mediation to Finality." I prefer to think of it as compulsory labor-management disaster.

Collective bargaining in our land has always worked best when government has interfered least. Government action—whether it be the dispatching of troops as strikebreakers, the seizure of an industry or the invocation of an injunction—has consistently created wounds that have led to an erosion of labor-management relations.

There is no proof that America has ever been afflicted by a strike that caused a "national emergency." And where the Taft-Hartley injunction or the Railway Labor Act's tedious extension provisions have been invoked, the "national emergencies" they were intended to curtail, vaporized under the heat of the test of reality.

A study directed by former Labor Secretary Shultz of three longshore strikes lasting 35 days and longer brought findings that the strikes had no visible impact on the national economy.

Nor is there any indication that the recent 18-day strike by the United Transportation Union against 10 railroads caused a "national emergency." Indeed, the evidence indicates that these selective strikes may well have provided our system of free collective bargaining with a sorely-needed shot of strength and reality in the railroad industry.

A contract settlement was reached without Congressional action—and without compulsion.

Compulsion and freedom are incompatible. To advocate compulsion over freedom in labor-management relations is to invite tyranny.

Compulsory arbitration in its many forms has been opposed for decades by informed leaders of labor, of industry, and of government.

Senator Wayne Morse, in 1953, said that compulsory arbitration "attacks, in my judgment, some basic foundations of economic freedom in this Republic."

Senator Barry Goldwater at the same time warned that compulsory arbitration "can mean price control, wage control, quality control, and even place of employment control."

The National Association of Manufacturers has testified that compulsory arbitration "violates the American concept of freedom, under which the government is the servant rather than the master of the people."

The AFL–CIO, which has never altered its course on this paramount issue, warns flatly that "compulsory arbitration means loss of freedom."

We in the maritime industry do not want to negotiate in the shadow of government dictate. We would be hamstrung. We would eternally be weighing our demands—and our concessions—against those that we might feel would be acceptable to government. To settle for less would be a disservice to our members. To fight for more would carry the danger of government forcing men back to the workplace in violation of the liberties we have fought for, won and cherish.

Each of us would become the victim of a controlled economy—with government determining what would be paid to whom, as well as the acceptable level of profits and the method by which both wages and profits could be earned.

In addition, there is no escaping the fact that any form of compulsory arbitration would, of necessity, eliminate the legal right of a worker to strike. The only alternative that would be left for the worker would be to violate the law in the name of freedom.

We have seen this occur frequently in recent years as public employees, ranging from sanitation workers to mailmen to teachers and policemen, have struck in the face of laws prohibiting strikes. They have struck, in several instances, where the punishment for exercising their inherent right to withhold their labors as included long terms in jail, as well as substantial fines.

Mr. Chairman, each of us knows from past history that the only absolute guarantee against the use by workers of the strike weapon in a police state.

Logic tells us that any law commanding compulsory arbitration must, by its nature, eliminate effective strike action. This, in turn, would force workers to violate such laws unless those laws were enforced in a police-state manner.

Mr. Chairman, the American free collective bargaining process has provided the individual worker with a way to defend himself against the overwhelming economic odds of management. It has given him the means to lift himself from his knees—to become the equal of his employer.

Compulsory arbitration would strip the worker of his only effective means to gain the dignity that is fundamental to receiving a fair day's pay for a fair day's work.

We in the maritime industry want to see the collective bargaining process protected and strengthened so that it will provide even greater benefits to the worker, to industry and to America. We are dedicated in our opposition to all forms of compulsory arbitration in contract negotiations as a dangerous step toward the repression and restriction of a hard-won freedom.

What we are discussing here is a fundamental freedom that has made this country great and different in terms of human freedom. Even if we assume that there are occasions when a strike has national impact, it is essential that we preserve freedom above all else. For it is only in a free society that there is hope for the lasting resolution of human issues without leaving the bitterness of a struggle which could pit class against class.

In a democracy like ours, we are constantly faced with problems that one segment or another finds unpleasant. We cannot afford, however, to succumb to the temptation of dealing with these problems through suppression and repression of our basic freedoms.

In the final analysis, the erosion of any basic freedom opens the door to a succession of such restrictions which could only alter our democracy and jeopardize our future as a free nation.

It is in this context that I submit our opposition to H. R. 3596 and request that the Subcommittee carefully consider the implications of the legislation before you in terms of altering a system and a concept that has proven its value as a foundation upon which we have built a tradition of economic freedom.

Mr. METCALFE. Thank you, Mr. Hall. That was quite a presentation on the philosophy of our way of life here in America.

I am wondering, since, in your analysis you place great emphasis upon the right of an individual to work, and you are opposed to compulsory arbitration, if the economic situation was taken into consideration as to why the railroads are not doing well and probably why industry itself is not doing well, and maybe why you only have 5 percent of the maritime business, what about the right of the American people that, perhaps, are not employed by any of these unions or any of these bodies for service; were those rights and those considerations taken into account as you went about your analysis as to whether or not there should be compulsory arbitration?

Mr. HALL. My answer would be "yes," Mr. Chairman. I think that the very laws which we now operate under, and procedural rules we follow on settlements that have been made, when you measure those against impact economically and the physical discomfort, I think one weighs out very well with the other.

I would point out, first of all, it is a great inconvenience to any worker to quit working; he quits earning and that is inconvenient, and in our kind of society, Mr. Chairman, again, when this happens, obviously it will cause discomfort. The discomfort, Mr. Chairman, and inconvenience—they do not make a national disaster or tragedy. Inconvenience is the price I believe you pay for a free society. And it does not just happen that only the labor movement inconveniences the public, but many things inconvenience the public.

Don't forget either, in inconvenience to the public you are talking also about the working class and labor movement. We are all one indivisible group in this country. We are all public. We are all America. So, I think it equals itself out, all things considered.

Mr. METCALFE. I don't want to get into any further discussion on that, but thank you very much.

Mr. Devine, any questions?

Mr. DEVINE. Thank you.

I would also like to compliment you on your statement.

You don't have to answer this, but what was your occupation prior to becoming president of the Seafarers International? Were you a seaman?

Mr. HALL. Yes, I am a seaman myself, not a sailor as such on deck, but a fireman, marine fireman. I spent my life in this industry.

Mr. DEVINE. I might suggest in all kindness, you don't need a prepared statement; you are quite glib, quite articulate and tell a story without resorting to a prepared paper, and I think perhaps you could have been a professor of philosophy or maybe American history and the labor movement, because you handle yourself quite well.

Getting into the field of compulsion, I don't mean to be argumentative—we abhor compulsion here, and I have been on the committee for the 13 years and we have been required time after time to come up with what amounts to compulsory arbitration in labor disputes because of the abject failure of collective bargaining to work, particularly in the railroad industry, and you mentioned that compulsion is against our basic American philosophy, which I agree with. But we have what we call progression to the point we have compulsion in a number of fields, whether we like it or not, such as social security, which is compulsory, no longer voluntary, and eminent domain by States telling people to give up private property under certain circumstances. So, it is not foreign to our policy, so when our parties cannot resolve differences, it puts the burden on us in Congress.

We are seeking solutions. We know the problem and see the problem you face in your position.

I do want to thank you for your volunteered statement in addition to the other, which I read.

Mr. HALL. Congressman, first, when you talk about social security, which is a question of taxation for the purpose of pensioning old people and people not well, that is quite different from compulsion relative to the man, control of himself as an individual. He is a free human being, and these are quite different things, and quite different types of compulsion.

I don't think it is a proper analogy.

Mr. DEVINE. In compulsion by law you have to contribute whether you want to or not.

Mr. HALL. By the same token, income tax is compulsory, but it is for the purpose of the total country, and this is applied evenly by at least some people's standards, and in my mind it is not quite even, but I don't believe it is a proper analogy, if you forgive me for saying so.

Mr. DEVINE. It is a distinction without a difference. Thank you very much.

Mr. HALL. Yes.

Mr. METCALFE. Mr. Harvey?

Mr. HARVEY. Thank you.

I also welcome you, Mr. Hall, this morning. I agree with you in many respects, I have argued from this forum up here against the in-

clusion of the maritime industry in any such bill we are considering because I don't feel they should be included either.

Our problems have not come from the maritime industry, so in that regard I agree.

Let me say along the line my colleague, Mr. Devine, has raised, that when the Congress is called to act, it is a form of compulsory arbitration. We have to make the decision and the parties come before us, management comes one day and labor comes the next day, and then the matter is in our laps, and we have to make the decisions.

I guess what I object to about Congress having to make the decision is not the words you used, "inconvenience to Congress in making it." None of us have shied away from the burden of having to make decisions. Rather I object to the fact that Congress is really the poorest equipped to make the decisions. None of the 535 Members in the House and the Senate are, to my knowledge, experts in either the railroad industry or airline industry, which are covered by the Railway Labor Act. Nor are they experts in the area of labor relations. This makes for the poorest sort of agreement that can possibly be reached.

I think you would agree in that regard that we get just a cursory summation of the position of the parties. Upon this we are, within a matter of 24 or 48 hours, called upon to make a decision and do something which is going to get the men back to work. That is because—contrary to what you say in your statement on page 3, and I refer to the last sentence on the page, "There is no proof that America has ever been affilicted by a strike that caused a national emergency."

Contrary to that, the courts have found that a national railway strike is a national emergency in any duration of time. I think that the overwhelming opinion in Congress and the overwhelming opinion of American Presidents, Democrat, Republican, alike, in the past 50 years is to the effect that a national railway strike is a national emergency and must be dealt with.

The question we are faced with is: How do we do it best and most fairly? This is a very, very difficult question to answer, frankly, and that is what we are trying to reach here.

Mr. HALL. You are talking about specifically railroads now, Congressman. Of course, your bill includes all other forms of transportation.

Mr. HARVEY. Not my bill.

Mr. HALL. I don't mean your bill, but the other bill.

Mr. HARVEY. The administration's bill, H.R. 3569, includes maritime and I think this is ill-advised, as I informed Secretary Hodgson the day he was here. I thought it was a major mistake. I told Secretary Volpe also, and I think a majority of the members of the committee on both sides of the aisle have informed the administration of this.

Mr. HALL. I know time is a factor here, but let me comment on your remark, if I may.

First of all, the basic problem of this country relative to railroads is the basic problem relative to all transportation. You heard about the baby boom; you heard about the question of pollution and all of these things.

Well, what most of us don't understand, Congressman, and this is the appropriate committee I would think that in part would deal with this, on the question of commerce, you have a transportation boom

in this country. The transportation facilities, some of them, are being outmoded and some are in need of being revised. You have a very bad situation relative to transportation per se.

Now, the last administration recognized this, and they set up a Department of Transportation. We fought them over details. We don't think they had done a good job or put the right man in charge, of and we didn't believe that they gave the total look at the situation that should have been.

We think the proof of this pudding, Congressman, was that the day that gentleman left that office, he went to work, I repeat, as president of the Illinois Central, and this showed what his feelings were to start with. How could he have conceivably been unbiased right down the line?

When you talk about transportation, because some of the transportation might not work properly under certain conditions, it is not fair to make the immediate decision, it seems to me, to take away the rights of part of the transportation industry—the right of the worker to strike—without going into the total picture, you see, because that is a pretty big step you are taking in the history book when you move to deny people their fundamental rights.

Mr. HARVEY. What I thought, rather than doing that, we ought to start small, and since we had had almost all of the problems with the railroads, that is where we ought to find a formula for settlement.

I recommended to the administration that rather than trying to include truckers and the maritime industry and include everybody else included under Taft-Hartley, that really their problem has been consistently over the last 7 or 8 years with the railroad industry. That is where we need a formula for settlement.

Mr. HALL. Congressman, I don't want to belabor the point, but I feel, you know, I have bargained a few years under the Railway Labor Act for seagoing railway members, guys who move tugs, marine equipment from New York or the Jersey side, and so forth, down the coast. I have seen a lot of guys who are very skillfully confusing people, but the railroads have always been able, in my opinion, to confuse the picture—management I am talking about—and I don't want to sound just like a labor guy. I am not talking just as that, but I am amazed that this industry management, which themselves are so incapable of running their own business, and witness their condition today, have been so able to confuse the issues in the Congress.

I won't belabor the time of this committee to say what I think.

Mr. HARVEY. It is like a divorce case, for there is plenty of fault on both sides.

Mr. HALL. This is why I think it should have been completely objective and take into consideration all facets and not just what might have been a mistake of labor.

Mr. HARVEY. My question to you is a very general one. What do we do to settle a railroad strike that has suddenly escalated from a small into a big strike and has become a national emergency? This is just the situation we were in the month of August. What is Congress to do when labor itself has exceeded what they have defined as a selective strike and brought about a national emergency? Is the only solution to come to Congress, which is ill equipped and poorly advised, as I mentioned, to settle the dispute? Isn't there some mechanism that labor and management can come up with?

Mr. HALL. I would think this, and you know in my bargaining with railroad management, and this is important to me, it was the one area in which I could not personally, as the representative of the workers, meet and talk to the principals of management.

Remember—let me repeat it—I could talk to the biggest shipowner in the country at any time, subject to convenience on both parties' sides, on anything dealing with the basic questions of maritime. Mr. Chairman, I don't think I got past the 21st office boy on the railroads. I never saw an area in which relationships in that sense are so bad.

Mr. HARVEY. We tried to go into it in the last few days. I guess if the carriers want a national bargaining conference and hire Mr. Hiltz, that is their prerogative, but what astounds me is both management and labor want national bargining. There is no question about it. They testified over and over again. Each witness for labor testified that.

Mr. HALL. Let me point out we also have national bargaining and management likes it, and we like it, but, Congressman, this does not mean we deprive ourselves of the opportunity of meeting the fellows in management who have the real interest. That is the people who own it, the people that control it, and they are the fellows who should care and be interested. We never exclude that relationship, even though they have professional negotiators as well.

We sit down with them and we bargain, but I personally have access to every owner in the industry and such, and whether he is the small one or big one, he has access to me. But with the railroads, I repeat, we never got past the 21st office boy, believe me.

Mr. HARVEY. Let's assume I agree with you there. I say, too, that labor negotiators ought to be able to talk to the presidents and bosses and ought to have closer contacts and so forth, but let's say it still does no work. Now, you have a strike which is a national emergency, how would you go about settling it, other than coming to Congress?

Mr. HALL. I certainly don't think the answer is to take away the right of one of the parties.

Mr. HARVEY. If I had my druthers, nobody would take away the right of parties to collective bargaining. Nobody wants compulsory arbitration, but the point is, there is some burden on organized labor to come up with something new. Every person in organized labor has been critical of the administration for final offer selection. Very frankly, I have not thought it is the best thing. On the other hand, it is the only new idea thrown out in this field. I think it has certain merits.

Mr. HALL. To find the answer, you must first understand the problem. The problem, I repeat, in part is a lack of proper relationships between the top management of both parties, the unions and the management people.

What you are proposing, and not you as a person but the legislation proposal, without going into that area, you are going to suggest that one of the parties have their rights deprived. The greatest and single weapon a worker has is just to withhold his service. That is all he has in the final analysis, his ultimate weapon in our system, and if you take it away from him, you have him prostrate belly up to the mercy of an employer who wants the Government to come in.

Mr. HARVEY. No, sir; I believe he ought to have the right as long as he confines it within the limits of the selective strike as defined by Congress. I believe he should have the right to selective strike and I don't want you to misunderstand. What I am talking about is the situation where a union escalates, voluntarily or involuntarily, a selective strike so that you get to the point of a national emergency. What do we do then?

I wish you would see for 1 minute some of the advantages of final offer selection. I think compulsory arbitration, for example, where you always have to split the difference, tends to drive the parties apart. Somebody did some thinking on final offer selection, however, for it will at least get the parties closer together.

If you have other ideas, we welcome them.

Mr. HALL. I have had lots of ideas on it. I think, for example, what Andrew Biemiller said as the official position of this labor movement is, in part, the answer; that is, under certain conditions. The national railway labor industry, it is rather peculiar, one of the big industries with so many considerations from Government from the origin of the land-grant days up to date——

Mr. HARVEY. I am sorry to interrupt you, but we have to close. I testified myself as a witness here in these hearings the first day we started, and in my testimony I said at that time that unless we solve this problem, there is no doubt in my mind we were approaching the nationalization of the railroads. There should be some solution that the American people can be offered to settle these disputes short of that. Certainly, that is not the only thing we have to offer, not the only thing you have to offer, or the only thing management has to offer. But we thank you for your testimony. You have been a very good witness.

Mr. HALL. Thank you very much.

Mr. METCALFE. Thank you very much for your testimony, Mr. Hall.

According to our agenda, this concludes the witnesses that will be heard today.

The subcommittee hearings on the disputes between the transportation labor groups will recess until 10 o'clock tomorrow morning.

Thank you very much.

(Whereupon, at 12:05 p.m., the hearing was adjourned, to reconvene at 10 a.m., Thursday, September 30, 1971.)

SETTLEMENT OF LABOR-MANAGEMENT DISPUTES IN TRANSPORTATION

THURSDAY, SEPTEMBER 30, 1971

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

The subcommittee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. John Jarman (chairman) presiding.

Mr. JARMAN. The subcommittee will please be in order as we continue the hearings on legislative proposals for the settlement of transportation labor disputes.

Our first witness this morning is Mr. Charles Luna, president of the United Transportation Union, with headquarters here in Washington. Mr. Luna.

Mr. HARVEY. Mr. Chairman, I would like to make a unanimous-consent request, if I might. The Republicans in the House have a conference at 10:30 this morning, at which I am one of the candidates for office, and consequently I am going to have to ask to the excused.

I have had opportunity this morning to read over Mr. Luna's testimony. I jotted down three or four questions and wondered if I might interrupt the ordinary procedure here and perhaps ask him a question or two in advance of his testimony. It is most unusual, Mr. Luna, and I apologize to you very much for doing it, but you are certainly one of the most important witnesses here and I didn't want the opportunity to pass by without a chance to ask you a few questions.

STATEMENTS OF CHARLES LUNA, PRESIDENT, UNITED TRANSPORTATION UNION; H. C. CROTTY, PRESIDENT, BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES; AND LESTER P. SCHOENE, COUNSEL, CONGRESS OF RAILWAY UNIONS; ACCOMPANIED BY AL CHESSER, NATIONAL LEGISLATIVE DIRECTOR AND PRESIDENT-ELECT, UTU

Mr. LUNA. I will be glad to answer.

Mr. JARMAN. This is certainly acceptable to the committee, and the gentleman is recognized.

Mr. HARVEY. I thank the chairman very much. Mr. Luna, when railroad management was here, I asked them the question, as I have most of the other labor witnesses as well, whether or not they preferred a pattern of national settlement of rail strikes, or whether they preferred regional settlements.

I had the impression from reading the newspapers that the pattern of national settlement was not working as well as it should be. I was wondering if you would comment on that.

Mr. LUNA. You are exactly right. I had been hopeful we would never have to go to national handling, on rules especially. On one railroad alone, one general chairman has nine different contracts—that is on one railroad—and most rules are different on the same railroad.

I personally came off of a railroad, the Santa Fe, where we have three general committees, and the same people we represent, doing the same work, have different working agreements on three parts of that same railroad.

I did make the statement in court that wages, vacations, and health and welfare should be the same on all the railroads; and if you will check the record, we never agreed on this last one to go to national handling on rules. The Mediation Board put us in national handling, and the only way you can get in national handling, according to the Railway Labor Act as it now stands, is by agreement or by the Mediation Board putting you in national handling. If I had my way, we would never handle the rules nationally.

Mr. HARVEY. All right; I thank you. My next question is this: On page 18 of your statement, you indicated that for those who thought that the UTU let the recent strike get out of hand, that H.R. 3595—that is the Staggers bill—has certain limits to it; but my question to you is: Of what use are the limits if the bill also permits national strikes?

Mr. LUNA. We didn't have any guidelines except the court decision on selective strikes, and we would have never had this many railroads out at one time even under those guidelines if it had not been for promulgation of the carrier rules; the rules that were promulgated were worse than we worked under 50 years ago.

It was only by strict discipline on the part of our members that we were able to keep them working. The only reason you would need a national strike: If the carrier had done away with your rule book and disrespected everything you worked for and negotiated for, you would have to have some way to combat it if they did it all over the United States.

Mr. HARVEY. When Mr. Hickey testified here the other day, he indicated the right of the national strike was today virtually meaningless. I think he said it was an "impracticality" and "futility," as he described it. Would you agree?

Mr. LUNA. I would agree, with the condition that they, too, abided by the laws, the railroads, too, abided by it.

Mr. HARVEY. I am not sure I follow that.

Mr. LUNA. In other words, if the railroads would only promulgate the rules that they had notices served on and have implementing agreements so the men would know what they were working under, as the law provides, I would say a national strike would be a thing of the past.

Mr. HARVEY. I see. I have another question here. Like the other representatives of organized labor, you reject the idea of compulsory arbitration, as I think the majority of the Congress does. We don't look with favor on it at all. Final offer selection however has this important feature. As it is used, the offers in the final offer selection are

prepared by the parties themselves. They are not prepared by some third parties called in to mediate the dispute at all.

I have the impression that there is a very strong force there for driving the parties together, rather than the force that works in compulsory arbitration driving them apart, knowing that someone will split the difference later on.

Mr. LUNA. If that applied only to wages, it might be possible, on the final offer on wages; but with rules, I don't think either party could make the final offer on how a rule would be drawn up or what it would do. It is something you have to have implementing agreements on, and it is different on each railroad.

Mr. HARVEY. As I recall—and not reading your agreement, of course, but reading in the New York Times about it—in the agreement you recently signed, you agreed to arbitrate the rest of the rules; is that correct?

Mr. LUNA. No, sir; you are a little bit wrong. I told them for 10 years you couldn't write a national rule on interdivisional runs, and the first night we met with the three presidents, I had a proposal; they accepted that. And they go down to their personnel experts, who were in another room, and they said it will not work. They made three or four offers to me, and I accepted them, and they went out into the other room and came back and said it would not work.

Finally, one of the presidents came back and said: We could not write a national rule, and I said I have been trying to tell you that for 10 years.

We set up machinery for each individual railroad to handle its own cases on interdivisional run rules, which we now have in effect on 287 roads or something like that, that have been worked out on individual railroads.

In other words, they wanted, as I said, a blank check, signed by us, that they could put them in any way they wanted to, and we couldn't give them that blank check.

Mr. HARVEY. I have one last question. H.R. 3595, the labor bill, amends the Railway Labor Act, which I think is the proper starting point. However the emergency clause of the Railway Labor Act provides that one criterion of an emergency is an impairment of regional health and safety. My question is this: Isn't the 40 percent provided by the labor bill in this case excessive? Doesn't that seem high to you in light of the experience of what took place in the month of August?

Mr. LUNA. No, sir, I will tell you why. At one time, the railroads handled 100 percent of the intercity freight and at this time only 40 percent of the intercity freight, and when you take 40 percent of 41 percent, then you are stopping very little of the intercity freight. In other words, other modes of transportation are handling a larger part of the business than the railroads do. You take 40 percent of that and you don't have much that you are stopping.

At no time in any strike I have ever been in, any work stoppage, have we refused to run trains needed for the safety and health of the people, at no time; and at no time, to my knowledge, have the railroads ever agreed to do this because they say it is unprofitable. I think at a time like this, we should forget about profit, because our people suffer as much as they do, and try to do what is necessary to give the people the service, they need as far as health and safety which should be done.

Mr. HARVEY. Mr. Chairman, I thank you and apologize to the committee.

Mr. LUNA. Mr. Chairman, there is one thing I would like to add if you will let me.

Mr. JARMAN. Yes.

Mr. LUNA. I notice some of them said this would have been back on the Hill in another 2 or 3 days if a settlement had not been made. I personally, as I said before, would not have had this many railroads out if they had not promulgated the rules or did what they did; and Sunday night I had our people standing by in the office at Cleveland to put one or two railroads back to work before we pulled any more out.

We were watching that as closely as anyone else, because I was determined that we had won a battle on selective strikes and was keeping it off of the Hill, and I was determined we were not going to have too many out. We watched it as clearly as you, and we could have put them back and would have put some back before we would have pulled any more out.

Mr. HARVEY. I apologize to the committee in behalf of the other minority members, because at least in the next half hour, there will be very few minority members here.

Mr. JARMAN. Mr. Luna, for the record, would you please identify your associates this morning.

Mr. LUNA. Mr. Schoene is our attorney, and Mr. Crotty is president of the Brotherhood of Maintenance of Way Employes, and Mr. Al Chesser is national legislative director and president-elect of the United Transportation Union.

Mr. JARMAN. The committee will receive your prepared statement in full.

Mr. LUNA. Yes, sir; you have my statement in full, and I have an introductory statement which I have given the reporter a copy of.

STATEMENT OF CHARLES LUNA

Mr. LUNA. Mr. Chairman and members of the committee, my name is Charles Luna, and I am president of the United Transportation Union, which represents all the organized operating railroad employees in the United States, other than those represented by the Brotherhood of Locomotive Engineers.

Bills under consideration by your committee for settling emergency labor disputes are of vital importance to our members. I have here a prepared statement consisting of 22 pages outlining our position in detail on such bills and respectfully submit it for your consideration and request that it be entered into the record in order to consume as little of your time as possible.

I would like briefly to summarize the contents of my written statement as follows:

The bills under consideration for settling emergency labor disputes were generally introduced in the forepart of this year while major disputes existed between the Nation's railroads and our organization and several other organizations which everyone assumed would result in a national railroad strike paralyzing the Nation's railroads since the courts had not at that time recognized the legality of selective strikes in the railroad industry covering disputes which had previously been the subject of national handling.

Since that time, the United Transportation Union has conducted a fair, responsible, and successful selective strike in the railroad industry which ultimately resulted in resolving, through the collective bargaining process, one of the most controversial disputes which ever existed between our union and the Nation's railroads, which proves conclusively that there is no need for legislation providing for compulsory arbitration of our disputes or for ad hoc congressional disposition.

Our agreement reached through collective bargaining provides for wage increase in keeping with recommendations of Emergency Board No. 178 as well as many of the rules changes requested by the carriers. This is evidence that we did not use dictatorial or oppressive powers in conducting selective strikes. Our agreement is further evidence of the fact that the collective bargaining process works and will continue to work under any and all circumstances in settling emergency labor disputes.

I speak in opposition to the administration bill H.R. 3596 and the railroad and airlines bill H.R. 9989 because both bills will ultimately result in compulsory arbitration of our disputes in the future, thus ignoring a 100-year history of collective bargaining in the railroad industry.

I thank you for your time and respectfully urge you to read and give consideration to my written statement.

(Mr. Luna's prepared statement follows:)

STATEMENT OF CHARLES LUNA, PRESIDENT, UNITED TRANSPORTATION UNION

Mr. Chairman and Members of the Committee: My name is Charles Luna, and I am President of the United Transportation Union. The United Transportation Union represents all the organized operating railroad employees in the United States (other than those represented by the Brotherhood of Locomotive Engineers) as a result of the merger, effective January 1, 1969, of the Brotherhood of Railroad Trainmen, Order of Railway Conductors and Brakemen, Brotherhood of Locomotive Firemen and Enginemen, and the Switchmen's Union of North America. I was the President of the former Brotherhood of Railroad Trainmen.

The bills that the Committee has under consideration for settling emergency labor disputes were generally introduced in the forepart of this year or represent refinements and modifications of bills that were introduced early this year. Since the ideas embodied in these bills were formulated, two events, both having major bearing on these ideas, have occurred, and I believe I can say, without impairment of my usual modesty, that I might qualify as an expert witness with respect to both of these events.

These events are: (1) the courts have recognized the legality of selective strikes in the railroad industry with respect to disputes that have been the subject previously of national handling; and (2) the UTU has conducted a fair, responsible, and successful selective strike in the railroad industry. I shall devote the major portion of my statement to a discussion of these events and their relevance to the issues this Committee has under consideration.

The problem with respect to the legality of selective strikes arose solely from the fact that the railroads in the last couple of years persuaded two District Court Judges in the District of Columbia that selective strikes after previous national handling of the disputes under the Railway Labor Act are illegal. Consequently, whenever any railway labor union attempted to strike selectively under such circumstances, the District of Columbia Courts would issue preliminary injunctions, and, before any appellate review could be had, there would be some other disposition of the dispute—usually a national strike followed by *ad hoc* congressional disposition.

The dispute arising from the notices that the UTU served under Section 6 of the Railway Labor Act on October 20, 1969, the carrier counterproposals of November 7, 1969, and the further notices of the UTU served on November 20, 1969,

at one stage were headed for disposition according to this same pattern. After these disputes had been handled on the individual properties and in national handling with the National Railway Labor Conference, both in national conferences and in mediation, they were investigated and reported upon (along with disputes involving the Brotherhood of Maintenance and Way Employes, the Brotherhood of Railway, Airline and Steamship Clerks, and the Hotel and Restaurant Employees and Bartenders International Union) by Emergency Board No. 178. When negotiations following the report of the Emergency Board did not result in disposition of the disputes, the four unions called a national strike for December 10, 1970. To avert this strike, Congress enacted Public Law 91–541 in the early morning of December 10, 1970, and the strike was called off.

That legislation required the railroads to put into effect the wage increase which the Emergency Board had recommended for adoption in 1970 and required the parties to engage in further negotiations with any strike prohibited until March 1, 1971. Before March 1, 1971, the other unions that had been before Emergency Board No. 178 succeeded in working out dispositions of their disputes. Our union was unable to work out any amicable solution because, I believe, the Emergency Board's recommendations for rules revisions, affecting almost entirely the employees represented by the UTU, were designed to save the railroads enough in operating expenses to ofiset the wage increases recommended for the employes represented by all the unions and, in addition, failed to reflect any comprehension of the practicalities of railroading.

In any event, when we were unable to work out a settlement by March 6, 1971, we called a selective strike to begin on March 8 on the Burlington Northern and Seaboard Coast Line Railroads. When the railroads sought a restraining order and injunction against such a strike on March 7, 1971, we voluntarily postponed the strike in order that the application for preliminary injunction might be heard in the United States District Court for the District of Columbia on March 10, 1971. After the hearing, the judge, in accordance with the practice established for the past several years, issued a preliminary injunction against the strike.

Instead of allowing the matter to be resolved by the preliminary injunction route, this time we sought and obtained emergency consideration of an appeal to the United States Court of Appeals for the District of Columbia Circuit. On March 31, 1971, the Court of Appeals decided unanimously that a selective strike was unlawful, notwithstanding previous national handling of the disputes, so long as the purpose of such a strike was not the breaking up of national handling. The court, nevertheless, delayed issuance of its mandate so as to permit the carriers to seek Supreme Court review by petitioning for a writ of certorari. A petition for a writ of certorari was denied on June 7, 1971. We were at last legally free to proceed with a selective strike, but we continued to negotiate through June in the hope that a settlement could now be negotiated in light of the carriers' knowledge that we could strike selectively.

The opinion of the Court of Appeals had indicated that, as a manifestation of our good faith in seeking a national disposition of the dispute, notwithstanding the selective nature of the strikes, it would be appropriate to give two weeks' notice of the intention to strike. This is what we did. On July 2, 1971, we notified the National Railway Labor Conference, the officials of the railroads involved, and the Government that on July 16, 1971, we would strike three named railroads, one in each of the three regions; until the actual date of strike, we continued our efforts to dispose of the dispute through negotiations, without a strike.

The railroads bitterly resisted these efforts. They were apparently convinced that the welfare of the industry required them to fight us to the last ditch, no matter what harm the industry might have to endure or what hardship might result to the public for lack of railroad transportation. Accordingly, it became necessary for us progressively to enlarge the number of railroads struck and to continue the strikes for a period longer than might have been thought necessary at the beginning. In each instance of enlargement of the number of carriers struck, we gave the same type of two weeks' notice that we had given in the first instance. Finally, effective August 2, 1971, we were able to make a national agreement disposing of the dispute on all the railroads involved, except for the Chicago and North Western which had settled earlier under circumstances which I will relate later in my testimony.

I have recited these events in some detail because I think they require consideration of the premises on which all the bills now under consideration by this Committee were drafted. These bills are premised on the thought that,

whenever there is a national railroad dispute, a national railroad strike is an intolerable national emergency; hence, some modification of the present law is needed. The events I have recited demonstrate that it is now the established law that a selective strike is lawful, that such a strike can be conducted fairly and responsibly, and that it will lead to a collectively bargaining disposition of even the most far-reaching and bitter dispute.

Most of the bills that this Committee has under consideration provided for some form of compulsory arbitration—if arbitration is understood broadly enough to embrace the imposition of rates of pay, rules, and working conditions not voluntarily agreed to by the parties, even though it may be disguised under such forms as "final offer selection." I believe, though, that all or nearly all the members of this Committee, and all or nearly all members of Congress, including the authors of bills providing for compulsory arbitration, would agree that any form of compulsory arbitration is, at least to some degree, repressive of our traditional free enterprise system and, specifically, repressive of freedom of contract. I think it follows that all or nearly all members of Congress would prefer that solutions to disputes over rates of pay, rules, and working conditions in the railroad industry, and every other industry, be found through free collective bargaining, rather than through compulsory arbitration, no matter how it may be disguised. Our experience this year suggests that this is now possible under present law.

In many respects, the experience leading up to the disposition of our dispute through the agreement of ugust 2, 1971, was about as severe a test of the efficacy of collective bargaining as one is likely to find. This is true for a number of reasons. In the first place, the issues in dispute were very important and far reaching; the wage increases involved were of critical importance to our people at a time when living costs were rising rapidly, and our people had had no wage increases for a long time; on the other hand, the revisions of working conditions that the railroads sought were revolutionary—the railroads thought it was important that they should have them, and our people were equally determined not to suffer retrogression in their working conditions.

But the inherent importance of the issues was by no means the only reason that the dispute was a difficult one to settle. The carriers had great difficulty in reconciling themselves to the fact that selective strikes following national handling were now actually lawful. This can be illustrated with what happened on the Chicago and North Western. That railroad was one of the first to be struck. The management wanted to avoid being struck but apparently could not persuade the national representatives of the carriers to make a national agreement on the terms that the C&NW was willing to make. Accordingly, the C & NW withdrew from national handling and sought a separate agreement with us. We were in doubt whether our engaging in separate negotiations with the C&NW might be construed as indicating a purpose to break up national handling, which the Court of Appeals for the District of Columbia Circuit had indicated would be an unlawful purpose. We, therefore, petitioned the court for instructions. The C&NW responded by seeking a mandatory injunction to compel us to bargain with them individually (and also for a ninjunction against any strike while this individual bargaining was going on), but the other railroads, in substance, said, "See, I told you so!", and again tried to enjoin our strike altogether, notwithstanding the previous action of the Court of Appeals and of the Supreme Court. The District of Columbia Courts denied any relief to anybody, but the C&NW, nevertheless, got an order from the Federal District Court in Chicago commanding us to negotiate with them individually. As a result of such negotiations, a separation agreement was made with the S & NW, but the greatest care had to be exercised in the conduct of these negotiations to avoid ianything that the carriers might use as an excuse again to try to enjoin all strike action.

There can be little doubt that throughout the strike the railroads' efforts were directed toward forcing a national strike and consequent congressional ad hoc disposition. This is shown not only by their persistent efforts to enjoin the selective strikes but also by the fact that they put their proposed rules changes into effect by unilateral promulgation on all the railroads, including those that had not been struck. To avoid a national strike under these circumstances called for the highest order of discipline among our people. It meant that many thousands of our people had to work under working conditions that were not acceptable, that were brutal, and for earnings far below those normally associated with their jobs. It also meant that, before a final settlement could be made, not only the issues initially in dispute but also those arising from the rules promulgation had

to be resolved and provision made for resolving the grievances arising from working under the promulgated rule.

I have no doubt that the circumstances I have described made it necessary in this instance to extend our selective strikes to a larger portion of the industry than would normally have been necessary in order to secure disposition of a less complicated dispute. I recognize that many members of Congress received many letters from their constituents beseeching them to do something about the lack of railroad service. No one could have hoped more fervently than I did for an early and satisfactory disposition. If some of your other constituents considered it a hardship to be without railroad service, bear in mind that those of your constituents who are also members of my union were either out of work and on the picketline or else were working for reduced earnings under intolerable working conditions promulgated by the railroads.

The Court of Appeals for the District of Columbia had suggested in its opinion that one way of spreading the impact of selective strikes without spreading the deprivation of railroad service to the public would be to resume service on some railroads while strike action on others was initiated. Whatever merit this suggestion might have under other circumstances, its adoption was virtually precluded by the railroads' promulgation of their rules. To have asked people who were on strike to go back to work under changed working conditions could only have resulted in further complicating the settlement of an already complicated dispute.

When you are weighing the hardships that some of your constituents were subjected to by lack of railroad service, I think you should also have in mind that, constantly throughout the strike, we said, and reiterated, that we were ready at all times on the struck railroads to perform any service necessary to protect the national safety and health. But we were never called upon to perform any such service since probably such a limited partial operation would not be profitable. By the same token, it is easier to conduct a strike when operations are shut down entirely than it is when partial operations are carried on in the interest of protecting the national safety and health, but we were constantly ready to conduct such operations; and we think that the railroads, as public service institutions, should likewise be prepared to carry on such operations even if they are not profitable.

While the selective strike was in progress, and from some comments I have heard since, one might gather that the selective strike gave us dictatorial and oppressive powers—that it put us in a position to enforce any demands we might make and bleed the industry white. I submit that anyone entertaining any such notion does so in complete disregard of the facts. I have already alluded to the fact that conducting the strike was no picnic for our people. They were willing to undergo the sacrifices necessary to secure a fair settlement, but no workman is willing to undergo sacrifices for the sake of being oppressive.

Was the settlement fair? I don't see how anyone can dispute the fairness of the wage settlement. The wages we contracted for were exactly those which a Presidential Emergency Board had recommended for the duration of the contract they recommended, with only the addition of a modest increase at the end of that period, in consideration for an extension of the duration of the contract; they were exactly the same wage terms that a majority of other railroad employees had included in contracts that they recently made and that the railroads were offering us even before the strike.

With respect to rules, which was the heart of the problem, the settlement was a fair compromise. With respect to interdivisional runs, about which there was so much publicity during the strike, we have made many agreements for them in the past on individual railroads and I have constantly expressed willingness to make such agreements to fit the precise requirements of individual railroad operations. In our national negotiations, the negotiators for the railroads found, I think, that they couldn't write a national rule that their own people would find acceptable and the matter was remanded for disposition on the individual properties under procedures assuring that it will be disposed of there. Numbers of other rules were involved and some of the rules changes we agreed to would certainly have resulted in hardships to our people if we had not also negotiated fair protective conditions to guard against these hardships.

Perhaps, the best evidence of the fairness of the terms is the testimony of the representatives of the railroad managements. I note that, when Mr. Stephen Ailes, President of the Association of American Railroads, was before this Committee the week before last advocating the enactment of H.R. 9989, he said,

"The purpose of the bill is not to protect the railroads from the railroad unions—the recent UTU strike should have made it clear that no such protection is necessary."

Another appraisal comes from Mr. Benjamin F. Biaggini, President of the Southern Pacific. Mr. Biaggini was the spokesman for the Western region in the negotiations that finally led to settlement and, thus, a well-informed participant. The August 30, 1971, issue of Traffic World quotes extensively from a speech Mr. Biaggini made on August 16 to the National Association of Railroad Trial Counsel in San Francisco. Mr. Biaggini explains in detail the importance of the rules dispute to the railroad industry, why the industry felt it necessary to make an allout fight on the matter, why the industry considered it necessary to let the users of railroad service suffer the hardships that they did, and he indicates that the settlement achieved well-justified the suffering and made everything worthwhile. (Of course, he does not agree that the use of selective strikes is the answer to collective bargaining problems in the industry and would like to see Congress enact H.R. 9989.)

I have indicated that I believe the two events I have discussed—judicial recognition of the lawfulness of selective strikes and disposition of a far-reaching national dispute through a fair agreement resulting from selective strikes—calls for reconsideration by this Committee of all the ideas that were current when the legislation was introduced. This doesn't necessarily mean, however, that I now consider any legislation undesirable. I joined with the Chief Executives of all the other railway labor organizations and with the AFL–CIO in supporting the enactment of H.R. 3595, and I have no occasion now to diminish that support. The express declaration as to the lawfulness of a selective strike after national handling without predicating such lawfulness on the avoidance of negotiations with individual carriers who may wish to withdraw from national handling seems to me useful, notwithstanding the judicial recognition of the lawfulness of such strikes. The prohibition of a national lockout converting a selective strike into a national emergency is probably essential at some time; I know that the industry considered that course during the UTU selective strike and I think they rejected it only because they thought it would put them into a bad light in the eyes of Congress when they came here for ad hoc disposition. I have already indicated that we were able to endure the railroads' promulgation of their rules changes but that the promulgation seriously complicated the making of a settlement; H.R. 3595's prohibition of carrier counterproposals by a nonstruck road would have facilitated settlement if it had been in effect. Further, those who feel that we pressed our selective strikes too extensively should take comfort from the limitations H.R. 3595 puts on the extent to which the industry can be struck selectively. Finally, although I have indicated that we were always ready to perform any service of struck railroads that was necessary to the national safety and health, we were not called upon by the railroads to perform any such service; H.R. 3595 would oblige the railroads, as well as the unions, to perform such services.

Now, I would like to comment briefly on the Administration bill H.R. 3596 and the Railroad and Airlines' bill H.R. 9989.

Let me address myself to the Administration bill's provision giving the President a choice of instrumentalities for dealing with a national emergency strike. The bill gives the President three choices: (1) Additional Cooling Off Period, (2) Partial Operation, and (3) Final Offer Selection. I would like to eliminate No. 2, Partial Operation, first. We know from experience during the UTU strike that the railroads are unwilling to operate partially in order to provide service necessary to the national safety and health. The inference drawn from that experience has been confirmed by Mr. Ailes' opposition before this Committee to that portion of the Administration bill. The bill itself provides in Section 218(b) that in no event shall an order for partial operation place a greater economic burden on any party than that which a total cessation of operations would impose. This makes it certain that there will never be any Partial Operation under this bill if it should be enacted: the railroads will not voluntarily operate partially and the government is prohibited from ordering them to do so.

This leaves the alternatives of Additional Cooling Off Period and Final Offer Selection. The President is given only one choice; he must select one or the other. Although the Additional Cooling Off Period may sometimes produce a settlement, as witness the experience of the Brotherhood of Maintenance of Way Employes, the Hotel and Restaurant Employees and Bartenders International Union and the Brotherhood of Railway, Airline and Steamship Clerks during the cooling off

period imposed by Public Law 91–541. But there is no certainty that this will be its effect. By contrast, Final Offer Selection, the term the bill uses to disguise compulsory arbitration, does assure that the dispute will be settled. In my judgment, the temptation to the President to select this alternative would be overwhelming.

I conclude that, notwithstanding the window dressing, this is simply a compulsory arbitration bill and I am opposed to it, regardless of any other considerations.

I have many other grounds of opposition to that bill. For no reason at all, it ignores approximately a hundred years of history of collectively bargaining in the railroad industry and tries to force bargaining in that industry into the mold that has been established through bargaining in industries that have been more recently organized. Worse, it would fasten on the railroad industry essentially the evils of the infamous Taft-Hartley Act that the reactionary 80th Congress succeeded in imposing on the rest of industry, over the veto of President Truman in 1947. In addition, it seeks to reverse the policy Congress has maintained since 1938 with respect to defining the conditions under which the Railroad Unemployment Insurance Act permits the payment of benefits to individuals unemployed on account of strikes. The railroads have been trying for over thirty years to reverse this policy but Congress, after frequent reconsideration, has always stuck to its original determination. The Administration now proposes to do for the railroads what they have not been able to do for themselves in thirty years.

Little additional comment is needed on the Railroad and Airlines' bill H.R. 9989. It includes all the vices of the Administration bill, plus providing for straightout compulsory arbitration as another Presidential choice and providing a host of other revisions of the Railway Labor Act that the carriers would like to see made but which have no relevance at all to the handling of emergency disputes.

Mr. LUNA. I would like to elaborate a little on the selective strikes we have had. I have read a lot of testimony that has been presented on it. We found out, when we were given the right to have these selective strikes, that we had something that would not penalize the American public to any great extent, that the majority of these roads—we took a map that contained all of the railroads in the United States—the majority of these roads are paralleled by other railroads, and by a selective strike you can have a strike on one railroad, and the other railroad can still move the business—they can divert the traffic and move it over to another railroad and not have any part of the country or that section of the country in dire need of rail transportation.

Of course, there is no use of kidding yourself, there are some plants that will be without service, but when we talk about that, in a strike your economical strength is all you have, and our men are out on the picket line, and they, too, then are suffering as well as the people who do not have the service.

That is all I have to add at this time unless there are some questions, and Mr. Crotty might want to add something.

Mr. CROTTY. I have a statement to make, Mr. Chairman, whenever you are ready for it.

Mr. JARMAN. I think unless there some questions at this point, we will ask you to proceed with your statement and hold the questions until you finish.

STATEMENT OF H. C. CROTTY

Mr. CROTTY. Mr. Chairman and members of the committee, I am president of the Brotherhood of Maintenance of Way Employes and have my headquarters at 12050 Woodward Avenue, Detroit, Mich.

As the name of my organization indicates, our members are in charge of installing and maintaining the railroad roadbed, track, and structures along the railroad right-of-way, but the name of the organization is only partially indicative of the work we do. Many of our people are engaged in building and maintaining buildings, bridges, and other structures; they are in every way comparable to building trades mechanics. We have masons, bricklayers, carpenters, structural steel workers, electricians; others of our members operate all sorts of power equipment, ranging from power wrenches and jackhammers to the heaviest type of roadway equipment.

I have asked to appear before you today because I think that our experience during our most recent wage and rules dispute, which began in May 1969 and ended in February of this year, may be enlightening to you with respect to the several bills that you have under consideration.

On May 29, 1969, we served notices under section 6 of the Railway Labor Act to improve our vacation agreement, since that agreement requires notice to be served 7 months before the end of the year if the revised agreement is to be effective in the following year. Our wage, holiday, and insurance proposals were served later, on September 2, 1969. For the moment, I am not so much concerned with the content of these proposals as I am with the nature of the counterproposals they elicited from the railroads.

As I shall discuss in more detail later, we do not have rules in our craft that give rise to carrier propaganda about featherbedding or complaints that the carriers are unduly restricted with respect to the use they can make of personnel or that our people get paid for not working. The rules that we have have been built up over the years in order to establish decent working conditions and keep our people from being imposed upon. In view of this fact, it is not surprising that railroads seldom take the initiative in seeking broad revisions of our rules; when they have occasion to seek rules revisions, their proposals usually take the form of specific proposed revisions on an individual property to conform the rules to changed methods of doing the work.

It is, accordingly, not surprising that the railroads felt no urge to rewrite our rules until after we found it necessary to serve proposals to increase the pay and improve the working conditions of our members. But, in response to our proposals of September 2, 1969, the carriers, on September 12, 1969, and November 3, 1969, served us with the most extensive and horrifying counterproposals, which were for concurrent handling with our wage, vacation, holiday, and insurance proposals. I have reproduced these proposals in the appendix to this statement so that you can see for yourself what they are like (see p. 726).

In every respect, these proposed rules are designed to destroy the decency of working conditions. Take, for example, the 40-hour-workweek rules. We worked out the 40-hour workweek in 1949 in a joint national nonoperating employee movement, and the rules than adopted were the result of the recommendations of a Presidential emergency board, followed by extensive negotiations with the assistance of, and finally arbitration by, the members of the emergency board. Every rule of the agreement was for the purpose of establishing a genuine 40-hour week, with 2 rest days per week, and to assure against imposi-

tion on the employees, while at the same time permitting ample flexibility of working time so as to meet all the carriers' operating problems. These rules did not become obsolete by the passage of time, as the railroads contend some of their operating rules have. The railroads found it necessary to propose a general breakdown of the established rules for the 40-hour week 20 years after their adoption, simply because they knew their proposals would be odious to us.

The second carrier counterproposal is for a 20-percent wage cut for new employees with a requirement that they would then have to work 5 years, during which the cut would be gradually restored. The third counterproposal is to do away with any notice whatever for the abolition of positions or the making of force reductions. I could review each of the 20 counterproposals in this fashion, but I am not interested now in rehashing their merits. My only point is to illustrate that they serve only the tactical purpose of putting the carrier in a position so that, when the procedures of the Railway Labor Act have been exhausted, the carriers will be able to make it intolerable for our people to keep on working. This was the sole purpose of making the counterproposals.

When we had negotiated our proposals and the carriers' counterproposals through the procedures of the Railway Labor Act, both locally and nationally, and had mediated until the National Mediation Board told us it had no hope of compromising the differences, and then had waited some 35 days more, including time that the Department of Labor spent trying to get a settlement, we finally set a selective strike to commence on September 15, 1970, on the Baltimore & Ohio, the Chesapeake & Ohio, and the Southern Pacific Railroads. At 11:40 p.m. on September 14, the Federal District Court for the District of Columbia restrained us from striking these railroads without, at the same time, striking all the other railroads involved in the dispute. On September 23, the date initially set for hearing on the motion for preliminary injunction, we filed a motion for prompt trial of the case, which was denied summarily by the judge on the same day.

In the meantime, a Presidential emergency board had been created to investigate our dispute along with those of the Hotel and Restaurant Employees, United Transportation Union, and the BRAC. The emergency board made its investigation and report, and we again negotiated with the railroads in a futile effort to settle the dispute.

When no settlement could be reached, we again set a stike date for December 10, 1970. This time it was obviously pointless to try to avoid a national crisis by trying to be selective in our strike; it had already been determined by the Federal District Court for the District of Columbia that a selective strike was illegal, and the action in which that determination was made was still pending.

We, and the other unions involved, set a nationwide strike. Congress promtply enacted Public Law 91-541, postponing any right to strike until March 1, 1971.

Fortunately, and commendably, Congress recognized that it would be inequitable to subject us to such a postponement of the right to strike without at least providing that the railroads should, in the interim, put into effect the wage increases which the emergency board had recommended should become effective during 1970—one of them retroactive to January 1, 1970—and which the railroads had indicated they were willing to agree to.

During the period following the enactment of Public Law 91–541, we applied ourselves diligently and intently to trying to get an agreement. At times the prospect seemed hopeless. This was not because of any disagreement on wage increases to become effective during 1970, 1971, and 1972, the period covered by the emergency board recommendations; both sides were in agreement on following the board recommendations for that period. Vacations and holidays presented a somewhat more difficult problem since the railroads, in line with the emergency board recommendations, were not willing to grant any substantial improvements before 1973. But this difficulty was resolved by deferring vacation and holiday improvements until 1973, extending the period contracted about to cover the first half of 1973 and providing additional wage increases in the first half of 1973.

The real hurdle stemmed from the rules proposals the carriers had injected into the dispute at the outset, some of which had been recommended by the emergency board, although the railroads had experienced no difficulties in our craft by reason of existing rules. In any event, we and the hotel and restaurant employees and Bartenders International Union succeeded in working out a agreement with the carriers on February 10, 1971.

It is in light of this background that I want now to discuss the pending bills, particularly H.R. 3595, which has the support of the railway labor unions and of the AFL–CIO.

Mr. JARMAN. Mr. Crotty, excuse me. Could I interrupt you for a moment for an answer by you or Mr. Luna or both on what progress there is on UTU ratification at the present time?

Mr. CROTTY. I will have to defer to Mr. Luna with respect to that.

Mr. LUNA. As you know, Mr. Chairman, the ratification was sent out, and until we find out what this committee that the President appointed is going to do on the wages, the ballots have been impounded or frozen until we can find out whether what they voted on can be accomplished or not.

Mr. JARMAN. So it is being held in abeyance until you get the additional information?

Mr. LUNA. Yes, sir—that is, until they can tell us whether the contract can go in as it was agreed to.

Mr. JARMAN. You may proceed if you would, sir.

Mr. CROTTY. The first thing the bill does, referring to H.R. 3595, is to make clear that the railroads have no right to lockout. There is, I think, serious doubt that the railroads have any such right now, and, in any event, they ought not to have. It is completely inconsistent with any notion that national emergencies can be avoided through selective strikes to permit railroads that are not struck to escalate strikes on a few railroads into a national emergency by locking out their employees and shutting up shop.

The second thing bill H.R. 3595 would do is to prevent nonstruck railroads from unilaterally promulgating their counterproposals. I have dwelt at some length on the counterproposals that the railroads injected into our recent dispute as a tactical device to use in the last stages of bargaining. In the case of our dispute, they did not reach the point of actually promulgating these counterproposals, as they did later in the dispute with the UTU. But the threat that they might

do so was a constant hazard, and the very existence of the proposals confused the investigation of the dispute by the Presidential emergency board and seriously complicated the settlement negotiations. The provisions of H.R. 3595 would remove the incentive for making such proposals as a device and, I would hope, restore proposals for bargaining under the Railway Labor Act to those that can be seriously supported on their merits.

The third major item contained in H.R. 3595 is an express authorization of selective strikes, so as to permit collective bargaining in this industry to proceed without a national emergency being the inevitable consequence of an impasse. I firmly believe that when it is recognized that this is not the inevitable consequence of an impasse, there will be many fewer impasses and Congress will not be confronted with the recurring problem of finding ad hoc solutions to railway labor disputes.

As I have pointed out above, when we sought to strike selectively last September, we were enjoined and our request for a prompt trial was summarily denied. Then, when we were forced to strike again in December, we had no alternative but a national strike which, of course, was bound to lead to congressional intervention. I am happy that the appellate courts have now recognized the legality of selective strikes, but I believe an express congressional declaration to that effect, together with a statutory definition of what constitutes a selecive strike, would promote the disposition of disputes in the railroad industry through collective bargaining.

Finally, H.R. 3595 would require that operations necessary to the protection of the national safety and health be carried forward even during strikes. I think it is true that railroad unions that have had occasion to strike in recent years have consistently expressed their willingness to perform such services. But their willingness to perform them does little good unless the railroads too are willing to perform them. H.R. 3595 imposes such an obligation on both disputants.

It is thus apparent that H.R. 3595 is directed specifically at those things which recent experience has shown to be the generating factors of national emergencies. National emergencies have not only not been tolerated but they have frustrated collective bargaining as well. We are most anxious to preserve free collective bargaining in this industry, but we want it to be genuine bargaining and not pursuit of the forms of bargaining to the point of imposed solutions either through compulsory arbitration or congressional fiat.

I turn now to a brief consideration of some of the other bills that you have before you. H.R. 3596, and the other bills identical to it, H.R. 9989, H.R. 9088, and identical bills or earlier versions, and H.R. 2357, I find utterly repugnant to and inconsistent with collective bargaining. They all embody, in one form or another, and in the case of H.R. 9989 in several forms, compulsory arbitration. It is true that in H.R. 3596 and H.R. 9088, the compulsory arbitration feature is called "final offer selection," but, no matter how it is camouflaged, you cannot escape the fact that in the end people would be required to work under conditions they have not agreed to.

I realize that the bills do not contemplate that compulsory arbitration would occur in all instances. I think it would. My experience leads me to believe that the very existence of this procedure as a possible solution at the end of the road would frustrate any possibility of reaching

an agreement through genuine collective bargaining at any earlier stage.

I recognize, too, that as our society grows more complex, more areas that were formerly unregulated become regulated, and regulation imposes restrictions on freedom. Nevertheless, I have a very fundamental conviction that when it comes to determining the wages for which, and conditions under which, working men are required to work, there is no acceptable substitute for collective bargaining.

In addition to being unacceptable as repugnant to collective bargaining, H.R. 3596 and H.R. 9989 set about deliberately to scuttle the methods of bargaining and the methods of grievance adjustment that are embodied in the Railway Labor Act and are the product of a century of evolution in the industry. I can find no warrant for this deliberate destruction.

Finally, I want to join my colleagues who have appeared earlier in opposing the provisions of these two bills that would reverse the policy Congress has followed for over 30 years in determining the conditions under which railroad unemployment insurance benefits are payable to individuals who are unemployed on account of a strike. So far, Congress has always seen fit to deny unemployment benefits to strikers in a wildcat strike but to make benefits available to those who are unemployed on account of a strike in which they are nonparticipants or are participating in accordance with the Railway Labor Act and the constitution and bylaws of their union. I believe this policy to be sound and recommend its continuance.

Some of the testimony before this committee has been to the effect that the real evils to be remedied stem from the fact that the unions have grown too big and too powerful. As the president of one of the unions which has been among the larger ones in the railroad industry, I think I can appropriately deal with that suggestion.

I have recited for you, briefly, the tribulations we have recently gone through to get a negotiated settlement of our most recent wage and rules dispute. Does this sound as though we have become too big and too powerful? I will not only admit, but point with pride to the fact, that the wage increases we negotiated are more substantial than we have been able to negotiate heretofore. I cannot feel that we would have been properly representing our membership if we had not been able to accomplish that much in a period when the cost of living was rising rapidly. Even so, the average hourly rate of pay for the people I represent, including the highly skilled mechanics and machine operators, is now, after these increases, only $3.79 per hour.

I spoke earlier of the fact that our working rules are not to be characterized as standing in the way of progress, efficiency, and increased productivity. I can cite no better proof of that fact than what has happened quantitatively to our membership.

As late as the forepart of the 1950's, we had a membership of 200,000—and it really was actually in excess of 200,000—working on the railroads. Today, we have 80,000. But these 80,000 are maintaining a railroad plant that is handling far more traffic than the railroads had when we had 200,000 members. This is a fair measure of what the craft our union represents has contributed to progress in our industry

That concludes my statement, Mr. Chairman.

66-871—71—pt. 2——21

(The appendix referred to follows:)

APPENDIX

CARRIER PROPOSALS OF SEPTEMBER 12, 1969, FOR CONCURRENT HANDLING WITH BRAC, BMWE AND H. & R.E. PROPOSALS

1. FORTY-HOUR WORK WEEK RULES

A. Eliminate all agreements, rules, regulations, interpretations or practices, however established, applicable to the forty-hour work week which are in conflict with the rules set forth in Paragraph B.

B. Establish a rule to provide that:

1. The normal work week of regularly assigned employees shall be forty hours consisting of five days of eight hours each, with any two consecutive or nonconsecutive days off in each seven. Such work weeks may be staggered in accordance with the carrier's operational requirements.

2. Regular relief assignments may include different starting times, duties and work locations.

3. Nothing in this rule shall constitute a guarantee of any number of hours or days of work or pay.

4. Work performed by a regularly assigned employee on either or both of his assigned rest days shall be paid for at the straight time rates, unless the work performed on either of the assigned rest days would require him to work more than forty straight time hours in the work week, in which event the work performed on either of his rest days in excess of forty straight time hours in the work week shall be paid for at the rate of time and one half.

5. Any overtime worked by the employee will be computed into straight time hours and be used for purposes of determining when he has completed his forty-hour work week but not for the purpose of determining when the time and one-half rate is applicable.

2. ENTERING RATES

Establish a rule, or amend existing rules, to provide that entering rates of pay shall be 80% of the established rates, with increases of four per cent (4%) of the established rate effective on completion of the first and each succeeding year of compensated service until the established rate is reached.

3. FORCE REDUCTIONS

Establish a rule, or amend existing rules, to provide that no advance notice shall be necessary to abolish positions or make force reductions.

4. MONETARY CLAIMS

Establish a rule to provide that no monetary claim based on the failure of the carrier to use an employee to perform work shall be valid unless the claimant was the employee contractually entitled to perform the work and was available and qualified to do so, and no monetary award based on such a claim shall exceed the equivalent of the time actually required to perform the claimed work on a minute basis at the straight time rate, less amounts earned in any capacity in other railroad employment or outside employment, and less any amounts received as unemployment compensation.

Existing rules, agreements, interpretations or practices, however established, which provide for penalty payments for failure to use an employee contractually entitled to perform work shall be modified to conform with the foregoing, and where there is no rule, agreement, interpretation or practice providing for penalty pay, none shall be established by this rule.

5. DISCIPLINE AND INVESTIGATION

Amend all existing rules, agreements, interpretations or practices, however established, dealing with discipline and investigation in such manner so as to make the following effective:

If it is found that an employee has been unjustly suspended or dismissed from service, such employee shall be reinstated with his seniority rights unimpaired and be compensated for wage loss, if any, suffered by him resulting from said suspension or dismissal less any amount earned, or which could have been earned by the exercise of reasonable diligence, during such period of suspension or dismissal.

6. HOLIDAY RULES

Eliminate all rules, regulations or practices that provide that when a regularly assigned employee on a position described as a 7-day position has an assigned relief day other than Sunday, and one of the holidays specified in this rule falls on such relief day, the following assigned day will be considered his holiday.

Revise rules with respect to the birthday holiday to provide that an employee may be laid off on his birthday holiday and if the position is one that must be filled for the entire day, the work will be performed by such other employee as may be available at the straight time rate of pay.

7. CONSOLIDATION OF SENIORITY DISTRICTS

Eliminate any restriction, however established, upon the right of the Carrier to consolidate seniority districts, in whole or in part.

8. CLAIMS INVOLVING JURISDICTIONAL DISPUTES

Establish a rule to provide that disputes which may arise as to which one of the several crafts of employees in the industry is entitled to perform certain work will be decided by a joint jurisdictional committee of the unions involved and that no claims will be presented to the company in connection with such disputes regarding the assignment of such work prior to notification to the company of the decision of the jurisdictional committee, and that in no event shall the company be required to accept any decision or other disposition of the conflicting claims which will require the company to use or pay more employees than are needed for the work involved, nor will any retroactivity be involved in decisions of the Committee.

9. OPERATION OF CTC OR TCS MACHINES

Establish a rule to provide that the operation of CTC or TCS machines shall not be reserved to any particular craft.

10. ASSIGNMENT OF DUTIES

Establish a rule, or amend existing rules, to recognize the Carriers' rights to assign clerical duties to telegraph service employees and to assign communication duties to clerical employees.

11. ABSORBING OVERTIME

Revise rules covering "absorbing overtime" so as to permit employes to perform duties of other positions where necessary.

12. GUARANTEE RULES

Revise guarante rules to eliminate guarantee for positions.

13. TRAVEL TIME

(a) Revise travel time rules to eliminate travel time pay between 10:00 P.M. and 7:00 A.M. where sleeping accommodations are furnished.

(b) Revise travel time rules to stop travel time pay where destination reached instead of paying to starting time of regular tour of duty.

14. GENERAL

All agreements, rules, regulations, interpretations, or practices, however established, which conflict with any of the above shall be eliminated, except that any existing rules, regulations, interpretations or practices considered by the carrier to be more favorable may be retained.

CARRIER PROPOSALS OF NOVEMBER 3, 1969, FOR CONCURRENT HANDLING WITH BRAC, BMWE AND H. & R.E. PROPOSALS

1. Eliminate all agreements, rules, regulations, interpretations or practices, however established, which restrict the carrier's right to transfer work and/or employees across seniority district or craft lines.

2. Eliminate all agreements, rules, regulations, interpretations or practices, however established, which restrict the carrier's right to rearrange forces and/or work on any shift or tour ow duty to secure the most effective utilization of the available work force.

3. Eliminate any restrictions, however established, upon the right of the carrier to consolidate seniority districts in whole or in part.

4. Eliminate all agreements, rules, regulations, interpretations or practices, however established, which restrict the carrier's right to contract out work.

5. Establish a rule providing that during any work stoppage in any part of the railroad industry all bulletin, assignment, displacement, pay and protective provisions of any applicable agreements may be suspended by the carrier for the duration of such work stoppage and employees will be assigned and compensated on a basis to be determined by the carrier.

6. Elimination Mediation Agreement, Case No. A–7128, dated February 7, 1965, and any similar so-called job stabilization agreements (excluding the "Agreement of May, 1936, Washington, D.C." and agreeemnts entered into pursuant to Interstate Commerce Commission Orders in connection with merger, control or consolidation.)

Mr. JARMAN. Mr. Dingell.

Mr. DINGELL. Mr. Chairman, thank you. It is a pleasure to welcome Mr. Crotty, who is a constituent and old friend, and Mr. Luna, for whom I have great respect, and Mr. Chesser, who is a personal friend.

I would like to first question Mr. Luna on the points he raised, which I think are very valuable. First, at page 20 of his statement and also at page 22, Mr. Luna, you stated in your statement first at page 20: "This makes it certain that there will never be any partial operation under this bill if it should be enacted: the railroads will not voluntarily operate partially and the government is prohibited from ordering them to do so."

Now, I assume, in that, you are referring to the language in your statement which appeared above relating to the language the administration bill has, which you say as follows: "The bill itself provides in section 218 (b) that in no event shall an order for partial operation place a greater economic burden on any party than that which a total cessation of operations would impose."

I do not so interpret that language to come to the conclusion that you have in about the last five lines of that paragraph which I read earlier. Do you want to address yourself to that plus a little bit of explanation?

Mr. LUNA. I would like to. From past experience in every strike we have participated in for the last 20 years, we have offered to do what is in that bill, and the railroads say they will lose too much money if they have a partial operation. I think one reason they will lose money, if they have a partial operation, they might lose their strike benefits that the other railroads pay them; and I think, well, they don't want to take a chance on that and take a chance on anything that is not profitable.

We have offered them this on all of the strikes we have been on, and they have never accepted it yet. We offered to move the war materials or essential materials or anything and, to my knowledge, they never accepted that offer.

Mr. DINGELL. Do you interpret the two different sentences as being mutually exclusive?

Mr. LUNA. What page is that?

Mr. DINGELL. I am on page 20. The thrust of it was, as I read your statement, that the language in the administration bill which says "The order for partial operation will not be allowed to place greater economic burden on one party than that which total cessation of operations would impose"—then you go on to say that you construe this—I think in the next sentence—to mean that this would ban railroads from participating in partial strikes because they would be adversely affected. Am I correct in that interpretation of these two sentences?

Mr. LUNA. Yes, sir.

Mr. DINGELL. I am?

Mr. LUNA. Yes, sir; you are correct.

Mr. DINGELL. That is the way I interpreted it, and I am not sure I am satisfied or sure I am in agreement. I would be more comforted if you gave us a little more explanatory material after you have had a chance to reflect and maybe give us guidance, perhaps consulting with your able counsel.

Mr. LUNA. I will let Mr. Schoene explain that.

Mr. SCHOENE. Mr. Dingell, the statement is based on the express provision in section 218(b), found on page 6, about the middle of the page, line 14, where it says: "*Provided*, That in no event shall the order of the board place a greater economic burden on any party than that which a total cessation of operations would impose." The order referred to is an order for partial operation.

I think Mr. Luna's statement was based on my understanding of that proviso; that is, that no order for partial operation can be made which would impose any greater burden on the railroad, for example, than a total cessation of operations.

Mr. Luna's experience, I think, amply demonstrates that they will not operate under those conditions.

Mr. DINGELL. I think it is different to say they would not operate under those conditions than to say it would place a greater burden on them. You must remember the language says they would not be placed in worse condition than they would by total cessation of operations. It is different to say they won't operate than to say they won't be in a worse position. I assume your position is, they would be in a worse position?

Mr. LUNA. They always said they would be in a worse position—their own words.

Mr. DINGELL. Are you assuming, then, as a matter of finding of fact and law—and perhaps Mr. Schoene may want to make a comment—that the railroads would be able to satisfy a court that they would be in a worse economic condition by reason of partial operation than by reason of complete cessation?

Mr. SCHOENE. Yes; I think they would be able to make such a demonstration. I wouldn't hold for a minute that the railroads would not be worse off operating partially.

Mr. DINGELL. So essentially you wind up with a position where the language really does not mean anything—is that what you are saying?—as long as the language remains that no party be in a worse position than he would if there were total cessation of operations.

Mr. SCHOENE. I firmly believe it does not mean anything.

Mr. DINGELL. I would like to switch, if I could now, to page 22 of Mr. Luna's statement, and I don't ask you to give us this at this particular time, but at the bottom of the page, you say:

> Little additional comment is needed on the railroad and airlines bill H.R. 9989. It includes all the vices of the administration bill, plus providing for straight-out compulsory arbitration as another Presidential choice and providing a host of other revisions of the Railway Labor Act that the carriers would like to see made but which have no relevance at all to the handling of emergency disputes.

Would you discuss those now or by submission to the record? I would like to know them precisely.

Mr. LUNA. We will supply them for the record. (See p. 734.)

Mr. DINGELL. I think that will be helpful, and, Mr. Chairman, those are all of the questions I have.

Mr. JARMAN. Mr. Metcalfe.

Mr. METCALFE. Thank you very much, Mr. Chairman. I recognize the part that was demonstrated in Mr. Luna's statement of the success they have had on selective strikes and the concern for compulsory arbitration, but I refer you to the bottom of page 12, top of page 13, Mr. Crotty's statement, and I am wondering if perhaps you are going a little bit too far in your analysis of the freedom.

I am concerned about the last few words where you say "restriction of freedom." You already recognize that our society is growing more complex, and more areas that were formerly unregulated become regulated and impose restrictions on freedom.

As our society grows more complex, there is a necessity for controls, and I don't interpret controls as being a restriction of anyone's freedom. I would like your reaction to my thoughts in regards to the imposition of the controls where it would restrict the freedom.

Mr. CROTTY. I appreciate, Mr. Congressman, that what I have said here could be interpreted the way you have interpreted it, but I am speaking here about wage rates and the requirement that individuals would, under these proposed bills, be required to work for a private operator, not for the Government, not for our country, but for a company that is operating under the private enterprise system, and they would be required to work for that employer at a wage rate they had not negotiated or agreed to. I don't think that is compatible with our American way of life.

Mr. METCALFE. I am happy I asked the question, because you have given me some clarification, and I appreciate your answer. Thank you very much. I have no further questions, Mr. Chairman.

Mr. JARMAN. Gentlemen, I get a reaction from your statement—I will get my reaction from your statements for the record—but final offer selection, which has been proposed in the various bills that have been introduced, has never been really tried in this collective bargaining effort to settle disputes, and don't you think it deserves a trial? If it is not successful, legislation can always be changed, and frequently it is changed. This is something that has not been tried which offers real possibilities. What would be your comment?

Mr. LUNA. Mr. Chairman, you are dealing with the lives and the living of about 600,000 good Americans and, as we said before, the final offer might sound good, but no one, unless he works with the rules

in this railroad industry, in my opinion, can make a final offer and make it work where it could be put in as a rule and worked by.

As I said before, if you knew you were going to have that to fall back on—and I don't think either party would have true collective bargaining or try to show their hand until they made that final offer—I think it would kill collective bargaining as collective bargaining.

Mr. JARMAN. Mr. Crotty.

Mr. CROTTY. I agree basically with what Mr. Luna has said, Mr. Chairman. Our rules in this industry has grown up over a period of 100 years. They are complex. I don't think that any tribunal can consider the merits of our respective rules and the manner in which they are handled in our disputes and come up with a solution that is good for the industry or good for the employer even.

I think that collective bargaining has to operate in the railroad industry just the same as it does in the rest of our society. I think it would be very unfair to separate railroad workers and put them under this type of legislation.

Mr. JARMAN. Well, I think you are going to find that nearly everybody in Congress is going to be supporting and trying to protect, under the law, the basic principles of collective bargaining. It does seem to me, however, that with the situation as it has existed over the years and the real emergency disputes that have arisen and finally have been brought individually to this Congress for emergency legislative action, we have in the past had a threat that extends to the welfare of the entire country. It does seem to me that when a proposal of this sort is made—and I can understand there is apprehension on both sides as to how final offer selection approach might work out, on the sides of both management and labor—but we get progress only by trying new approaches.

It has a lot of merit, it seems to me, as recommended. Congress is in session all the year around now, and if it does not work effectively and fairly, it is something that the Congress can always change or repeal, and I am sure the pressures would be tremendous if experience does show that it does not work equitably.

So, on the basis, I did want to get at least a reaction from you gentlemen.

Mr. LUNA. Mr. Chairman, I hold in my hand 13 contracts held by just one general chairman on one railroad, by one organization. Another general chairman on that same railroad and for the same organization probably has the same number of contracts. These contracts were made over the years. No other industry, to my knowledge, has rules negotiated between the parties like this industry has.

Now, I have had experience lately on AMTRAK, and we have a vice president from the airlines and other industries, and they can't comprehend the rules that govern the workers on the railroads, and no one, unless he lives with them, comes up against them day to day, will be able to make an offer that—I will put it this way—that can even be interpreted by the parties that have to work under it and live under it.

Mr. JARMAN. Of course, final offers are going to be made by those who are closest to the problems involved.

Mr. LUNA. I know that.

Mr. JARMAN. And you understand in those contracts, management and labor are the ones who drew those contracts, and the ones who are

going to be working on a final offer proposal which they think is fair and which would have the best chance of being accepted.

Mr. LUNA. Can I ask you one question, Mr. Chairman: Who is going to make the final decision on which one to take?

Mr. JARMAN. Well, of course, that will be in the hands of some type of review board, but a review board certainly that will be experienced in the field, well experienced in the area.

Mr. LUNA. We have not had one yet in the emergency board that ever had experience in the field. We have had people that have never been on a railroad case.

Mr. JARMAN. I will say this—and I understand what you are saying and it might well be exactly the way it would work out—but it seems to me, though, with a Congress that is in session all of the time for the entire year, that if something does not work out after having been given a good trial, then I think you can count on legislative action that would correct it or repeal it, and we are reaching out in this committee and in this Congress, as best we can for legislation that will make for some solution to what we think has been an impossible situation.

Mr. LUNA. We have the solution now, Mr. Chairman. They did things, and you will see in my testimony, as to this last settlement on the selective strike, that the railroads wanted rules on for years, and the Staggers bill will give us an opportunity to show Congress that we can handle our own business, and we will handle our own business.

If you are going to try something, try something that it has already been proven that it will work.

Mr. JARMAN. How would you feel about legislation with a time limit on it that embodies the final offer selection approach? That is just an example, but if we did write it into law, how would you feel about an approach that set a time limit during which time we would see how it worked out and then it would be a matter of whether Congress would extend it or whether it would die because it had not proved effective?

Mr. LUNA. I wish I could agree with you, but being in the labor movement as long as I have—and all of it has been in the railroad industry—I think you would just be trying something to take the place of collective bargaining, and I don't think they have ever invented anything until now that can take the place of collective bargaining.

I think we are entitled to it. I think it is the American way of life. I think we have had it for 100 years, and I think, if you will check the record, you will find that fewer man-hours have been lost in the railroad industry than any other industry in the land as a result of strikes.

Mr. JARMAN. But, as I say, I think you have the strongest support, as you have always had, and as has always been true in Congress, in support of the basic principles of collective bargaining.

I do think that in some of the testimony we have heard that there has been an overstatement when the final offer selection has been referred to as compulsory arbitration. I think that is particularly true when it is simply one of a number of alternatives in the progressive solution of the dispute.

I think if you had that alone, you could make a stronger argument—that is compulsory arbitration certainly—but when it is part of a successive series of steps and alternatives in an effort to reach an agreement and settlement, then I think labeling it as compulsory arbitration is a strong label.

Mr. LUNA. I don't read the law that way. I read the law that you can take one of those, kind of like Russian roulette, you load the gun and put seven shells in and leave one blank open and you spin the wheel and pull the trigger. In other words, the succession—I don't think if I read the bill right they can go to seizure and then go to that. I think they have to go to one of those, not succession.

Mr. JARMAN. Well, under various bills before us, this is one of the final steps, of course, in trying to achieve a solution. But there are other approaches and steps that precede this. This is simply the definitive one at the end where the parties finally have to come up with a best offer.

Mr. LUNA. Mr. Chairman, I found out, through my years in labor negotiations—and labor is as much to blame as management; I will be the first one to say that—if there is anything in the law or in the handling that gives them a chance to let somebody else make the decision for them, that they never tried to do their duty. Final offer selection offers an escape from doing their duty.

In other words, the final offer that you talk about, if they know they are going to that and have to take one of them regardless of what they may offer and what the other side may offer, in the final analysis all they have to tell their membership is "I didn't agree to this; I agreed to this over here; this is my offer, and the impartial board are the ones that forced that down our throat."

It would be the best way for the negotiating committee of any of these unions to pass the buck or management to pass the buck, or their people that they hire to do the negotiating for them, and it is awfully hard to negotiate with management and say, "Well, we didn't agree to it; this board that they appointed are the ones that crammed it down our throats."

In other words, it is a good way to shirk the responsibility they were elected to perform. It is the same thing as your having to answer to your constituents on how you have to vote on bills. If you could put all of them on a ballot and let them vote on it and take the popular vote on how you should vote on them, when you go back for election you wouldn't have anything to answer for.

Mr. JARMAN. But I think, in our work in representing a constituency, that frequently we have to be in a position of reporting to an individual or to a part of the constituency back home that we had voted for a particular bill or a part of a bill because it was the best compromise that we felt could be achieved, and I think it is exactly the situation you are in, a bargaining position, labor and management, that you have to work for the best possible solution you can get.

Mr. LUNA. Not on the "best offer," Mr. Chairman. You would make the best offer and they make the best offer, and then some board would decide which one to take. All you would have to tell them, make yours so high they couldn't criticize you and then lay it off on someone else.

Mr. JARMAN. Well, the only point I was making was—and I did want your comment—that when we come to a new approach in a very

difficult area, we are all reaching for a solution that is equitable. It does seem to me there is a lot of merit in trying something like this. If it does not work, we can sure back up, we can sure repeal it or not extend it if it has a limited period of time. That is simply a subject of discussion in these hearings, and I appreciate the comments you gentlemen have made.

Mr. LUNA. May I make one more statement, Mr. Chairman?

Mr. JARMAN. Yes.

Mr. LUNA. I think we have the solution to this. I think we proved it in the selective strike we just had, and I handled that strike personally, and I know that if they had not promulgated their rules, that at no time would we have had over three railroads tied up in these United States; I know that. But after you take a railroad out on strike and you have to put them back to work under rules that were worse than they had 50 years ago, it is a hard thing to do. I was trying to keep control of the men.

The reason I was trying to put it off until the last thing was because I didn't want something to happen that would ruin what we had fought for and won in the courts.

I think you have a solution for it; if you will just put it in there they can't promulgate rules counterproposals, then I don't think you will have to worry about over three railroads being tied up in the United States at once.

Mr. JARMAN. Gentlemen, we appreciate your coming here and helping us to make a record on this subject.

Mr. DINGELL. Mr. Chairman, before the witnesses are released, I would like to ask this question: Gentlemen, at your convenience, would you address yourselves to the administration bill and inform us of the sections of the administration bill which relate to the traditional laws relating to railway labor and the way that those provisions would affect railway labor law? I have looked in your statements and do not recall seeing those particular matters touched upon. I think that would be helpful to the committee, to have comments in that direction.

As I understand the effect of it, it would substitute a number of provisions of Taft-Hartley for Railway Labor, some of which, I think, even are the provisions which relate to day-to-day arbitration through the railroad adjustment boards. And if you give us those comments, I believe that will be helpful.

Mr. SCHOENE. We will supply those, Mr. Dingell, and let me also say, with respect to your earlier request, that we can supply details in explanation of page 22 of Mr. Luna's statement, that we will also do that.

(The following information was received for the record:)

LIST OF PROVISIONS OF H.R. 9989 NOT RELATED TO EMERGENCY DISPUTES SETTLEMENT

The following is a list of the provisions of the bill not related to emergency disputes settlement, together with a summary description of what the provisions do. We list only substantive amendments and do not include technical or conforming amendments. The listed provisions cover approximately the first 15 pages and pages 24–26 of the bill.

Section 101 (a) eliminates definition of "Adjustment Board".

Section 101 (b) takes away the right of collective bargaining from supervisors and subordinate officials.

Section 101 (c) takes away any right a union may have established in its constitution or by-laws for members or organizational units to ratify agreements.

Section 101 (e) adds definition of "supervisors."

Section 102 (a) makes agreements reached by conferees binding without ratification by anyone.

Section 102 (b) makes carrier a party to any representation dispute on request to the Mediation Board.

Section 102 (c) permits employees to be unrepresented by any collective bargaining agent.

Section 102 (d) confers on Mediation Board the function of resolving jurisdictional disputes between or among unions, makes carriers parties to such disputes and relieves carrier of any obligation to bargain until the dispute is resolved.

Section 102 (e) provides that membership in a company union satisfies requirements of union shop agreement held by a standard union.

Section 103 substitutes special boards of adjustment exclusively for National Railroad Adjustment Board and provides for parties to disputes to pay all expenses.

Section 104 (a) extends length of terms of office of National Mediation Board from three to five years.

Section 105 eliminates proffer of arbitration as the last required act of the National Mediation Board.

Section 106 (a) and (b) eliminates present provisions for the government paying for expenses of arbitration other than compensation of party representatives and substitutes sharing of all expenses.

Section 109 adds a prohibition of secondary boycotts, gives federal courts jurisdiction to enforce the prohibition, and makes the Clayton Act and Norris-LaGuardia Act restrictions on federal court jurisdiction inapplicable to suits for such enforcement.

Section 110 takes away any rights of collective bargaining from supervisors and subordinate officials in the airlines.

Sections 112 and 113 repeal present provisions for possible establishment of a national adjustment board in the airlines industry.

Section 201 amends the Railroad Unemployment Insurance Act to disqualify for benefits any one who is unemployed due to a strike on his railroad irrespect of whether his craft is involved in the strike; also disqualifies anyone who is unemployed as a result of his refusal to cross a picket line.

LIST OF PROVISIONS OF H.R. 3596 REVISING PROCEDURES FOR THE CONDUCT OF TRANSPORTATION LABOR RELATIONS NOT DIRECTLY RELATED TO EMERGENCY DISPUTES SETTLEMENT

The following is a list of the provisions of the bill that would revise procedures for conducting labor relations in transportation not directly related to emergency disputes settlement, together with a summary description of what the provisions do. We list only substantive amendments and do not include technical or conforming amendments. The listed provisions cover everything after Title I, pages 14–26.

Section 201 renames National Mediation Board as Railroad and Airlines Representation Board.

Section 202(b) phases out the National Railroad Adjustment Board and substitutes different compulsory procedure for the arbitration of grievances.

Section 202(c) makes the phase-out applicable to system, group or regional adjustment boards.

Section 202(d) makes the phase-out applicable to special boards of adjustment.

Section 202(f) restricts the functions of the Railroad and Airlines Representation Board to conducting representation elections and requiring publication of notice to employees.

Section 202(g) transfers the mediation functions of the National Mediation Board to the Federal Mediation and Conciliation Service.

Section 202(h) converts Section 6 from provision for re-opening contracts on thirty days' notice to provision for periodic expiration of contracts and renegotiation.

Section 202(j) makes the new functions of the Railroad and Airlines Representation Board applicable to air carriers.

Section 202(k) phases out adjustment boards on the airlines and substitutes the same procedures that are applicable to railroads.

Title III sets up a National Special Industries Commission to study, investigate and report on specified subjects and whatever else it wants to study.

Section 401 makes applicable to railroad and airline unions provisions similar to Title III of the Taft-Hartley Act relating to suits.

Section 402 repeals Sections 5, 7, 8, 9, 203 and 205 of the Railway Labor Act.

Section 403 makes the Norris-LaGuardia Act inapplicable to suits brought under or to enforce the Act.

Section 404 contains platitudes similar to the Taft-Hartley Act against involuntary servitude.

Section 405 amends the Railroad Unemployment Insurance Act to disqualify for unemployment insurance benefits persons who are unemployed due to a strike.

Mr. SCHOENE. I call your attention to the fact that I have filed a written statement here, and on page 15 of my statement you will find some examples, not an exhaustive enumeration, but if you are curious as to what kinds of things we are talking about, you will find it on page 15 of my written statement.

Mr. DINGELL. Very good. I will read it with interest. Thank you, Mr. Chairman.

(Mr. Schoene's prepared statement follows:)

STATEMENT OF LESTER P. SCHOENE, COUNCIL, CONGRESS OF RAILWAY UNIONS

Mr. Chairman and Members of the Committee: My name is Lester P. Schoene. I am a lawyer and a member of the firm of Bernstein, Alper, Schoene & Friedman with officers at 818—18th Street, N.W., Washington, D.C. I have been engaged in the practice of law here in Washington since 1944. My specialty has been representing railway labor organizations and this representation has involved rather substantial experience in all the phases of handling disputes under the Railway Labor Act.

I appear this morning on behalf of the Congress of Railway Unions. The Congress of Railway Unions is a federation of unions representing employees in the railroad industry. In the aggregate they represent some 70 to 75 percent of the railroad employees in the United States. The unions affiliated with the Congress of Railway Unions are:

Brotherhood of Maintenance of Way Employes.
Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers Express and Station Employes.
Hotel & Restaurant Employees and Bartenders International Union.
Seafarers' International Union of North America.
Transport Workers Union of America.
United Transportation Union.

My primary purpose in appearing before you is to support and recommend your favorable action upon H.R. 3595 introduced by Mr. Staggers for himself, Mr. Eckhardt and Mr. McDonald of Massachusetts. This bill has the support of all the railway labor organizations and of the A.F. of L./C.I.O.

Most of the bills you have before you for reconsideration at these hearings would revise the Railway Labor Act rather substantially and, it seems to me, for a variety of purposes not directly related to the avoidance of emergency disputes or to their settlement. In saying this, I have in mind particularly H.R. 3596 and H.R. 9989. By contrast, H.R. 3595 is specifically and exclusively directed to those particular features of the functioning of the Railway Labor Act that have been causing national emergencies to develop and have called on Congress to deal with such emergencies on an *ad hoc* basis. The express and only purpose of the bill is to take the national emergency out of railroad strikes.

The first thing that the bill would do, by the enactment of a new Section 10(b), is to prohibit any carrier from locking out its employees at any time under any circumstances.

For years people have been talking about the right of railroads to lock out their employees as being an exercise of the right to self-help, as though this

were a reciprocal of the right to strike; yet, curiously enough, it has never been definitely adjudicated whether there is any such right. Personally, I do not think that there is. And there is no reason there should be.

The means the carrier has of using self-help when the procedures of the Railway Labor Act have been exhausted is to put its own proposals into effect, if the dispute arises from carrier proposals, or to decline to make the changes requested by the union, if the dispute arises from union proposals. There is no reason why a carrier that is not struck should have any right to shut down its operations and thus deprive the public of transportation, and deprive other classes and crafts of employees with whom it has no dispute of work opportunities simply as a tactic in a labor dispute.

Although, as I have said, there has been no definitive adjudication of whether the right of lock-out exists, there have been *dicta* by the Supreme Court of the United States at least casting doubt upon the existence of any such right. In *Brotherhood of Railway Clerks* versus *Florida East Coast Railway Co.*, 384 U.S. 238, 244–45, the Supreme Court had this to say:

"The carrier's right of self-help is underlined by the public service aspects of its business. 'More is involved than the settlement of a private controversy without appreciable consequences to the public.' Virginian Ry. v. Federation, 300 US 515, 552, 81 L ed 789, 802, 57 S Ct 592. The Interstate Commerce Act, 24 Stat 379, as amended, places a responsibility on common carriers by rail to provide transportation. The duty runs not to shippers alone but to the public. In our complex society, metropolitan areas in particular might suffer a calamity if rail service for freight or for passengers were stopped. Food and other critical supplies might be dangerously curtailed; vital services might be impaired; whole metropolitan communities might be paralyzed.

"We emphasize these aspects of the problem not to say that the carrier's duty to operate is absolute, but only to emphasize that it owes the public reasonable efforts to maintain the public service at all times, even when beset by labor-management controversies and that this duty continues even when all the mediation provisions of the Act have been exhausted and self-help becomes available to both sides of the labor-management controversy."

Nevertheless, the existence of such a right has been so generally assumed that it behooves Congress to make it clear that there is no such right.

The second major objective of H.R. 3595 is to put an end to a tactic that the railroads have been increasingly employing for the last twenty years. This tactic is deliberately to create a national crisis every time the unions make a move to revise their labor agreements so as to improve the standard of living of their members. If the unions are to serve their function, they must move periodically to bring the standard of living of their members into line with the higher available living standards this country traditionally produces for all its citizens. It has been the history of all our industrial society that we constantly produce more goods and services in less man-hours of employment than we did before, and, if our capitalistic system is to function, these goods and services must be made available to our people in the form of a constantly improved standard of living. Thus, it is inherent in our capitalistic system, and particularly in labor management relationships, that labor unions will constantly be seeking to improve the living standards of their members.

There is no such reason for managements, in the railroad industry or in any other industry, to be constantly pressing for revision of the labor contract.

The railroad industry had been unionized to a progressively increasing degree for fifty years before World War I and has been virtually completely unionized ever since then. Throughout this history, there has been relatively little occasion to revise the working agreements at the behest of management compared to the constant necessity of improving rates of pay, rules, and working conditions, including fringe benefits, that labor has found it necessary to pursue in order to gain the progressively higher standard of living that our industrial society afford us. But, about twenty years ago, the railroads developed a tactic of countering union proposals for improved standards of living with horrendous and terrifying proposals for retrogression in rules and working conditions.

It should be particularly noted that seldom have railroads found it incumbent upon themselves to take the initiative and seek general national revisions of rules and working conditions, of course, on individul railroads there are constant revisions brought about by negotiations between the railroad and individual union committees that keep the method of doing things abreast of developments.

A major source of friction in railway labor negotiations, and a primary generator of national crises, has been the tactic of the railroads of countering proposals for the improvement of living standards with carrier proposals for retrogressive working conditions.

It is for this reason that the second major feature of H.R. 3595 has been included. This is the enactment of a new Section 10(c) which would expressly recognize and authorize the use of self-help by the carriers upon exhaustion of the procedures of the Railway Labor Act to put their proposed changes into effect unilaterally, provided these proposals are genuinely made at the initiative of the carrier, and not the tactical kind of counter-proposal that I have been talking about.

The bill was introduced last February, well before the development of any concrete issue about the carriers' putting their rules into effect unilaterally in the recently concluded United Transportation Union dispute with the railroads, and it had been drafted several months before that. However, the importance of the provisions I am now discussing could not be better illustrated than by reference to that dispute and to what happened in the course of the selective strikes that ensued.

It is true that railroads have been seeking revisions of working rules from time to time, and the alleged need for such revisions has constantly been a subject of railroad propaganda. Also, the railroads made a joint concerted national effort in this direction in the late 1950's and early 1960's. But relative tranquillity in this area had been attained until the United Transportation Union found it necessary in 1969 to ask for a substantial wage increase. Then the railroads found it a strategic negotiating tactic to propose in a joint national movement all the rules changes that any of the organizations that had merged into the United Transportation Union had found odious in the past generation.

As a result, United Transportation Union, after months of delay and expensive and time-consuming litigation, finally struck a few railroads selectively. The railroads found that their counterproposals were made to order to serve an attempt to escalate the selective strikes into a national strike, calling again for Congressional disposition on an *ad hoc* basis. It was only through the heroic discipline that the members of the United Transportation Union exercised that a national crisis was averted.

The only other restriction that the new Subsection 10(c) would impose on the right of carriers unilaterally to implement their proposals, in addition to the one I have been discussing, is a retention of prohibitions contained in the law now. For example, in the over-eight-year-old Florida-East Coast Railroad strike the company has proposed a number of changes that we do not regard as proper under present law; if we are right, we would not want to have Congress now sanction them inadvertently in the process of confirming the general right of the railroads to use self-help in implementing their legitimate proposals.

The next provision of H.R. 3595 would legislatively affirm the right to strike selectively. Since the bill was drafted, the Court of Appeals for the District of Columbia has confirmed that we do have the right to strike selectively, and the Supreme Court has declined to review this decision. For these reasons, one might believe that the new paragraph (d) is now unnecessary. Nevertheless, this provision of the bill has the virtue of giving a statutory definition to what is a "selective strike" and giving statutory authorization to it.

The new Section 10(e) sets up a simple system through which a striking union under any circumstances would provide the service that the country needs to protect its health and safety. This is the same protection for the nation's health and safety that all striking railroad unions have offered to provide in recent years but which struck railroads have not chosen to provide. The bill would provide statutory formulation of the obligation that has hitherto been voluntarily undertaken and would provide a simple statutory procedure through which the dimensions of the obligation would be defined, as well as imposing the obigation on the railroads as well.

I wish now to turn to a very brief discussion of the other bills that are under consideration by this Committee. Obviously, I cannot consider all of them in detail, and I shall not address myself to more than a few of them.

I am going to address myself specifically to H.R. 3596 and the identical bills that contain the Administration's proposal; H.R. 9989, introduced by Mr. Jarman, which contains the proposal of the Association of American Railroads, the National Railway Labor Conference, and the Air Transportation Association; and H.R. 9088 and identical or similar bills that contain the so-called "Harvey Proposals."

These bills have one thing in common that makes them unacceptable to the unions I represent, and, I believe, to all of organized labor. This is that they rely, ultimately, on a form of coercion which we know in labor circles as compulsory arbitration.

There have been many definitions of "compulsory arbitration" which may be defined as broadly or narrowly as fits the purposes of the one who defines it. I define it as including any procedure by which management and labor are required to put into effect rates of pay, rules, or working conditions determined by a tribunal and not agreed to by the parties. The reason I define compulsory arbitration in these terms is that this specifically identifies the vicious feature of compulsory arbitration. This feature is that people are compelled, if they want to go on working at their jobs, to accept rates of pay, rules, or working conditions to which neither they nor their representatives have voluntarily agreed.

We believe that every form of compulsory arbitration, as thus defined, is inimical to our system of free enterprise, to freedom of contract, to freedom from involuntary servitude, and to our whole capitalist economy. Since all the bills I have specified have this defect in common, they are all unacceptable to us.

Now let me turn more specifically to each of these bills and enumerate some of their more glaring defects.

1. H.R. 3596—The Administration Bill.—(a) The bill would substitute a whole gamut of rules and procedures that apply in other industries for those that have developed on the railroads for over one hundred years, and for no reason whatever except that apparently the authors of the bill are completely unfamiliar with the procedures that prevail in the railroad industry.

Somehow, it is assumed that some special virtue attaches to having contracts expire and be renegotiated in their entirety at periodic intervals. There is no foundation whatever for such an assumption. The relatively newer and cruder procedures that prevail in industries that have only been unionized within the last forty years are not procedures that should be emulated in the railroad industry. I predict that the tendency will be in the opposite direction.

(b) The bill proposes to upset the whole process of grievance adjustments that has been embodied in statutes since 1934 and has been embodied in the practices of the industry for at least the present century and to substitute an alien form of grievance arbitration. Admittedly, the National Railroad Adjustment Board system bogged down and was on the verge of causing a complete failure of grievance handling in the railroad industry. The industry was rescued from this collapse of grievance machinery by the enactment in 1966 of Public Law 456 by the 89th Congress. (Incidentally, Congress enacted this law over the strenuous opposition of the railroad managements.)

(c) The bill attributes some sort of magic to what is called "final offer selection." I know of no practical experience with this device. The academicians who dreamt it up assume that contending parties will be driven to getting closer and closer together as they approach submission to a final determination. My experience leads me to believe that each contending party will play for an advantageous position and that whether this will bring the parties closer together depends upon a wide variety of circumstances that cannot be predicted.

(d) "Final offer selection" is the only option open to the President that gives assurance of the dispute's being settled, and, hence, there is an inevitable tendency for the President to select this option.

(e) The option of partial operation, in addition to being encumbered with an impossible bureaucratic procedure, contains a fatal defect that makes this option forever inoperable. On page 6, lines 14–16, of the bill, it is provided that in no event shall an order for partial operation place a greater economic burden on any party than that which a total cessation of operations would impose. I have no doubt that it would always be contended that any order for partial operation would violate this restriction, and, therefore, that contention would be used to block operation of the order. Please note that this is an absolute prohibition of law, persumably enforceable by the courts, and, therefore, basically inconsistent with the provision on lines 24 and 25, page 6, to lines 1 and 2, page 7, that the Board's order is to be conclusive unless found arbitrary or capricious by the court.

2. H.R. 9989—The Railroad and Airlines Industry Bill.—(a) This bill is replete with provisions calling for a complete realignment of the relative positions of management and labor in the industry, having nothing whatever to do with the settlement of disputes that have given rise to national emergencies. A few examples will suffice: it takes away the right to bargain from subordinate officials; it takes away any right a union may have established for its members to ratify

agreements made by its officers; it makes the railroad a party to any representation disputes or any jurisdictional disputes among its employees; and it makes membership in a company union an adequate substitute for membership in a standard union for purposes of compliance with a union shop agreement. These are merely illustrative.

(b) The bill includes not only the coercive procedures involved in "final offer selection" but straight out compulsory arbitration.

3. H.R. 9088—Congressman Harvey's Bill.—(a) This bill is essentially the Administration bill insofar as the Administration bill addresses itself to the settlement of emergency disputes. It differs in one important aspect: whereas the Administration bill gives the President certain options, of which he must select one, the Harvey bill permits multiple choices and, in effect, invites the President to use however many clubs it may take to beat out a settlement.

(b) In its definition of selective strikes (or partial operation), this bill would permit only one-half as much of a strike in any region as would be permitted under H.R. 3595. In fact, a special exception has to be made for the circumstance when only one carrier is struck in order to permit any strike against Penn Central.

Now I want to make a final comment about one feature of both H.R. 3596 and H.R. 9989. Both would repeal the provisions of the Railroad Unemployment Insurance Act, permitting a striking employee to draw unemployment benefits while he is on strike if the strike is not in violation of the Railway Labor Act or in violation of the constitution or by-laws of his union.

Congress adopted these provisions of the Railroad Unemployment Insurance Act in 1938 pursuant to a deliberate policy to add sanctions in support of authorized and legitimate strikes as opposed to wildcats. The railroads have missed no opportunity to bring this policy decision up for reexamination whenever amendments to the Railroad Unemployment Insurance Act were under consideration. Congress has always decided to reaffirm its 1938 decision. It should do so again.

I have not gone into anywhere near all the ramifications of the various bills this Committee has before it for consideration in these Hearings.

I believe that one can fairly conclude from the testimony I have presented that:

1. Any general legislation by way of modification of the Railway Labor Act that should be considered by Congress must be narrowly confined to those items that have been the causes of repeated national crises. H.R. 3595 is the only bill you now have before you that is so directed.

2. There is no necessity for the adoption by Congress of any sort of procedure that involves compulsory arbitration in any of its forms or any other kind of coercion to work under rates of pay, rules, or working conditions that the employees do not voluntarily accept.

We have enough faith in the efficacy of our free enterprise system to believe that, if our Government conducts itself in accordance with these principles, we will again have the kind of peace in the railroad industry that we had for the first fifteen years after the Railway Labor Act was adopted.

Mr. JARMAN. Are there any further questions?

Mr. METCALFE. I have no further questions.

Mr. JARMAN. Thank you very much, gentlemen.

This subcommittee has now concluded this hearing, and the subcommittee will stand adjourned.

(The following letters and statements were received for the record:)

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., July 26, 1971.

HON. HARLEY STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
Rayburn Building, Washington, D.C.

DEAR CHAIRMAN STAGGERS: On July 27, your Committee will begin hearings on Emergency Strike legislation.

I am a cosponsor of H.R. 9088, one of the bills under consideration during these hearings. I appreciate your scheduling of the hearings, and I hope the

Committee will be persistent in its efforts to provide mechanisms for settling labor disputes in the railroad and airline industries.

I believe it is extremely important that the Congress act now so that we do not have to take up emergency legislation on an annual basis, as we have for the past eight years, which only defers the crisis and never ensures a settlement.

H.R. 9088, or some variation of it, is sorely needed to assure a reasonable settlement without a national transportation emergency or a special annual bill.

With a number of rail carriers now experiencing strikes, I would hope there would be additional incentives for the community to move expeditiously in this field.

Yours very truly,

BILL FRENZEL, *Member of Congress.*

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., July 7, 1971.

Hon. HARLEY O. STAGGERS,
Chairman, Interstate and Foreign Commerce Committee,
Rayburn Building, Washington, D.C.

DEAR MR. CHAIRMAN: The enclosed letter is self-explanatory and is forwarded for Committee consideration in their deliberations on H.R. 3596 and related legislation.

Kind regards.

Sincerely,

DEL CLAWSON, *Member of Congress.*

(Enclosure.)

FLEXIBLE PACKAGING DIVISION,
CONTINENTAL CAN CO., INC.,
South Gate, Calif., July 2, 1971.

Hon. DEL CLAWSON,
House of Representatives,
Canon House Office Building, Washington, D.C.

DEAR CONGRESSMAN CLAWSON: We understand there is a strong possibility that American Seaports will be closed by strike action of the International Longshoremens Association beginning October 1, 1971, if the above referenced bills should pass. This would create a very serious situation since the pattern of waterfront strikes in the preceding decade indicates that they are becoming longer and placing a tighter squeeze on the nation's economy.

Only appropriate legislation will improve a situation which periodically results in an incalculable loss of business and customers. Therefore, on behalf of this plant and Continental Can Company, we wish to urge that immediate hearings be held on legislative bills S. 560 and H.R. 3596 so that we, as interested parties, may place ourselves on record with Congress, with the objective of obtaining acceptable legislation.

Thank you for all efforts we are asking you to put forth in protesting the passage of these bills.

Sincerely,

R. J. HAUSER, *Plant Manager.*

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., August 3, 1971.

Hon. JOHN JARMAN,
Chairman, Subcommittee on Transportation and Aeronautics, House Committee on Interstate and Foreign Commerce, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Please find enclosed the resolution of the Transportation Club of Sioux City, Iowa, expressing support for the "Emergency Public Interest Protection Act", (bills H.R. 901, H.R. 3639, and H.R. 4116, which I cosponsored), with amendments:

(1) To provide for regional application (you may recall that I made a similar recommendation in my testimony last week before your Subcommittee);
(2) To provide for the application of anti-trust laws to labor-unions; and
(3) To hold labor unions liable for any acts of violence committed by union members during labor disputes.

Although the railroad labor-management dispute was finally settled yesterday, I know the Transportation Club of Sioux City considers the enactment of permanent legislation as of great urgency so as to avoid such emergencies in the future. I would sincerely appreciate your cooperation in bringing this resolution to the attention of members of the Subcommittee and in having it incorporated in the record of the Subcommittee's hearings on transportation stoppages.

Sincerely,

WILEY MAYNE, *Member of Congress.*

Enclosure

RESOLUTION IN SUPPORT OF HR 901, HR 3639, HR 4116

Whereas, it has been brought to the attention of the Transportation Club of Sioux City, Iowa, that the "Emergency Public Protection Act" as set forth in HR 901, HR 3639, and HR 4116 are currently in hearing at Washington, D.C., and

Whereas, the Transportation Club of Sioux City, Iowa, is an association of 250 shippers and rail and motor carriers, principally from Sioux City, but encompassing Iowa, Nebraska, South Dakota, Minnesota, Missouri, and Kansas, formed for the purpose of promoting the general welfare of the transportation industry and all business and industry in the Siouxland area, and

Whereas, the provisions of these bills are known to us, and

Whereas, this Association feels that it is imperative for an "Emergency Public Protection Act" to become law at the earliest possible date, and

Whereas, it is also felt by this Association that this bill should be strengthened by amending to:

1. Provide for regional application as proposed in S–3852,
2. To provide for the application of the anti-trust laws to all labor unions, and
3. To provide that labor unions be made financially responsible for any criminal acts of their members, when involved in a labor strike: Now, therefore, be it

Resolved, That the Transportation Club of Sioux City endorses and supports the enactment of an "Emergency Public Protection Act", and strongly urge that the above amendments be added to the bill.

JERRY MEISNER, *President,*
Transportation Club of Sioux City.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., August 3, 1971.

Hon. JOHN JARMAN,
Chairman, Subcommittee on Transportation and Aeronautics, House Committee on Interstate and Foreign Commerce, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Please find enclosed the resolution of the Sioux City Motor Carriers Association of Sioux City, Iowa, favoring enactment of the "Emergency Public Interest Protection Act" with amendments:

(1) To provide for regional application (such as I recommended in testimony before your Subcommittee last week);
(2) To apply anti-trust laws to labor unions; and
(3) To hold labor unions liable for acts of violence committed by union members in connection with labor-management disputes.

Although I'm sure the Sioux City Motor Carriers Association is pleased that the railroad labor-management dispute was settled yesterday, I know that the Association considers the enactment of permanent legislation as of no less urgency and importance. As a cosponsor of the "Emergency Public Interest Protection Act" (bills H.R. 901, H.R. 3639, and H.R. 4116), I concur in this need for permanent legislation to protect the public interest in averting critical transportation stoppages in the future. Your cooperation in bringing the resolu-

tion of the Sioux City Motor Carriers Association to the attention of your Subcommittee and in incorporating it into the hearings record would be sincerely appreciated.

Sincerely,

WILEY MAYNE, *Member of Congress.*

Enclosure.

RESOLUTIONS

Whereas it has come to the attention of the Sioux City Motor Carriers Association that hearings on H.R. 901, H.R. 4116, and H.R. 3639, the bills called "The Emergency Public Interest Protection Act", are presently being held before the House Subcommittee on Transportation and Aeronautics of the Committee on Interstate and Foreign Commerce, and

Whereas it is the unanimous opinion of the Association that all of these bills are good bills, but can be made better by the inclusion of amendments to:

1. Apply on a regional basis as proposed in S. 3852, and
2. To make all unions amenable to the Anti-Trust laws, and
3. To make all unions financially responsible for any act of violence committed during a strike, the same as any employer is responsible for any act of an employee, and

Wherefore, we the undersigned respectfully request and urge your committee to favorably report out, an Emergency Public Protection Act, embodying the amendments above.

G. L. SCHULDT and 11 others.

STATEMENT OF CHARLES J. CHAMBERLAIN, PRESIDENT, BROTHERHOOD OF RAILROAD SIGNALMEN

My name is Charles J. Chamberlain, and I am President of the Brotherhood of Railroad Signalmen. Prior to being elected to this position I held other elective and appointive positions in this organization and before going to the Brotherhood of Railroad Signalmen, I worked on the Chicago and North Western Railroad.

I am appearing here today as a witness on behalf of the Brotherhood of Railroad Signalmen in support of H.R. 3595 and any similar legislation that will amend the Railway Labor Act to allow selective strikes in the railroad industry.

By the same token, our organization is opposed to any pending legislation that would amend the Railway Labor Act, outlawing strikes in the transportation industry and invoke any variation of compulsory arbitration.

I feel sure that all mmebers of this Committee are familiar with the Brotherhood of Railroad Signalmen. Our membership is composed of signal employes on substantially every Class I railroad and many smaller carriers in the United States. Presently there are approximately 12,000 signal employes performing signal work on the nation's carriers.

Because H.R. 3595 and all other pending legislation would amend the Railway Labor Act and would have a tremendous effect on our organization, I think it appropriate that I say a few words about our Brotherhood's experience when negotiating in the past with the National Railway Conference Committee.

Since my school days in DeBalb, Illinois, I have devoted my entire life to the railroad industry and the labor movement. Thirty-two years ago I was employed by the Chicago and North Western as a signal helper. I worked continuously on the Galena Division of the Chicago and North Western until March 1, 1957, when I accepted a position of Grand Lodge Representative with the Brotherhood of Railroad Signalmen.

During the period of 1938 to 1957, I worked every classification from signal helper to leading signal maintainer and performed maintenance and construction service on Centralized Traffic Control-Automatic Train Control Systems, electric and mechanical interlocking plants, all types of automatic crossings, telephone systems, signal pole lines, in addition to many other services normally and regularly required of skilled signal employes on every railroad.

Upon commencing work for the C&NW, I immediately became a member of the Brotherhood of Railroad Signalmen, Local 130. I held various local offices in the Brotherhood and was Vice Chairman of the Chicago and North Western System General Committee at the time I was appointed to the full time position of Grand Lodge Representative. On October 1, 1961 I was elected to the position

of Secretary-Treasurer of the International Brotherhood of Railroad Signalmen, and was subsequently reelected in 1964 for a period of three years. In August 1967, I was elected to my present position as President of the Brotherhood of Railroad Signalmen and was re-elected to this position at our Convention which was held in August of 1970.

In addition to my Brotherhood position I also serve as Chairman of the Railway Labor Executives' Association, having been elected to this position in December 1969 for a three-year term.

I mention this experience simply to make one point clear. During my 32 years of working in the railroad industry and the labor movement, in both low level and high level positions, I have yet to meet a situation where such drastic changes were needed in the Railway Labor Act as proposed in the Administration's bill, the Emergency Public Interest Protection Act.

It is not my desire or intention to burden this Committee and the record with a voluminous report of our organization's experience in negotiating wage contracts under the Railway Labor Act. In fact, I will confine my remarks and reasons for supporting the changes outlined in H.R. 3595 to my experience in applying the provisions of the present act when negotiating with the National Railway Labor Conference since I assumed the office of President of Railroad Signalmen.

Shortly after assuming my present office, our organization served notice on all of the nation's carriers for wage adjustments effective July 1, 1968.

During the period between March 1, 1968, the date our organization served notice on all of the nation's carriers, and April 13, 1969, all provisions of the Railway Labor Act were exhausted including the services of the National Mediation Board and an Emergency Board. It was only after the intervention of the Department of Labor in assisting Federal Mediators at the eleventh hour, that a wage agreement was reached between our Brotherhood and the nation's carriers. This settlement averted a nation-wide strike at that time.

During this time Secretary of Labor Schultz expressed his views, stating that labor-management disputes should be resolved through agreements reached by the collective bargaining process without government intervention.

Again on October 1, 1969 our organization served notice on the nation's carriers for wage adjustments effective January 1, 1970.

On May 17, 1971 we were forced to resort to self-help after exhausting all avenues of the Railway Labor Act. I am sure every member of this Committee can recall the action taken by the Congress to end the so-called national emergency at that time.

Had the Railway Labor Act contained a provision that would authorize selective strikes against a few railroads we would have avoided the cry of "national emergency," that was raised on May 17 and 18.

Unfortunately, the action taken on May 18 by both Houses of Congress extending until October 1, Section 10 of the Railway Labor Act, just delayed final settlement that much longer.

To date little or no progress has been made and the issues which caused the strike still remain unresolved.

It was not the ineffectiveness of the Railway Labor Act that caused the nation-wide crisis but rather the unwillingness of the Carriers' Committee to negotiate meaningfully. They would rather rely on Congress to impose the recommendations of the Emergency Board through legislation than negotiate a final contract.

There is no reason that the Congress of the United States should have to do what labor and management should be able to do for themselves. Remove the crutch of congressional intervention that the carriers have relied on for so long and you will see a return to collective bargaining in the railroad industry.

With this experience freshly on the minds of every officer of our organization it is easy to understand why the Brotherhood of Railroad Signalmen feels railroad workers cannot be denied their constitutional right of exercising their economic strength against an industry in the so-called free enterprise system.

A recent court decision allowing unions to call strikes selectively against a few railroads to bring pressure for a nation-wide agreement has proven to be one of the best ways to negotiate a settlement in the railroad industry.

H.R. 3595 allowing limited selective strikes on some railroads will provide an incentive to real collective bargaining. It would do away with the cry of a national emergency and the need for congressional action to block or end such strike. It would also end the need for Congress legislating a settlement.

H.R. 3595 is a plan for "permanent legislation" in contrast to the so-called one-shot laws Congress has enacted to remove a crisis in railroad negotiations or end a strike. The bill would restore to the railroad industry a measure of free collective bargaining and provide a means whereby labor-management confrontations in our industry may be reduced to less drastic dimensions.

By amending Section 10 of the Railway Labor Act making it absolutely clear, if railway labor organizations choose to exercise their right to strike over national issues following exhaustion of Section 6 procedures, we could avoid the economic and political consequences of a national emergency strike.

At the present time there is general agreement that the right to engage in a national railroad strike is, as a practical matter, illusory. In all such cases, the President and the Congress act quickly to end the strike.

Efforts to avoid congressional intervention in a national railway dispute by selectively limiting the strike action has thus far been successfully opposed, in most cases, by the carriers in Federal court. A Federal court order enjoining a limited or selective strike necessarily and inevitably produces a nation-wide strike which in turn provokes congressional intervention by way of legislation.

H.R. 3595 would end these whipsaw tactics of the carriers and restore to the railroad labor organizations an effective and meaningful right to strike.

In contrast the Administration's proposed legislation H.R. 3596 would virtually erase the Railway Labor Act.

Any legislation that would be a wholesale slaughter of the act is neither necessary or desirable and opposed by every member of our organization.

The Administration's proposed bill with the so-called "Final Offer Selection" is a new variation of compulsory arbitration and can only be looked upon by labor as a "Russian roulette" form of compulsory arbitration.

If the Nixon legislation were to pass, Signalmen and all transportation workers would become captive employes. Any compulsory arbitration under the label of "Final Offer Selection" or "Mediation to Finality" is a violation of the basic principles of democracy.

The Administration's bill is a device which would cripple free collective bargaining and would dictate contract settlements which all parties must accept.

Presidential Emergency Board recommendations under the Railway Labor Act have been a form of compulsory arbitration and these plus arbitration devised awards have left railroad workers' wages far behind.

The railroads in the United States have used congressional intervention to bail them out of labor-management disputes in the past. Railroad workers must not be denied their constitutional rights of exercising their economic strength against an industry in the so-called free enterprise system. Once the railroads know that they cannot depend on congressional intervention in railroad labor disputes, collective bargaining will return to the scene.

The Administration stated it is truly interested in trying to strengthen and improve collective bargaining and in keeping it strong and healthy. We fail to see how the "Emergency Public Interest Protection Act" provides any of these provisions.

In recent years the carriers have succeeded in creating a so-called nation-wide rail crisis by blocking, through the courts, every attempt at a selective or partial strike and thus transformed every impasse into a nation-wide strike or lockout. They have done this deliberately to provoke congressional intervention.

The soundest solution is to revise the Railway Labor Act to make it clear that unions have the legal right to strike a particular carrier or carriers and the railroads have no right to transform these limited disputes into nation-wide strikes or lockouts.

STATEMENT OF HENRY A. CORREA, CHAIRMAN, RAILWAY PROGRESS INSTITUTE AND PRESIDENT, ACF INDUSTRIES, INCORPORATED

Mr. Chairman and members of the committee, as Chairman of the Railway Progress Institute, the national trade association of railway suppliers, I welcome this opportunity to support the provisions of H.R. 9989 for resolving transportation labor disputes.

Few problems threaten the economic well-being of this great nation more than rail strikes. The railroads carry most of the goods on which a growing economy depends—the raw materials to run our industries; the finished products for domestic consumption and export; the basic necessities of food, clothing and medicine. What's more, as Secretary of Transportation John A. Volpe has

pointed out, 85 percent of those goods carried by rail cannot be shipped by any other means. So a major railroad strike is not just a catastrophe that we read about but one that affects each of us personally.

Yet, in the last four years, the United States has undergone six national rail strikes that virtually paralyzed freight transportation throughout the country.

Even the 18 days of so-called selective strikes which ended August 2 proved to be almost as disastrous. Two of the struck roads were switching and terminal facilities. The other eight, however, represented nearly a quarter to the total railroad miles in the United States.

If the strikes had remained unsettled just days longer, the total number of lines that then would have been struck would have represented about 46 percent of the country's total railroad miles, approximately 56 percent of the revenue ton miles and nearly 49 percent of the railway workers.

Furthermore, recent rail strikes have had another adverse affect on the economy. Recently wage increases have totaled 42 percent over 42 months. The inflationary character of these increases is apparent.

To still complicate matters, none of the last six national strikes could be settled through the traditional manner of collective bargaining. In each case Congress had to intervene with special ad hoc legislation, action that the lawmakers are always reluctant to take since it often merely postpones problems instead of eliminating them.

Of the several bills being considered by this Committee, RPI believes H.R. 9989 is best equipped to alleviate all of these hardships. Its "arsenal of weapons" would give a panel of experts a choice of one of four following alternatives in settling strikes: To do nothing; to appoint a neutral board for non-binding recommendations; to require final and binding arbitration and to provide a "final offer" procedure.

We believe that this type of flexible approach will assure fast, equitable and permanent settlements of transportation labor disputes and urge the Congress to give H.R. 9989 favorable consideration.

STATEMENT OF JOSEPH CURRAN, PRESIDENT, NATIONAL MARITIME UNION OF AMERICA, AND CHAIRMAN, AFL–CIO MARITIME COMMITTEE

My name is Joseph Curran. I am President of the National Maritime Union of America and Chairman of the AFL–CIO Maritime Committee. Our Committee represents the bulk of workers directly employed in the maritime industry, some 250,000, who are members of the following unions affiliated with the AFL–CIO:

National Maritime Union of America
International Longshoremen's Association
National Marine Engineers' Beneficial Association
International Organization of Masters, Mates and Pilots
American Radio Association
United Steelworkers of America

We appreciate the opportunity to testify before this Committee and to record our unqualified opposition to H.R. 3596.

We are most strongly opposed to the passage of H.R. 3596. This bill would deprive labor unions and their members of their fundamental Constitutional right to bargain collectively in their own behalf. All of the bills, both for transportation in general and for the railroad and airline services in particular, provide that in the event of a disagreement between labor and management, the matter ultimately will be settled by a panel appointed by the President of the United States. This panel would be given the right to make the contract for the parties. This is a complete departure from established precedent and a direct violation of the Federal Constitution, Amendment 5; *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 81 L. Ed. 893 (1937).

In *NLRB* v. *Jones & Laughlin*, the Supreme Court discussed "the scheme of the National Labor Relations Act", and quoted from the first section, which states that it is the policy of the United States to encourage "the practice and procedure of collective bargaining" and to protect "the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection".* In discussing the constitutionality

*301 U.S. at 23 (note 2); 81 L. Ed. at 904.

of this statutory policy which states that *employees* have the right to select their own representatives to bargain for them, the Supreme Court said:

"That is a fundamental right. Employees have as clear a right to organize and select their representatives for lawful purposes as the respondent has to organize its business and select its own officers and agents. Discrimination and coercion to prevent the free exercise of the right of employees to self-organization and representation is a proper subject for condemnation by competent legislative authority. Long ago we stated the reason for labor organizations. We said that they were organized out of the necessities of the situation; that a single employee was helpless in dealing with an employer; that he was dependent ordinarily on his daily wage for the maintenance of himself and family; that if the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and resist arbitrary and unfair treatment; that union was essential to give laborers opportunity to deal on an equality with their employer. . . . We reiterated these views when we had under consideration the Railway Labor Act of 1926. Fully recognizing the legality of collective action on the part of employees in order to safeguard their proper interests, we said that Congress was not required to ignore this right but could safeguard it. Congress could seek to make appropriate collective action of employees an instrument of peace rather than of strife. We said that such collective action would be a mockery if representation were made futile by interference with freedom of choice. Hence the prohibition by Congress of interference with the selection of representatives for the purpose of negotiation and conference between employers and employees, 'instead of being an invasion of the constitutional right of either, was based on the recognition of the rights of both.' . . . We have reasserted the same principle in sustaining the application of the Railway Labor Act as amended in 1934. . . ." *

Apart from the Constitutional impediment, the bill would change the entire system in the labor-management field to the great prejudice of unions and their membership. Of course, it could be argued that some Presidents might be more liberally inclined than others and perhaps even in the direction of labor; that in such a situation labor would be favored by the President in his appointment of a panel to determine the contract between the parties. In other situations the President generally would be inclined in the other direction and would appoint a panel favorable to management. The law should not be so phrased as to permit the result to hinge upon the inclinations or disposition of any particular President. In all of these situations the one thought in the minds of the President and the panel he appoints would be to terminate the strike, and do so in such a fashion as not to harm the business interest involved. It is immediately obvious that such a procedure would be the greatest deterrent to the progress of the public's interest. Procedures would be adhered to which may be far outmoded and which have become an obstacle to the growth of industry itself as well as to the advancement of the interest of the workers.

The placing of such power in the hands of the President, with complete authority to make such a labor agreement would be in direct conflict with the Constitutional rights of members of a union to join together for the purposes of self-protection and collective bargaining. Every important consideration which is now subject to self-determination by the parties would become one of executive fiat. In other words, within the limits of prior discussion between labor and management, the President of the United States would make the contract for the parties, and labor, and management as well, would be on its way to direction and control by the "Big Brother Government". This would of necessity lead to a complete destruction of the rights guaranteed by the Constitution of the United States as well as Section 7 of the Labor Management Relations Act.

STATEMENT OF AMERICAN COTTON SHIPPERS ASSOCIATION

The American Cotton Shippers Association expresses its strong support for legislation presently under consideration by the Subcommittee, as recommended by the Administration and introduced by Chairman Harley D. Staggers (D-W. Va.) and Ranking Minority Committee member William L. Springer (R-Ill.) as H.R. 16272, the "Emergency Public Interest Protection Act of 1970."

*301 U.S. at 33–34, 81 L. Ed. at 909–10.

The American Cotton Shippers Association was founded in 1924 and is basically comprised of merchants, shippers and exporters of raw cotton who are members of five federated associations, located in sixteen states throughout the cotton belt:

Arkansas-Missouri Cotton Trade Association
Atlantic Cotton Association
Southern Cotton Association
Texas Cotton Association
Western Cotton Shippers Association

The 447 member firms of the ACSA handle over 70% of the domestic cotton crop and 80% of the export market; for cooperative marketing associations control most of the remaining portions of these markets.

In the past 15 years the annual movement of cotton to domestic mills has ranged from a high of 9.2 million bales in 1955–56 to a low of 7.9 million bales in 1969–70, with the estimated figure for the past season at 8.1 million bales.[1] Exports in this period have ranged from a high of 7.5 billion bales in 1956–57 to a low of 2.73 million bales in 1968–69, with the estimated figures for the past season at 3.7 million bales,[2] despite a longshoremen's strike which tied up substantial shipments of cotton on the West Coast in July, usually the busiest month in the cotton exporting season. During this period a total of 139,224.6 million bales were moved mostly by rail to U.S. mills and 71,248.4 million bales moved to U.S. ports by rail for shipment in export aboard ocean-going vessels.[3] These shipments resulted in billions of dollars in revenue to the various modes of transportations with resulting benefits to both labor and management.

No records are available to calculate the losses resulting to members on this association due to labor strife in the transportation industry over the entire fifteen year period. The ACSA did take great pains, however, to record from member firms the losses suffered in the longshoremen's strike of 1968–69.

A survey of exporting members taken in March 1969, revealed that 115,000 bales of cotton were held from shipment at Gulf Ports and 578,000 bales were held in warehouses awaiting shipment to ports during the strike period. Losses were incurred by shippers for carrying charges in amounts aggregating over $2.5 million. The loss of export markets for our cotton producers were even more damaging.

Attached is a chart comparing the exports of cotton from the principal producing countries for the cotton seasons 1967–68 and 1968–69. In 1967–68 the United States exported 4,206 million bales, and this figure dropped to 2,731 million bales the following year. In this period our principal competing countries in Central and South America, who grow comparable styles of cotton, moved in and took our markets resulting in a loss to the U.S. in balance of payments of $165 million. The increases recorded by these countries is directly proportional to the decrease suffered by the U.S. due to the dock strike:

Brazil: +933, 000
Mexico: +390,000
Columbia: +144,000
Peru: +98,000
Guatemala: +98,000
Nicaragua: +44,000

At this very moment approximately 141,000 bales of cotton are tied up at West Coast ports due to a longshoremen's strike with the losses accumulating daily. Approximately 600,000 bales have been sold for shipment through Gulf Ports for the four-month period October 1971–January 1972.

This amount would be substantially higher were it not for the uncertainty in buyers' minds that a longshoremen's strike on the East and Gulf Coast would delay delivery.

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[1] Cotton Situation, August 1971, Economic Research Service, United States Department of Agriculture.
[2] Ibid.
[3] Ibid.

At this stage in the economic history of the United States we can no longer ignore the serious consequences of even threats of strikes. The justified fears of foreign purchasers of U.S. cotton reduces the income of exporting companies, railroads, trucking lines, stevedoring companies, steamship lines, port warehouses, freightforwarders, longshoremen and other workers in the transportation industry. The economic ripple of strikes at ports flows into the hinterland of our country, affecting millions of our most productive citizens, our farmers. We are inextricably tied together and our respective futures demand that solutions be found.

It was with these experiences in mind that the members of the American Cotton Shippers Association at their 47th Annual Convention in New Orleans, Louisiana on May 29, 1971, adopted the following resolution:

"TRANSPORTATION STRIKE LEGISLATION

"We commend President Nixon for his messages to the Congress of February 27, 1970, and February 3, 1971, requesting the enactment of legislation that would cope with the growing number of strikes in the transportation sector of the nation's economy.

"We endorse these recommendations which are designed to prevent stalemates in collective bargaining which cause great injury to innocent third parties, more so than the actual parties to the dispute. The legislation would permit the President three alternatives at the conclusion of the 80-day cooling-off period: a) an extension of the cooling-off period for an additional 30 days; b) require partial operation of the troubled industry for a maximum of 10 days; c) invoke a procedure empowering three neutral parties to choose the last reasonable offer of labor or management. The offer designated by the neutral parties as the most reasonable offer, would become a binding settlement on all parties.

"The longshoremen's strike that paralyzed the West Gulf Ports for three months in late 1968 and early 1969 caused untold damage to the cotton industry and general agriculture in the Southwestern part of the country. Countless millions of dollars were lost in export trade and some cotton requirements were filled by foreign growths causing permanent loss of markets.

"In 1970 and 1971, pending nationwide railroad strikes were averted on three separate occasions by congressional action. A shutdown of the railroads would prevent the movement of cotton to the textile mills in the Southeast and to the Port areas on the Gulf and the West Coast.

"The legislation, if enacted, will encourage reasonable and fruitful negotiations between management and labor, and hopefully lead to more reasonable demands by labor and avoid recalcitrance by management on negotiable issues."

Historically as interested third parties in relations between labor and management, we have made it our business, not to interfere with what we know to be a very sensitive relationship. In recent years, however, we have suffered too much from the failure of the bargaining parties to reach accord and thereby avoid lengthy strikes. We do not lay the blame for these failures on either of the principal parties to collective labor agreements, but cast the blame on the system in which the bargaining parties funtcion.

The system fails in attempting to alleviate the injury to innocent third parties, the people who provide the business, utilize the service or consume the end product—their interest, the public interest is not protected. We respectfully request that this Subcommittee recommend the adoption of legislation that will provide for machinery to achieve the ultimate in protecting the interest of all parties concerned and in ending lengthy and injurious labor management disputes.

That Congress has the right to legislate in this area is not questioned. The Supreme Court as long ago as 1917 in Wilson v. New[4] rejected a due process

[4] 243 U.S. 332.

objection and approved an Act of Congress which temporarily provided for an eight-hour day for railroad workers at compensation not less than that previously paid for ten hours. The enactment of this legislation avoided a nationwide-railroad strike and served as a precedent for legislation handled by this Subcommittee in recent years to avoid similar strikes. In the Wilson case, Chief Justice White, delivering the opinion of the Court, foresaw a situation which "if not remedied, would leave the public helpless, the whole people ruined, and all the homes of the land submitted to a danger of the most serious character." [5] He said that "engaging in the business of interstate commerce subjects the carrier to the lawful power of Congress to regulate;" that "by engaging in a business charged with a public interest, all the vast property and every right of the carrier become subject to the authority to regulate possessed by Congress to the extent that regulation may be exerted, considering the subject regulated and what is appropriate and relevant thereto;" and further that the right of the employee "to demand such wages as he desires, to leave the employment if he does not get them, and, by concert of action, to agree with others to leave upon the same condition" was "necessarily subject to limitation when employment is accepted in a business charged with a public interest." [6]

The Congress provided the railroad industry with machinery to adjudicate minor disputes through arbitration [7] in the 1934 amendments to the Railway Labor Act 1926.[8] This machinery has functioned effectively in resolving employee grievances and other minor disputes which have not been absolved by the parties themselves; and the Supreme Court has upheld its validity.[9] The legislation under consideration today, as submitted by the Administration affords the parties to collective labor agreements due process while being designed to deal with the grievances of the public—it thus bears a direct relation to a proper public end.

The following exhortation expressed by Congress in the preamble of the Labor Management Relations Act of 1947, the Taft-Hartley Law; [10] has not been heeded by many in the transportation industry:

"Industrial strife which interferes with the normal flow of commerce . . . can be avoided or subsequently minimized if employers, employees, and labor organizations each . . . above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety or interest . . ." [11]

The public health, safety and interest will continue in jeopardy so long as the transportation industry is permitted to shuttle from crisis to crisis awaiting Congressional stopgap measures. The issue should be faced today and permanent machinery established to preclude recurrent transportation crises.

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[5] Id. at 351.
[6] Id. at 352.
[7] 44 Stat. 577, 45 USC 152.
[8] 45 USC 151–163, 181–188.
[9] 353 US 30 (1957).
[10] 61 Stat. 136, 29 USC 141 et seq.
[11] Id. at 29 USC 141(b).

COMPARISON OF EXPORTS OF COTTON, 1967–68 AND 1968–69 SEASONS

Exporting country	1,000 bales		
	1967–58 season [1]	1968–69 season [1]	Increase or decrease
North America:			
British West Indies	1	1	
Costa Rica	15	13	−2
El Salvador	117	108	−9
Guatemala	270	368	+98
Honduras	31	17	+14
Mexico	1,233	1,623	+390
Nicaragua	430	474	+44
United States	4,206	2,731	−1,475
Others	1	2	+1
Total	6,304	5,337	
South America:			
Argentina	25	1	+24
Brazil	839	1,722	+933
Colombia	152	296	+144
Paraguay	22	28	+6
Peru	296	394	+98
Others	1	1	
Total	1,335	2,492	
Europe:			
Albania	3	5	+2
Bulgaria	25		−25
Greece	310	183	−127
Spain	46	5	−41
Total	384	193	
U.S.S.R	2,550	2,100	−450
Asia and Oceania:			
Afghanistan	60	35	−25
Australia		19	+19
Burma	10		10
China (mainland)	50	50	
India	172	138	−34
Iran	300	422	+122
Iraq	15	15	
Israel	56	35	−21
Pakistan	891	609	−282
Southern Yemen	13	20	+7
Syria	492	551	+59
Thailand	7	31	+24
Turkey	1,040	953	−87
Yemen	5	5	
Total	3,111	2,833	

[1] Source: ICAC Cotton World Statistics, vol. 24 No. 9 (pt. II) of April 1971.

STATEMENT OF JOHN A. STASTNY, PRESIDENT, NATIONAL ASSOCIATION OF HOME BUILDERS

Mr. Chairman, your hearings which open today will direct attention, we understand, to the urgent need for improved Federal legislation to assist in settling labor disputes and strikes which affect the Nation's transportation facilities. We strongly support your efforts.

We believe the Congress should take every possible legislative action to redress the imbalance in the collective bargaining process whereby the scales have been tipped so heavily in favor of the labor unions. This is a matter of great importance to the housing industry which, in recent weeks, has been seriously threatened by the rail transportation and longshoremen strikes on the West Coast and in other parts of the country.

The impact of the rail and longshoremen strikes was felt at once in the supply of plywood, lumber and other wood products which constitute the basic construction material for housing in the United States. Even though the rail strike has been settled during the past week, the West Coast longshoremen strike continues and seems far from any negotiated agreement. Moreover, we understand that there is a strong likelihood of an equally damaging strike of longshoremen on the East Coast and Gulf Coast ports, which is scheduled to begin about September 30, 1971.

Already, we are told, the lumber mills in British Columbia are planning to stop shipments of lumber by sea to the East and Gulf Coasts *beginning on or about August 16, 1971.* This is in order to avoid the situation which developed two years ago when ships were tied up in East and Gulf Coast harbors for months fully loaded with lumber, at a time when lumber prices skyrocketed. As you may know, in many areas of the East and Southeast, Canadian lumber forms a large part of the supply for housing construction, up to 75 percent or more in some places.

We in the housing industry believe that it is imperative, in situations of this kind, that both the President and the Congress use every avenue at their disposal to act to bring about reasonable and quick settlements of these disputes. During recent weeks, we strongly supported the full exercise of the President's influence and prestige to persuade the parties to these disputes to arrive at a settlement before major damage was done to the economy.

We communicated our support to the President, to the Secretary of Labor and to the Secretary of Housing and Urban Development. Just prior to the settlement of the rail strike last week, for example, we sent a wire to the President which read as follows:

"Strongly support your urgent efforts and plans being put forth by Labor Secretary Hodgson to achieve settlement of crippling west coast rail strike. Housing industry's ability to maintain high rate of production being threatened by strike which is curtailing lumber and plywood production and causing price increases. Full power and influence which your Administration using to effect a settlement is necessary to avert a broad economic setback which may take many months to repair."

The strikes which affect rail and shipping transportation in effect cripple lumber and plywood production and threaten steeply increased prices for these materials, having a seriously adverse impact upon housing production and housing costs. Not only steeply increased prices are involved, but in 1969 and on other occasions, including the present, the delivery of expected supplies of lumber, plywood and other construction materials has been disrupted. This greatly impedes the efficiency of construction in all parts of the country and creates another element increasing the costs of the final buildings and housing.

Home building, as you know, has been the strong underpinning of the Nation's slowly developing economic recovery during this spring and early summer. It has added considerably to the Nation's jobs, wages and income. When the home building industry's ability to produce is seriously threatened, as it is by these national transportation strikes, the Nation is in danger of suffering a broad economic setback which may take many months to repair. We believe neither the Nation nor the Congress, nor the Administration, wants this to happen.

We urge your Committee to report out favorably improved, remedial legislation to advance the public interest in these national transportation disputes. We do not take a specific position on either H.R. 3595 or H.R. 3596, but rather leave the details of the legislation to the wisdom of your Committee. We do strongly take a position, however, in support of stronger and more effective legislation to aid the President and the public in settling these disputes.

STATEMENT OF CAPTAIN JOHN J. O'DONNELL, PRESIDENT, AIR LINE PILOTS ASSOCIATION, INTERNATIONAL

Mr. Chairman and Members of the Subcommittee, my name is John J. O'Donnell. I am President of the Air Line Pilots Association, International, an organization representing 31,000 airline pilots of 39 commercial airlines and 14,000 stewards and stewardesses of 23 commercial airlines. ALPA appreciates this opportunity to set forth our views on this subject, which so vitally affects the public, employees and management.

Proposed alteration of the Railway Labor Act is a subject of special concern to ALPA and one in which our members have a special interest and experience. ALPA has been the collective bargaining representative for most scheduled American carriers' pilots since 1933 and, indeed, it was ALPA which was largely responsible for the 1936 amendments to the Railway Labor Act which extended the Act's coverage to airlines.

It is my main purpose to oppose H.R. 3596, which is the current Administration's proposal for revision of the Railway Labor Act. This bill and related proposals have been proferred as remedies for a variety of ailments perceived in the transportation industry's labor relations. But it can be demonstrated that the proponents of this bill have not properly diagnosed the patient's ailment, and have written a radical prescription which includes some very strong, costly and dangerous medicine.

The proponents of H.R. 3596 and its various counterparts advance several assertions in support of their claim that Congress should provide new and special treatment of labor relations in the transportation industries. One theme, often repeated, is that the public has been subjected to much essential damage as a result of too many transportation strikes.[1]

But no statistical evidence has been forthcoming to support this charge. And no substantial effort has been made to compare the incidence, duration, or public impact of recent transportation strikes to strikes in other industries. Recent labor disputes in the railroad industry have captured national headlines and attracted national attention repeatedly in recent years. But this Subcommittee has already been advised that, even in the railroad industry, serious disruptions of service have been quite infrequent. James E. Yost, President of the AFL–CIO Railway Employees Department, recently explained in his testimony that "there have been only 3 nationwide rail strikes, each lasting but a few days" in the entire 45 year history of the Railway Labor Act. According to the same source, there has been only one major airline strike during this same period, and the Secretary of Labor has admitted these are the facts.

The Department of Labor's Bureau of Labor Statistics has just completed a study of airline experience under the Railway Labor Act which further undermines the claims of H.R. 3596's sponsors. Since 1936, when the Act was amended to cover airlines, only 33 emergency boards have been created[2]; in only 9 years were there over 100,000 man-days lost due to strikes[3]; and only 10 strikes have occurred involving 10,000 employees or more.[4]

Indeed, the BLS study showed that most airline work stoppages involved fewer than 500 employees[5] and that only 7 strikes lasted for more than 90 days.[6]

It is conceivable, I suppose, that short work stoppages involving few employees could still create a problem warranting special legislation. But it seems obvious to me that those who seek such legislation have an obligation to show how and why. It also seems quite clear that they have not even attempted such a showing.

In a nation where voluntary collective bargaining is a cherished tradition and the right to strike has long enjoyed statutory protection, the Congress and the public are entitled to a clear demonstration that these institutions have been abused, to the detriment of the public interest, if new restrictions are to be imposed. In my own view, this demonstration has not yet been made and it cannot be made.

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[1] See, e.g., Message from the President of the United States transmitting proposed legislation, March 2, 1970, 91st Congress, 2d Session, H.R. Document No. 91–266, p. 1; Statement of Stuart G. Tipton before this Subcommittee dated August 4, 1971.

[3] *Ibid* at p. 26.

[2] "Airline Experience with the Railway Labor Act", Bulletin 1683, U.S. Department of Labor, GPO 1971, p. 19.

[4] *Ibid* at p. 27.

[5] *Id.* at p. 26.

[6] *Ibid* at p. 28.

Because airline pilots are highly paid professional employees and because of their essential operating role in maintaining air carrier operations, pilots are often the focus of discussions about bargaining power and wage settlements in the industry. When such discussions are responsibly conducted, and real historical data are considered, it becomes perfectly clear that pilots have seldom resorted to strikes, that collective bargaining works effectively in establishing their wages and working conditions, and that voluntary private agreements with management are typically negotiated without either undue reliance upon government intervention or any disruption of service. All of this can be said—and proven, as the following statistics will show—despite the fact that pilots and their employers have operated almost continually through an era of extraordinary growth and dynamic technological change. Such growth and change has had profound impact upon all aspects of professional pilots' work life, and created labor relations problems as serious and pervasive as those in any other industry.

Nonetheless, the record shows that over 500 collective bargaining agreements—excluding very numerous amendments and "side letters"—were negotiated with pilots during the period since 1933. Throughout this same 38 year period, there have been only 14 pilot strikes, including two partial work stoppages lasting less than 3 weeks. Indeed, of the 14 strikes, 9 of them lasted 30 days or less and only in one instance was more than one carrier affected.

In light of these circumstances, we cannot easily sympathize with those who would characterize either the practice of collective bargaining or the Railway Labor Act as a failure. The fact is that the Air Line Pilots Association has been able to make the collective bargaining process work, under stressful conditions of rapid technological change and industrial growth, without disruption to airline transportation.

I do not mean to suggest that collective bargaining has achieved all that it might, or that the process needs no improvement. Indeed, later in this statement, I will suggest some concrete propoasls. But ALPA's experience with the Railway Labor Act does provide a dramatic refutation of the chief arguments of the proponents of H.R. 3596.

We have also studied the incidence and duration of strikes by other airline unions, and would share these findings, too, with the Subcommittee. Here too, it is clear, evidence of disproportionate strike activity is lacking, and justfication for anti-labor legislation is non-existent. However, we do find a disturbing recent trend toward longer strikes; for this, we believe, the record will show that the airlines have themselves to blame.

In a case now pending before the Civil Aeronautics Board, Docket No. 9977, the Board is considering whether the airlines Mutual Aid Pact—a "strike insurance" program to which many of the nation's air carriers now subscribe—is consistent with the public interest.

Stanley H. Ruttenberg, an eminent labor economist and former U.S. Assistant Secretary of Labor, has testified before the Board in this proceeding that "the Mutual Aid Pact is at the root of this [recent] instability [in major segments of the airline industry.] Conceived by the airlines as a means of serving the public interest by reducing strikes and the service disruptions they cause, the Pact has instead led to an increase in strikes and to an increase in service disruptions." [7]

After explaining the dynamics of the Pact's effect on collective bargaining, Mr. Ruttenberg demonstrated his thesis by reference to a statistical analysis using the data supplied by the air carriers themselves, or by the Bureau of Labor Statistics. That demonstration revealed that the average duration of all strikes against air carriers since 1950 has changed from 15.1 days before the Pact to 35.5 days, after the Pact. He also showed that the average duration of strikes among carriers party to the Pact changed from 12.4 days when they were not in the Pact to 36.4 days—an increase of 200 percent—when they joined the Pact.

Finally, he showed that this trend toward longer strikes is accelerating as the Pact is successively amended by the carriers in the direction of wider coverage and higher benefits. Since October 31, 1969, there have been seven strikes against air carriers. Three of these involved non-Pact carriers and had an average duration of 19 days. The other four were against Pact carriers, and the average duration was 108 days!

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[7] Ruttenberg testimony, ALPA Exhibit 9, p. 3, CAB Docket 9977. A copy of this testimony, in its entirety, is attached hereto.

It would constitute nothing less than a revolution in American labor relations to change this philosophy and to revise the Railway Labor Act in order to assist the carriers in negotiating lower wage settlements. In short, federal labor legislation traditionally is aimed at establishing the mechanics and procedures of collective bargaining, not at determining the substance or the nature of the bargains themselves. To depart from this tradition is to threaten some of our most basic freedoms. Management's responsibility to bargain should not be assumed by Congress.

Besides, efforts to blame recent airline wage settlements for the rising passenger fares cannot withstand careful scrutiny. The facts are that higher fares and lower carrier profits derive from other considerations, and that airline employees' wage settlements have not been increasing out of proportion to productivity increases.

Thus, staff studies by the Civil Aeronautics Board show that from 1961 through 1967, the increases in employment cost per employer were totally eclipsed by the increases in real productivity per employee.[8] Beginning in 1967, however, the scheduled airlines invested over 2 billion dollars each year in new equipment.[9] With the benefit of hindsight, most airline executives and economists have been explaining their current economic problems, these days, by reference to the industry's ill-fated committment to heavy investment in larger aircraft at the very time when the growth of passenger traffic was inexplicably beginning to decline. The Civil Aeronautics Board itself has itself attributed the recent economic distress of the industry to these considerations.[10]

In a free economy, owners and management pay the price for such miscalculations, through reduced profits and dividends. Even in a controlled economy, it seems grossly inequitable to penalize the employees—by legislating for lower wages—because capital has been committed unwisely or unfortunately. Yet that is precisely Mr. Tipton's objective: he refers to the annual earnings (including fringe benefits) of the "top 600 airline pilots" and asserts that they have increased $39,700 in 1965 to $58,400 in 1970, an increase of 47% over the 5 year period, or about 9.4% per year. Mr. Tipton, however, does not advert to the fact that the carriers' executive compensation level increased, from 1969 to 1970, by an annual rate of 12.5%—an increase obtained *without* any of the "coercion" of collective bargaining. Plainly, some of the bill's proponents here simply want the best of all management worlds.

Before turning to an analysis of the provisions of H.R. 3596 itself, one last asserted objective of its sponsors deserves comment. In addition to their interest in restricting strikes, and lowering wages, the proponents have also expressed an interest in limiting the government's role in collective bargaining. Minimum federal interference is one of the explicit objectives here asserted. As we review the mechanics of the proposed new legislation, I would ask the Subcommittee to keep this objective in mind, for it will become painfully obvious that enactment of H.R. 3596 will have precisely the opposite effect.

Thus, not only does this bill misconceive the ailments affecting the transportation industry today; in addition, it would intensify an unhealthy condition all of us seek to avoid.

Turning to the bill itself, we examine first its most widely publicized feature: the addition of new Presidential powers. Under the Railway Labor Act, the President currently has no recourse after the 60 day Emergency Board period expires, except to request special Congressional legislation or let the imminent strike or lockout occur. His options are now the same under Taft-Hartley, after the 80 days cooling-off period has elapsed. Under H.R. 3596, the President would have three new options, exercisable after the 80 day period expired without a settlement. According to the new bill, the President would have to act within 10 days after the expiration of the cooling-off period and he could invoke one, but *only* one, of the following procedures.

First, he may decide to extend the cooling-off period, to compel further private bargaining, for another period of time not to exceed 30 days. During this additional cooling-off period, the parties would again be prevented from changing working conditions or engaging in strike or lockout, and the Taft-Hartley Inquiry Board would have authority to mediate. According to the President's

[8] Productivity and Employment Costs in System Operations of the Trunk Airlines and Pan American from 1950 through 1970, CAB, July 1971, p. 20.

[9] Air Transport Assn., "The U.S. Scheduled Airline Industry, An Economic Overview", October 1970, p. 9.

[10] Application of Trans World Airlines, Inc., et al, Docket No. 22908, CAB Order 71-8-91, decided August 19, 1971.

own message to Congress, this option would appear appropriate only when the parties were already very close to a settlement.

The second new option is much more significant: it allows a strike or lockout after the cooling-off period expires, within a *described portion* of the company's operations. To exercise this option, the President selects a special board of three impartial members whose task is first to determine whether a partial strike or lockout would have sufficient economic impact to pressure the parties toward a settlement without imperiling national health or safety. If the board so finds, it may then issue an order which specifies the extent and conditions of partial operations which must be maintained—for example, by describing essential routes, or critical segments of passengers or cargo—and which allows a strike or lockout only in the remainder.

Detailed procedural rules for the board's second option are specified in the bill, including provision for a formal trial-type hearing. The parties are forbidden to change working conditions during the board's consideration of the issues and during the period of any partial operation order it may issue. However, the board must issue such order no later than thirty days after its appointment, and the board's order cannot run for a period in excess of 180 days. Such orders are conclusive, unless the district court finds it to be "arbitrary and capricious"—an extremely difficult finding to reach.

This proposal would inject a substantially new and untested concept into national labor policy: our government has little or no experience in establishing boundary lines for strikes which will permit economic pressures to generate in regulated, "socially acceptable" amount and area. Until now, a particular strike has either been lawful—and all its attendant public burdens therefore necessary to accept—or unlawful and therefore enjoinable in court no matter how tolerable or acceptable its economic impact.

In ALPA's view, the criteria listed in the bill for determining whether a partial strike is appropriate will pose extremely complex and virtually unanswerable questions. How will the "experts" know within how wide a scope to allow a strike? In order to predict whether a partial strike will cause "enough" economic pressure, will they not be compelled to predict such unpredictables as the volume of future traffic on specified routes, the availability of potential fare increases, the capacity of competing carriers to absorb and retain diverted passengers, and the effect of unspecified losses by the carrier on its existing capital structure? Will a trial-type hearing of less than thirty days duration be able to inquire sufficiently into such matters?

Full-time, well-trained and professional airline executives have themselves experienced notorious and serious difficulties in attempting such prophesies, even in the absence of the stress and haste and emergency labor dispute would create. ALPA has no confidence that the part-time *ad hoc* experts will fare better when the pressure is on.

Furthermore, the opportunities for lucrative intra-carrier diversions of traffic will be readily at hand to defeat the legitimate intentions of the government panel and the striking employees. Many carriers today are party to a "strike insurance" program, the Mutual Air Pact, which provides them reimbursement for passenger fares lost to the other Pact airlines during a strike. By careful selection of routes and frequencies to be operated during a partial strike, and augmented by strike insurance payments, a carrier can actually increase its profitability at such times. Indeed, Northwest Airlines already has enjoyed this windfall at the expense of the public during the recent BRAC strike. There is little or no equity in a government scheme to perpetuate such a one-sided game.

The third Presidential option is the most drastic. If it is invoked, each side has three days to submit a final offer designed to resolve all issues in controversy; five days are allowed for further bargaining over these final proposals for settlement. If no agreement is reached, the President chooses a three-man board of neutrals, called "selectors," whose function is to select one of the two final offers—without any compromise or modifications—to be the final and binding settlement.

The selectors have a thirty day period to conduct formal hearings, like those provided for under the second option, and statutory criteria are articulated to guide their decision of which offer is to be selected. The bill also specifies that the selectors are prohibited from engaging in mediation or any other techniques of resolving the dispute except for selecting one of the final offers. The panel is to choose, according to the bill, that offer which is "the most reasonable." Again, their choice is conclusive unless the district court finds it "arbitrary or capricious."

The following criteria are supposed to guide the panel's judgment: (1) past contracts and negotiations between the parties (but not including evidence relating to bargaining over the present dispute), (2) comparative wages and working conditions of employees doing comparable work for other employers in the industry, in similar industries, and in industry in general, (3) security of employment, with consideration to the impact of technology on manning practices, and (4) "the public interest." The bill does not clarify further any of these criteria.

According to the bill's proponents, the advantages to this new procedure are that it would not only resolve the underlying labor dispute without a strike but, also, that it would provide a strong incentive for labor and management to reach their own accommodation at an earlier stage in the bargaining. We are told that "when final offer selection is the ultimate recourse, the disputants will compete to make the most reasonable and most realistic final offer, one which will have the best chance to win the panel's endorsement."

In our view, these advantages are overstated, theoretical and speculative. First of all, there is no real "guarantee" of a conclusive settlement without a work stoppage. When employees have been directed to labor, even by force of federal law, under conditions they deem extremely onerous or objectionable, work stoppages *have* occurred in the past. Recent experience with postal workers and other government employees, who never enjoyed a statutory freedom to strike at all, is instructive here. Government compulsion is no assurance against disruptions of service. Nor will management be likely to avoid the imposition of alien, uncomfortable or unworkable conditions from which they will feel compelled to escape.

Second, the assurance that each disputant will make his "most reasonable and realistic final offer," in order to have the best chance at winning the panel's endorsement, is a flimsy one. People being what they are, we suspect the tendency will be for the parties to submit final offers which *appear* to be reasonable. Moreover, when the final offers cover, as will be typical, a vast multiplicity of interrelated and complicated contract terms, it will become increasingly difficult to establish which offer is cheaper, let alone "more reasonable," simply because so many different points of dispute exist.

Those selectors who must, under this bill, sort out and evaluate the elements of each side's final offers will face a task which is simply unworkable. For the bill presupposes a much lower level of bargaining sophistication than actually obtains in the airline industry. The selectors will not be called upon to determine whether a $4.00 wage increase is "more reasonable" than a $5.00 increase. They will, instead, be asked to choose between two complex and intricately sub-divided charts, creating new compensation levels for a variety of job and equipment classifications, changing at different increments and at different times over the contract period. It may be impossible even for the neutral panel to agree on what actuarial assumptions must be used in order to fairly compute the real cost of each final compensation offer to the carrier, let alone to determine which offer is more "reasonable."

And compensation is the simplest part of the contract offer to measure. Pilots and stewardesses bargain long and hard to establish equitable methods for the allocation of work and training assignments; bidding, scheduling and manning requirements are part and parcel of our typical contract negotiations. Yet neither cost accounting nor logic nor the principles of economics will provide any method for weighing or measuring the various proposals with which negotiators deal on these subjects. These proposals reflect, instead, the consensus of personal employee desires as articulated by the ALPA negotiators and the convenience, facilities and interests of the carriers as perceived by their negotiators. Apart from these people, there are no "experts" on these subjects. Selection of one offer rather than another can only be an act of arbitrary manipulation. It must be remembered that in many negotiations, both wages and working conditions are at stake. Changes proposed in both areas—monetary and non-monetary—must be evaluated against each other within each final offer, and then both offers evaluated against each other. This alone would defy the skills of the experts.

But, more serious, the experts will not know the *relative priorities* of each of the negotiating parties. A negotiator's proposed terms on wages, for example, may be more flexible and subject to alteration than other items open for negotiation. One or two items in a union offer may be matters of vital principal over which the union—although, perhaps not the Company—would be prepared to risk everything.

But, the neutral selectors are compelled by the rules of this new game to accept one of the two final offers, without any modifications, and they will be unable to probe for areas of compromise based upon each side's differing priorities. Therefore, they are subject to manipulation by the negotiator who artfully injects some "reasonable" terms on low-priority items. Where both negotiators play this game, the selectors will necessarily choose a contract which contains unwelcome and inappropriate terms for both sides.

Thus, ALPA considers this option to be seriously objectionable on fundamental grounds. It was obviously designed to provide something like compulsory arbitration of new-contract issues without being subject to the label of compulsory arbitration. But, it threatens all the mischief of compulsory settlements plus some additional problems caused by the effort to disguise.

In a free society, employers and employees retain the power to settle their own economic disputes. ALPA has never supported any past moves to transfer this vital power to third-party "experts." Instead, solutions for labor disputes, we have maintained, must be discovered by and acceptable to the parties who must live with them. Anything else is too remote and illusory to last.

Under present law, employer and employee alike must propose and agree to terms which meet their own varying standards and priorities; in a crisis, each side must determine for itself how far its priorities and needs can be altered by economic pressure. This is an uncomfortable, time-consuming process. But it is a task we cannot delegate. Who else can tell us whether our new shoes fit, or if they pinch, just where?

It is true, of course, that there is a "public interest" at stake in transportation work stoppages. But there is a public interest, too, in the institution of free collective bargaining. Where that institution shows as much vitality and effectiveness as it does in the airline industry, the government's obligations are clearly to support it, not to supplant it with third-party compulsions. And it cannot be gainsaid that the panel's selection of one side's final offer is, in the eyes of the "losing" party, at least, nothing less than a compulsory regulation of wages and working conditions. Accordingly, on this key point, H.R. 3596 seriously weakens the institution of collective bargaining.

I turn now to another feature of the bill: the provision which would eliminate the arbitration boards presently functioning under all ALPA collective bargaining contracts to resolve grievances and interpret ambiguities in the terms of the contract.

Under present law, Title I of the Railway Labor Act contains detailed mandatory provisions for the establishment of Adjustment Boards by railroad employers, to hear grievances and other so-called "minor disputes"—disputes arising out of the "interpretation or application" of working agreements. Title II of this Act imposes similar requirements upon airline employers, and ALPA presents about 500 arbitration cases a year before these tribunals.

H.R. 3596 would abolish the Adjustment Boards, by deleting the relevant language in both Title I and Title II of the Railway Labor Act. In its place, the bill would provide for the following new procedures for resolution of minor disputes: upon failure of the parties to agree at the last company level of grievance-handling, a five day period is allowed for mutual agreement upon the selection of a single arbitrator. Failing such agreement, the Federal Mediation and Conciliation Service submits a list of five arbitrators to the parties, who alternately strike names until one name remains. The remaining arbitrator not only has authority to decide the underlying dispute, but power to make all necessary procedural rules, including determinations as to evidence, costs, etc.

The President's message contains the following justification for these alterations:

"The Railway Labor Act presently calls for final arbitration by *government Boards* of unresolved disputes over minor grievances . . . [emphasis added]. Again, the availability of government arbitration seems to have created the necessity for it; the National Railroad Adjustment Board, for example has a backlog of several thousand cases to arbitrate."

This is another glaring oversight in the bill. While it is true the government pays the salary and expenses of *Railroad Board* neutral parties, the the costs of a neutral member of an ALPA System Board are shared by the parties. ALPA does *not* bring its grievances to "government boards."

This White House oversight is significant. In its concern for reforming Railroad Adjustment Boards, where employee complaints of delay are common, the bill erroneously extends its provisions to Airline Boards without even inquiring whether a different situation and different rules apply. Those who

drafted the bill have not apprised themselves of the fact that both airlines and pilots consider it vital to appoint expert partisan members to the Adjustment Board, in order to share the decision-making process with the neutral. No good reason exists to deprive both sides of a system they prefer and to subtitute a single neutral instead.

Nor have the bill's draftsmen investigated the extent to which *our* Adjustment Boards currently suffer from delays—as compared to Railroad Boards—or the extent to which a single-neutral system could be expected to expedite decisions. Finally, little thought has been given to the beneficial effects of past precedent in establishing procedural rules for Adjustment Boards. Where both parties have thrashed out, over the years, modes of procedure for hearing grievances, what benefits are achieved by compelling them to abandon these procedures for the new rules imposed by a single neutral?

The next area of the bill warranting comment relates to the differences in procedures for terminating collective bargaining agreements. Presently, the duration of a collective bargaining agreement and the techniques for negotiating its change are treated differently in the Railway Labor Act and in Taft-Hartley. Railroad and airline contracts are unchangeable by either side unless and until the procedures of Section 6 are fulfilled: formal notice, conferences, mediation, arbitration (or proffer of arbitration), and release by the National Mediation Board. Because the Board has virtually unreviewable discretion over when to release the parties, management's freedom to change working conditions and the union's freedom to strike are both subject to inherent uncertainty and delay. Under Taft-Hartley, however, all collective bargaining agreements have specific expiration dates, after which a union is immediately free to engage in a lawful strike and management is free, after bargaining to an impasse, to change working conditions.

H.R. 3596 would require all contracts to be negotiated in the manner now provided for in Taft-Hartley. Thus, the party seeking contract changes would be required to serve the other side with a formal notice; then, there can be no strike or lockout, and no change of conditions, for a period of sixty days or until the agreement expires, whichever comes later. According to the President, this would put negotiations on a schedule which depends upon the conduct of the parties themselves, not upon the Mediation Board's decisions and would encourage "earlier, more independent and more earnest bargaining."

In ALPA'S view, this proposal warrants serious consideration. The major advantage, as we see it, is the provision for removing the Mediation Board's power to cause those undue delays in consummation of agreements which have sometimes characterized past negotiations. It is a fact that inordinate delay invariably works to the employee's detriment in negotations, since not all aspects of working agreements are susceptible to retroactive protection.

On the other hand, the present system of continuing agreements, with changes permitted only in specified "open" areas, does serve to reduce the number of potential issues, simplify negotiations, and reduce the likelihood of strikes. Furthermore, there are other ways to approach the problem of undue delay in negotiations besides simply scrapping the Mediation Board. Indeed, once the subject of bargaining delays is approached directly, a number of feasible alternatives suggest themselves.

For one thing, consideration might be given to enhancing the stature of the Mediation Board and improving its effectiveness by increasing the number of staff mediators and their compensation levels, and by allowing mediators not on the Civil Service list to serve. There are pervasive indications that some of the lack of progress in bargaining under Mediation Board auspices is attributable to the case overloads imposed upon Board personnel and consequent repeated distractions which divert them from one dispute to attend a crisis at another.

Thought should also be given to requiring an earlier beginning to negotiations. At present, Section 6 of the Railway Labor Act only requires that "at least thirty days written notice" of intended changes in agreements be provided, with negotiations to commence during that period. If negotiations were required, instead, to commence three or four months before the date of intended change, it seems likely that the negotiating preliminaries necessary for successful bargaining could be completed before the parties find themselves under the pressures of a crisis.

Moreover, recent history contains numerous examples of government willingness—especially in the railroad industry—to allow the parties to bypass the Board and induce the Secretary of Labor or the President himself to participate im-

mediately. When the prospect of such intervention seems both real and attractive to either side, the incentive to stall negotiations until that prospect becomes a reality is almost irresistible. If the government could discourage such high-level access by continued and persistent containment of disputes at the Board level, and simultaneously improve the Board's manpower resources, enduring benefits and reductions in delays might be achieved.

H.R. 3596 recognizes this reality, but fails to acknowledge that if the mediation and release functions are invested in an agency with an enhanced status and an adequate and adequately compensated staff, there may be sufficient consequent improvement in the timetable of negotiations so that Railway Labor Act rules about when economic action is permissible need not be changed.

Several other miscellaneous features of the proposed new legislation warrant brief comment.

Section 301 of the National Labor Relations Act gives federal courts jurisdiction to hear "suits for violation of contracts between an employer and a labor organization," and forms the basis for much of the machinery through which private arbitration has been recently encouraged and enforced by federal courts throughout the industries not covered by the Railway Labor Act. H.R. 3596 contains a provision identical to Section 301 for the railroad and airline industries. This apparently simple addition raises a host of fundamental and complex legal issues.

First of all, Section 301 was deemed an appropriate feature of the National Labor Relations Act for reasons largely inapplicable to labor relations covered by the Railway Labor Act. It provided a forum and a set of rules whereby alleged breaches of the working agreement could be uniformly heard and resolved. But the Railway Labor Act already had such machinery: the Adjustment Boards always had power, and *exclusive* power, to hear disputes over the interpretation and application of agreements.

Elsewhere in H.R. 3596, as I have already explained, Adjustment Boards are abolished and their jurisdiction transferred to arbitrators. Does the contemporaneous establishment of federal court jurisdiction over contract lawsuits mean that there will be a *choice* of forums—court *or* arbitrator—to hear future contract disputes? Or does the bill mean to draw a distinction between minor disputes subject to arbitration and contract violations subject to lawsuits? If the latter is intended, what is this distinction?

Perhaps the creation of two forums means to imply an initial trial before the arbitrator with subsequent appeal to the court. But there are portions of the Railway Labor Act, which the present bill would not alter or amend, which already provide in detail for court action to enforce or set aside Adjustment Board arbitration awards. And these provisions authorize a different set of district courts to assert such reviewing jurisdiction than are authorized in Section 301.

Lawyers can easily extend the list of problems and puzzles created by this proposal for a duplication of Section 301. The point of the matter can be briefly stated, however; when confusion exists over the availability or choice of a forum, labor relations is bound to suffer.

And, to be sure, this opportunity for more frequent judicial participation is hardly consistent with the proponents' asserted objective of reducing government intervention.

There is one feature of the bill which seems to warrant unqualified support. H.R. 3596 establishes a National Special Industries Commission, to make a comprehensive study of labor relations in those industries particularly vulnerable to national emergency disputes. It is true, as the President's message points out, that "such labor crises occur with much greater frequency in some industries than in others" and that the Commission, with its two-year life span, seven expert members, and power of subpoena, could likely make a real contribution toward explaining why this is so and what can be done about it. This study might be the proper and sole course to follow.

The subject matter here is one which has not recently received thorough and comprehensive study, and—as H.R. 3596 itself demonstrates—hasty legislative action can be productive of more mischief than help where the real facts of life remain unknown.

ALPA would welcome an opportunity to present statistics and viewpoints on the subjects such a Commission could investigate: the value of a permanent neutral, the real causes of delay in grievance-handling, the effectiveness of tripartite arbitration, remedies for bad faith bargaining, the proportion of cases settled at stages of the process prior to arbitration, the role of partisan System Board members, the costs of the System Board process and the needed reforms

in our grievance-arbitration procedures. We would also welcome, of course, the opportunity to hear such presentations from the airlines.

A realistic study of such nature is long overdue and, if properly conceived and executed, could provide the basis for enlightened reform by either legislation or mutual consent. We also expect that such a study would result in a demonstration of our present suspicions: that, insofar as ALPA-airline relations are concerned, the Railway Labor Act needs only minor therapy and not drastic surgical change.

I thank you.

COMET RICE MILLS DIVISION,
EARLY CALIFORNIA INDUSTRIES INC.,
Houston, Tex., June 29, 1971.

Hon. HARLEY O. STAGGERS,
Chairman of the House Committee, Interstate and Foreign Commerce, Washington, D.C.

GENTLEMEN: Comet Rice Mills Division, Early California Industries Inc., is a shipper of clean rice in the export market and is very much concerned about the upcoming waterfront strike on the Atlantic and Gulf Coast Ports beginning October 1, 1971. It is our understanding that the administration will not use the 80-day injunction to delay the strike until a possible agreement is reached. Comet Rice Mills is still suffering from financial losses encountered account the dock strike which lasted 113 days in the year 1968–69. If we experience another costly financial setback as in the year 1968–69, it could mean eventual non-existence of a company that manufactures a food product which is so vital in the welfare of all countries.

It seems obvious that the strike has become built in to the negotiations and that only appropriate legislation will improve this situation. The purpose of this letter is to ask that you please arrange hearings in the House and Senate on the "Emergency Public Interest Protection Act of 1971" (S. 560 and H.R. 3596) and similar legislation in order that some governmental legislation can be envoked to curtail or at least reduce the length of this possible strike.

It is imperative that we as a shipper get help on this important matter.

Yours truly,

E. W. LUEDKE,
Manager of Transportation Department.

HOUSTON CHAMBER OF COMMERCE,
Houston, Tex., July 27, 1971.

Hon. HARLEY O. STAGGERS,
Chairman, and Members, Committee on Interstate and Foreign Commerce, House of Representatives, Congress of the United States, Washington, D.C.

DEAR CHAIRMAN STAGGERS AND GENTLEMEN: Houston Chamber of Commerce urges your favorable consideration of H.R. 3596–S. 560, the Emergency Public Interest Protection Act of 1971, which proposes three alternative procedures for presidential action in setting labor-management disputes in the railroad, trucking, aviation, maritime and longshore industries.

Today in Houston our essential railroad freight service is disrupted, and our port is being further clogged in anticipation of another long dockworkers' strike at the end of September.

Houston's intense interest in and strong support for H.R. 3596–S. 560 is because our heavy-industry manufacturing and port-oriented economy is utterly dependent upon reliable transportation service by all types of carriers:

More than 21 million tons of line-haul rail freight in and out of the city last year.

2,901 Houston industries require carload rail service; 638 of these were established in the period 1965–1970.

Over 200 trains and more than 18,000 freight cars are handled daily.

More than half of all cross-town switching in Texas occurs in Houston.

Port of Houston, third-ranked in the nation, last year handled some 64.5 million tons of cargo.

Some 20 million tons of freight is handled annually by scores of barge lines here.

140 steamship lines provide service from our port to all parts of the world, and offer excellent trade outlets for our nation's Midcontinent, Southwest and Intermountain-Pacific Coast commerce.

Several-score common carrier and specialized carrier truck lines providing nationwide coverage to our economy.

4.5 million airline passengers using our commercial airport services last year, and passenger traffic increasing at a rate higher here than the national average.

Severe disruptions to Houston's economy—including cutbacks in manufacturing employment—in past years could have been avoided had the well-considered provisions proposed in H.R. 3596–S. 560 been available for settling the series of labor-management disputes that have cost us so dearly. While several of those transportation work stoppages have also affected the entire nation, their economic impact upon Houston has been unduly severe because the major strength of our economic base is in those industry groups that are so heavily dependent upon mass-volume transportation service.

Pinpointing the dollar cost to Houston of transportation shutdowns has been done with some accuracy in the past, and we submit for your consideration just such a study, (attached hereto) made at year-end 1964. Occasion for the study was a labor walkout on one of our two rail switching lines, the Port Terminal Railway Association (PTRA). PTRA acts as agent for our six line-haul trunk railroads and serves most of the Port of Houston docks as well as some 100 industries on and along the Houston Ship Channel. The walkout lasted some 45 days and began on December 16, 1964. Our effort was to secure creation of an emergency fact-finding board so that essential PTRA service could be resumed.

Note that the study reflects only the first 15 days of the strike. The eleven industries most affected comprised 11.4% of all Houston manufacturing employment. The seven firms able to determine accurately the cost of the rail stoppage reflected a per-week cost of $384,230—but accelerating rapidly with additional curtailments in plant production, jobs, and lost business. Such unfortunate economic hardships did indeed intensify through the month of January.

A significant revelation from the study is that one mode of transportation seldom can be replaced with another mode of transportation—and then only at prohibitive cost. The reason is that huge volumes of low-value raw materials simply cannot afford premium prices of alternate, higher-cost transport.

Today, and in recent days, the P.T.R.A. and other Houston rail service is disrupted. Houston is hurting, and our economic well-being is jeopardized. We are disabled in our efforts to "space out" the adverse economic effects of an impending longshoremen's strike.

The proposed Emergency Public Interest Protection Act of 1971 offers the Congress a practical and desirable means of serving the *paramount* public interest of Houston and the nation.

Houston Chamber of Commerce calls upon you to display your concern for our economic well-being, by enacting this measure.

Respectfully submitted.

FRANK R. KENFIELD,
Manager, Public Affairs/Transportation.

Enclosures (2).

[Telegram]

JULY 27, 1971.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, U.S. House of Representatives, Rayburn House Office Building, Washington, D.C.

Houston Chamber of Commerce strongly urges enactment H.R. 3596 S. 560 the Emergency Public Interest Protection Act of 1971. Recurring dock strikes, rail shutdowns and truck work stoppages have plagued the Houston-area economy over recent years and the effects of transportation strikes are especially harsh on Houston because our heavy-industry manufacturing and port-oriented economy is more dependent upon transportation than are other cities of comparable size. Alternative procedures for presidential handling of substantive labor-management disputes in the affected transportation industries proposed in H.R. 3596 would have averted much of the economic hardship Houston has suffered in past years and now offer reasonable and realistic protection of public interest.

More detailed documentary support being airmailed all members your committee this date and we respectfully request our statement and this wire be received in evidence though late-filed due to illness.

FRANK R. KENFIELD,
Manager,
Public Affairs/Transportation, Houston Chamber of Commerce.

* * *

HOUSTON'S PORT TERMINAL RAILWAY ASSOCIATION STRIKE DECEMBER 16, 1964–JANUARY 26, 1965—COST EFFECTS ON INDUSTRIES SHIPPING IN INTERSTATE COMMERCE

Company "A" has 4,000 employees and receives about 50% of its raw materials by P.T.R.A. service. Loss of service terminated an average of 534 loaded cars a week in and out, and truck-barge alternate service costs some $1.00 a ton over rail. Plant shipments through December 31 have been reduced by 15%; inbound supplies of raw materials reduced by 50% and total plant cost as of January 2 could not be estimated.

"It is estimated that the loss of this rail service will cost this plant approximately $100,000 per week, due to a reduction in shipments of finished products and extra handling costs incurred because of the loss of rail service."

Company "B" employs 1,467 persons and receives 95% of its raw materials through P.T.R.A.; loaded car movements in and out average 563 weekly virtually all of which are in line-haul service. Alternate transportation during strike is trucking, at 90% premium cost. Plant production maintained in high-cost round-the-clock operation with disruption of rail service. 15-day plant cost of strike estimated at $149,000. Cost for each succeeding week after January 1 estimated at $72,730.

"Production unsatisfactorily maintained at previously high stated cost and we are losing ground. If this condition continues we may shut down."

Company "C" employs 768 company personnel plus 60 contract (construction) employees, receives most of its various raw materials by P.T.R.A., has 110 loaded cars a week in and out, and has utilized barge, truck and pipeline transport where feasible for particular products at overall cost increase of 25%, considering use of company's out-of-state plants in supplying customers. $252,000 in lost plant production, December 16–December 30 inclusive. "Continuation of the strike can well have a significant effect on employment." Total cost of service disruption estimated at over $275,000 through December 30. Should strike continue "emergency arrangements may have to be made which, in the long run, can well decrease the regular use of the Port Terminal facilities, their unreliability having justified the alternate of initially more expensive methods of shipment." "One of the major effects of an extended disruption of this nature is the loss of customers."

Company "D" employs 125 men, using P.T.R.A. on 85% of outbound tonnage and most inbound, totaling 78 cars a week. Own trucks used as alternate during strike, at 75% increase in cost. Plant production off 25%.

"The cost of this disruption in dollars and cents is as follows: $200.00 per day up to date (December 31) and approximately $1500.00 a week after the first of the year."

Company "E" has 679 employees and normally uses P.T.R.A. exclusively both inbound and outbound averaging 59 cars a week. Costs of alternate truck transportation range from 35% to 50% to 267% on different commodities.

"Our ——— (product) storage is approaching the maximum. This could represent a critical problem if we are unable to secure tank cars in the near future."

Company "F," with over 900 employees, ships approximately 100 cars of products a week via P.T.R.A., 95% in line-haul service, and receives about 50 cars of materials a week with some raw materials received by other means. Alternate transportation by tank wagon cost well over $1,000 daily; subsequent to January 1, these costs will increase to about $1,500 per day.

"This plant cannot continue to operate indefinitely without direct railroad service. Finished-product inventories are increasing and eventually it will be necessary to curtail and even halt some of our operations. In our view, a clear emergency now exists as a result of the P.T.R.A. strike."

Company "G" normally employs 350 persons when in production, now scheduled to resume on January 19. When shipping, they average 250 cars each week in line-haul service, 10 in switch service, and would receive 7 cars weekly.

"If it should become necessary to truck our product to a public team track for loading via rail, we estimate this extra cost would be approximately one hundred thousand dollars per month."

Company "H" employes 150 people, shipping and receiving some 19 cars a week over the P.T.R.A. Trucking has been used during the strike at an estimated 20% to 25% increase in transport cost. Plant production through December 31 is off some 5% due to the strike, and plant cost is about $2,000 weekly so far. Plant has been living off inventory and borrowing locally for fuel. Supplies of essentially low-value raw materials from distant sources now cut off and alternate transport when present supplies exhausted would be prohibitive in cost. Plant cost of strike will double after January 15.

Company "I" has 1,589 employees and handles 178 P.T.R.A. cars in an average week; alternate transport employed includes marine, truck and pipelines though these are not satisfactory for one commodity produced. Storage capacity of that commodity will be reduced by week's end (January 9) requiring plant changeover. "We could experience a loss of some $8,000–$10,000 a day." No estimate made of cost to date.

"Many orders previously placed are now being canceled; e.g., orders for five tank cars of ——— (product) and three of a ——— ——— (product) were canceled in one day due to inability to ship by rail."

Company "J" has plant employment of 1,050 persons. P.T.R.A. cars in and out per week average 106. Alternate transportation used is by tank truck and, significantly, reassignment of customer orders to other shipping points. Such alternate transport costs are 300% of normal P.T.R.A. service.

Company "K" operates two plants, employing 193 and 55 people respectively. The latter plant was shut down on January 5.

Plant (a) receives 13.3% of raw materials by P.T.R.A., handling some 231 cars weekly. For the period December 16–December 30, alternate transport used cost 476% of normal. Service disruption increased costs of inbound material by $2,533.20 and increased plant cost by $16,386.31; estimated plant cost for each successive week after January 1 is $28,000.00.

Plant (b) employing 55 persons depends upon P.T.R.A. service for delivering 52% of its raw materials, normally handling 41 cars weekly. Plant production was cut by 50% during the December 16–December 30 period. Alternate transport used is 145% of normal cost, and plant cost of service disruption, December 16–December 30 is $7,000.00 with $17,500.00 per week estimated for each week after January 1.

"In most cases no alternate service adequate to take care of shipments or receipts into either plant due to availability of equipment and demand on equipment that is available."

PORT OF HOUSTON

Summarizing Port of Houston impact of the strike, from date submitted only by Harris County-Houston Ship Channel Navigation District, these results appear:

General Cargo: 91 vessels loaded, Dec. 1–Dec. 15, and 34 vessels Dec. 16–Dec. 30. 24 known diversions of previously-booked vessels with loss of 45,040 tons, plus undetermined number of bookings not made at Houston. Rail cars in first half of month totaled 1,468 and 106,668 tons, as against 90 cars Dec. 16–Dec. 30.

Grain: Public elevator unloaded 1,844 cars of 3,319,200 bushels Dec. 1–Dec. 16, exporting 164,358 tons of grain. Since Dec. 16 only 163 cars have been unloaded, 64,460 tons have been exported and six ships and some 60,000 tons have been diverted. As of December 30, 17 grain ships were booked to lift 191,950 tons of Public Elevator grain and a sizeable amount of this would be lost because of inability to receive rail cars.

Bulk Plant: Dec. 1–Dec. 15 saw 16 ships take on about 50,000 tons of cargo; only two other ships and 8,000 tons were handled through Dec. 30. Three ships and 8,206 tons have canceled. Six ships are standing by for loading, to lift 20,019 long tons, but cannot be handled because of inability to get rail cars into the plant.

AMERICAN INSTITUTE FOR IMPORTED STEEL, INC.,
New York, N.Y., July 29, 1971.

Hon. HARLEY O. STAGGERS,
Chairman, House Committee on Interstate and Foreign Commerce,
U.S. Congress,
Washington, D.C.

DEAR CHAIRMAN STAGGERS: As President of the American Institute for Imported Steel, Inc., ("AIIS"), I write to you with respect to the Emergency Public Interest Protection Act of 1971, H.R. 3596, on which your Committee has recently held hearings.

The AIIS is a non-profit trade association of over 60 American companies which engage in the import and export trade in steel products, the consumption and use of such products in the United States, and in services ancillary to such trade and commerce. As such, our members' businesses depend for their very existence upon the maintenance of an efficient United States transportation industry.

Needless to say, the current strike of the ILWU, which has closed every port on the West Coast of the United States, has seriously injured the members of the AIIS. They, like many other American businessmen, are seriously concerned that this pattern of disruption of essential transportation services will be repeated on the East Coast when the ILA's contract expires on September 30. Indeed, it is our view that an ILA strike, such as has taken place in every year in which the longshoremen's contract has come up for renegotiation, would not only be an unmitigated disaster to international trading firms, but also would create a dire emergency for the American public as a whole. The short term effects of such a strike are clear. It would virtually embargo the United States, denying essential goods and merchandise to American businessmen and the public, further aggravating the present recession and unemployment in this country. The long term effects may well be more serious. An interruption in the modest expansionary trend evidenced since last October may well set back economic recovery and full employment for months or even years.

The AIIS recognizes that the national emergency strike has been a long standing problem which is not susceptible of any easy solution. The right of workmen to withhold their services in order to better their economic conditions is a cherished part of our democratic tradition. On the other hand, there must be some rational balancing of this right with the welfare of a large segment of the American public.

For this reason, the AIIS wishes to go on record as wholeheartedly supporting your and your Committee's efforts to find a means of enabling fair and equitable solutions to national emergency labor disputes in the transportation industry, without the need of suffering economically disastrous strikes such as have characterized the industry in recent years. We think that such a solution will not only be to the benefit of the American public at large, but also to both management and labor in the transportation industry. It is apparent that, far from resulting in rational and equitable economic solutions, recent longshoremen and railroad strikes have simply led to ill-conceived, inflationary settlements which have weakened the transportation industry and cost the jobs of many American workers.

The AIIS frankly admits to a lack of expertise in this complex area of labor-management relations. For this reason, we cannot express an educated opinion on the merits of H.R. 3596 in its present form. However, while deferring to those more expert than we are in this field, we do urge that, after it has examined all of the views expressed with respect to H.R. 3596, your Committee should act as expeditiously as possible to report legislation to the Congress to give the President the tools with which to deal equitably and effectively with national emergency disputes in the transportation industry. In our view, it is essential that the President have these tools at his command prior to the September 30th ILA contract expiration date.

Very truly yours,

VICTOR V. SHICK, *President.*

CENTRAL STORAGE AND WAREHOUSE CO.,
Milwaukee, Wisc., September 24, 1971.

HON. JOHN JARMAN,
Chairman, Subcommittee on Transportation and Aeronautics,
House Interstate and Foreign Commerce Committee, Washington, D.C.

DEAR SIR: My name is C. J. Williams and I am president of the Central Storage and Warehouse Company which is located in Wisconsin, and its main office is 2505 North Mayfair Road, Milwaukee. From 1926 to 1964 my activities were entirely in the truck transportation field but since 1964 the company has engaged ing operations. Throughout all these years I have been in close contact with the unions (Teamsters, Machinists, etc.) and have at times been chairman of Wisconsin employer groups in contract negotiations and also have been accepted by both the union and employer as sole arbitrator in certain grievance matters so that my support of H.R. 9989 cannot be construed as simply one more management vote.

My reason for supporting the general policy in the proposal simply stated is that true collective bargaining cannot and does not prevail since one of the parties is operating from a position of absolute strength. Where one party can exert its will to cause irreparable harm to the other, then bargaining is futile. To prevent this in civil matters we have the system of civil courts which by their mere existence cause the majority of cases to be settled between the parties even prior to court action when opposing parties are unequal and not able to avoid confrontation.

True collective bargaining can only come when the participants know that there is recourse to an alternative where the overwhelming power, the inequality of force will be disregarded. Other suggestions of trying to take power from one side and grant a proportionate increase of force to the other is without merit and would require constant vigilance and adjustments for the equalization. I am strongly opposed to taking the balance of power from one party and giving it to the other—neither party (management or labor) has shown its ability to control without partiality.

With regards to the terms within the proposed act there are many legal experts familiar with the Railway Labor Act and the Railroad Unemployment Insurance Act who have explored such acts in depth and these come from the ranks of both Airlines and Railroads, who jointly have decided to agree with the imposition of final decisions through the enactment of this bill. My experience has been with transportation by highway and while my support does not include this mode in H.R. 9989, I am convinced that some definite results can emerge from the present impossible situation which will eventually affect all.

I respectfully submit that those industries whose charges for their services are so closely controlled by Government cannot be exposed to demands affecting the greatest percentage of their costs without making a mockery of such regulation, and ultimately destroying the whole process.

H.R. 9989 may well prove to be the pattern for similar legislation for such other segments of regulated industries where the same catastrophic conditions prevail. Our economic system in order to continue depends upon considered reasonable restraints and H.R. 9989 so provides.

Respectfully yours,

C. J. WILLIAMS, *President.*

NATIONAL GRANGE,
Washington, D.C., October 12, 1971.

HON. JOHN JARMAN,
Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: For a considerable period of time, if not for years, it has been abundantly clear that federal legislation was needed to provide a means or mechanism for settlement of disputes between management and labor in the transportation field without resort to intolerable stoppage of our transportation system. Recent events have emphasized the need.

The National Grange, a rural-urban family organization of about 650,000 members in 7,000 community Granges located in small towns and rural areas in forty states, is particularly concerned about the problem. Many of its members are farmers, although a substantial number are residents of towns and smaller

municipalities of rural America. In general, although all are interested in matters of national welfare, the Grange as an organization is primarily concerned about the problems of the rural segment of the nation.

Stoppage of our transportation system for any length of time presents an intolerable threat to the public and imposes heavy burdens on it but it is to the rural residents and, most of all, farmers that the threat is most evident and on them that the burdens are heaviest and earliest imposed. Crops cannot be marketed and frequently spoil before they can be transported for consumption. The farmer's losses may ruin him financially and force him out of future production. Not only are current foreign sales lost but much of the foreign market may be also. When foreign countries switch to other sources of supply it is frequently difficult, if not impossible, for the United States to regain the business. This is bad for our nation—without farm exports the problem of our balance of trade would have reached crisis proportions a long time ago—but it is tragedy to our farming community. Rural America is already suffering more than the rest of the nation from deteriorating economic conditions. Also, we must always remember that a depression in the farming areas may mean catastrophe for the nation as a whole.

Acceptance of these facts brings us to a consideration of the nineteen bills identified above. Many are identical with others listed. They can be divided into seven parts, to wit:

1. S. 2060 and H.R. 9989, companion bills proposed by the railroads and airlines;
2. H.R. 901, 3596, 3639, 4116 and 5377, entitled the "Emergency Public Interest Protection Act of 1971";
3. H.R. 3595, 3985, 4620, 4996, and 5870;
4. H.R. 9088, 9089, 9571, and 9820.
5. H.R. 8385.
6. H.R. 2357.
7. H.R. 5347.

We do not feel the need in this communication to attempt to analyze these seven approaches to the problem or spell out the differences and similarities between them. The task would be lengthy and might be confusing. Moreover the Grange does not claim any great expertise concerning legislative details in this field and is content to leave them to Congressional judgment as developed through hearings and floor debate. We are adamant only on the points that need is great and action imperative.

The National Grange does believe that the legislation should provide, as spelled out in some of the bills, that the President, directly or indirectly through his cabinet officers, should have four options available in case of a threatened strike, namely (1) no action except mediation efforts, (2) appointment of a board to make non-binding settlement recommendations, (3) final and binding arbitration and (4) final offer selection procedure. Lesser remedies provided by some of the bills would in our judgment be inadequate. Moreover, we do not believe that selective strikes against a portion of the transportation mode, permitted by some of the bills, should be allowed on nationwide issues. Losses suffered by farmers, consumers, and the nation and even by the contesting parties themselves could not be retrieved. The proposal, to us, appears to countenance "being a little bit pregnant."

Another facet of the problem that we would like to call attention to is the need for not limiting the scope of the desired legislation to disputes between carriers and their employees. Of equal importance is making provision for the settlement without work stoppage of disputes involving longshoremen at the ports of the nation.

One provision contained in the bills in group 2 (the Emergency Public Interest Protection Act) appears to have merit. Title III thereof would set up a National Special Industries Commission of seven members to consider how the collective bargaining procedure could be improved.

Thank you for giving attention to our views. It would be appreciated if this communication were made a part of the record of hearings by your Subcommittee.

Sincerely,

JOSEPH E. QUIN, *Transportation Consultant.*

(Whereupon, at 11:15 a.m. the subcommittee adjourned.)

STATEMENT OF ALBERT LANNON, WASHINGTON REPRESENTATIVE, INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION

When the Administration first proposed its Emergency Public Interest Protection Act last year, the International Executive Board of the ILWU branded it "a major attack on organized labor, free collective bargaining, and rank and file democracy." We maintain that position, and include in it the Javits bill and any other proposal aimed at harassing and crippling the bargaining strength of workers in the transportation or any other industry. Free collective bargaining—the bulwark of American labor-management relations—is not, as some would imply, somehow un-American; it has worked. Without governmental interference it will continue to work.

We are told that the nation cannot tolerate a railroad strike, so therefore we must have controls and compulsion on longshore, trucking, maritime and airline workers also. We are told that railroad negotiations are at a constant impasse conveniently forgetting the fact that it was legislative interference in that collective bargaining process which created the impasse. Employers, in our experience, will never bargain seriously when they can expect the government to bail them out. An example of this can be seen in the attached *New York Times* story exposing a confidential American Association of Port Authorities letter predicting a 90-day East Coast longshore strike and urging support for the Administration proposals—even before negotiations there have begun!

When the Emergency Public Interest Protection Act was first unwrapped in the last Congress, it came at a time when, in addition to railroad, negotiations were under way for a national trucking contract. We believe that was no accident, that the proposal was meant to interject government into those negotiations at the expense of the involved workers. Its re-introduction comes at a time when the ILWU is in coast-wide negotiations and the rest of the longshore industry is preparing for contract talks. That too is not an accident; it is a blatant attempt to interfere with a free collective bargaining process which has served both labor and management well for over 35 years.

The last Pacific coast-wide longshore strike occurred in 1948. Armed with the new Taft-Hartley Act, the employers were trying to accomplish nothing less than the destruction of the union and the democratically-run hiring halls won in the historic 1934 strike. The Act was being used also to harass democratic unions by requiring declarations of political conformity from leaders freely elected by their rank and file. An injunction was issued under a Taft-Hartley provision requiring a government-supervised vote on management's final offer. The rank and file showed what it thought of government interference; the certification of that vote by the National Labor Relations Board read:

Number of eligible employees	26,965
Ballots marked "Yes"	0
Ballots marked "No"	0
Ballots challenged	0
Total ballots cast	0

Since then free collective bargaining has maintained a profitable industry; pioneering collective bargaining agreements have been ratified by the membership without strikes. Now, once again, we see legislative efforts which can only benefit the employers introduced while negotiations are in progress. Should our employers again count on governmental intervention, the reaching of a contract agreement will surely be difficult.

As the ILWU membership rejected the "final offer" vote and the political saliva tests of Taft-Hartley and Landrum-Griffin, so they will reject any further efforts to weaken or destroy their bargaining power. Workers, when push comes to shove, have but a single weapon to counter the finances, political pull and economic might of the corporations—workers have the basic right of free men and women to withhold their labor, to strike.

That right has been hard-won. It was opposed with court injunctions, with mass arrests, with vigilante murders and with legal lynchings, with the use of troops, with red scares, and with legislation. The right of working men and women to strike has been won with blood, sweat and tears, and it will not lightly be given up, in the longshore or any other industry.

The President, in resubmitting his proposal, called for action "before there is another crisis in the transportation industry." What crisis? What emergencies

is he referring to? In January, 1970 the Department of Labor issued a lengthy study titled *Impact Of Longshore Strikes On The National Economy.* That study, presented by then-Secretary George Shultz, concluded:

"The economic impact of a prolonged strike appears to have been minimal" and "'the economic impact of strikes on the economy are usually seriously exaggerated.'"

The study was of east coast longshore strikes where, in all except one negotiation over a twenty-one year period, Taft-Hartley provisions had been invoked; and in all but one of those situations a strike resulted anyway. There are two points to that: first, that governmental intervention does not assist collective bargaining, and second, that despite strikes in five out of seven negotiations, the industry and the nation managed to survive.

Indeed, Secretary Shultz indicated in releasing that study that Taft-Hartley ought not to be applied, that federal interference ought to be minimized. Clearly this Administration, little more than a month before it first introduced its proposals, was not raising the alarms about "crisis" in the transportation industry. In fact, Secretary Shultz commented then that a potential national trucking strike "was not likely" to become a national emergency.

We ask: why the turnabout? And in the face of other events, we ask if it might not be related to a growing repression in other areas, a repression which sees priests and nuns charged with an absurd "conspiracy"; which sees dissent over the war viciously attacked by high officials; which sees the bugging of Congressional offices; and which sees black and chicano militants shot down in the streets as union militants were a generation ago. We ask: do the employers and those who represent them feel that now is the time to strike also against the labor movement, to try and cripple these organizations which have won decent wages, conditions and human dignity for their members at the expense of super-profits?

We are told that these measures "would establish a framework for settling emergency transportation disputes in a reasonable and orderly fashion, fair to the parties."

What is fair about ordering people to work when they have decided to strike? What leverage does that put on an employer for settlement? By curtailing a strike, for 80 or 110 days, a rank and file impetus might be blunted and the union's bargaining strength thus deliberately weakened. That is not fair.

What is fair about ordering the partial operation of a struck industry? Besides the aspect of compulsion, such a move could only prolong a labor dispute if the employer can reap profits from one side while starving out workers on the other. That is not fair.

What is fair about a compulsory settlement, the empowering of a so-called neutral panel to select "the most reasonable" of one of the parties' final offers? The President tells us that this would "reward reasonableness." We tell you that it would destroy free collective bargaining, destroy the intrinsic pressures on the parties to reach a settlement, and in fact legitimizes a take-it-or-leave-it approach which is the antithesis of negotiating. And that also is not fair.

We find it curious that this measure is proposed at the same time that the President, in his State of the Union message, is calling for a "peaceful revolution in which power was turned back to the people." The Emergency Public Interest Protection Act and like proposals would place further power in the hands of government, in the hands of what the President termed "a bureaucratic elite." The right of the rank and file membership to vote to accept or reject a contract, to strike or settle—that power would be legislatively taken away. That rank and file right to determine its own course of action remains a basic tenet of democratic unionism. To limit that right any further im more than just strike-breaking: it is the denial of our democratic system itself.

We urge no amendments, no qualifying language, no improvements to these proposals. We urge only that the Congress reject them in toto, and thus reaffirm the right of American workers to seek—as the President declared—"a better life, a fuller life, in which by their own decisions they could shape their own destinies."

[From the New York Times, June 16, 1971]

DOCK UNION HEAD ASSAILS MOVE FOR U.S. ACTION IN LABOR DISPUTE

Thomas W. Gleason, president of the International Longshoremen's Association, said yesterday he was "very disturbed" by the stand taken by a major group of port authorities on the possibility of a strike when the I.L.A. contract expired Sept. 30.

The group is the American Association of Port Authorities. It has asked its members—which include most major port authorities—to join it in calling for Congressional hearings on a bill that, among other things, would empower an independent commission to settle maritime labor disputes by binding arbitration.

Mr. Gleason said in an interview that he was angry at the request because it went counter to what both he and industry negotiators maintained was a good thing—the Nixon Administration's promise that this time there would be no governmental intervention in longshore bargaining.

The association has also told its members that "if past experience and current assessments are any guide," Atlantic and Gulf ports "will be closed for at least 90 days" when the union contract runs out.

The Government has invoked the Taft-Hartley Act and its mandatory 80-day cooling-off period seven times in past I.L.A. contract renewals, and on six occasions the union walked out again—legally—at the end of the injunction period.

Mr. Gleason said yesterday that Government intervention "wasn't of any use" because it made industry unwilling "to put its best foot forward" early in the negotiations. "This time," the dock union's president added, "they're under the gun."

Administration officials say the probability of intervention has resulted in an unwillingness on the part of both sides to get down to hard bargaining without the prodding of an outside board or panel.

Mr. Gleason contended that the stand of the Association of Port Authorities would complicate the negotiations. Paul A. Amundsen, executive director of the trade group, denied this and argued that "on the basis of past experience everybody is expecting a strike."

The I.L.A.'s wage committee has recommended that the union seek an increase in straight-time pay from $4.65 an hour to $7.50. Asked if the figure was "for real" or just "for openers," Mr. Gleason replied: "Does Macy's tell Gimbels?"

STATEMENT OF ROBERT B. REEDY, MANAGER, TRANSPORTATION PRICING ANALYSIS AND ADJUSTMENT, VULCAN MATERIALS CO.

Vulcan Materials Company, a producer and shipper of crushed stone, gravel, sand, chemicals and various metallics, is a company heavily dependent upon the nation's railroads. To have the necessary rail service interrupted by strikes or work stoppages can be a tremendous economic blow. Thus, Vulcan is very hopeful that this Sub-Committee on Transportation and Aeronautics can come forth with a strong bill that will establish a procedure to preclude labor stoppages in rail transportation for the future.

It is our understanding that, at the moment, you have before you a number of bills with the control of transportation work stoppages or strikes in the rail industry as the purpose. We should like to express our thinking on some of the provisions of a few of these bills in hope that a piece of legislation with adequate provisions can be enacted.

One or more of the bills under consideration would allow selective strikes. Provisions that allow labor to pick and choose individual railroads against which to strike while leaving other carriers in operation can prove disastrous to individual industries and make an equitable settlement almost an impossibility. Imagine the position of the company located on the struck line when he finds his competitor still is able to serve the market. Imagine the impact on the bargaining table of a carrier who must face the strike impact along with the pressures from the industries on his line while competing carriers of competing railroads continue operating, earning, and possibly profiting, from the disability of the struck carrier. Provisions of any bill to control transportation work stoppages must not allow selective strikes.

Another provision found in some of the bills would allow the President to require partial carrier operation to take care of the nation's so-called "emergency" needs. Such a provision would create a number of problems. One of the principal problems would be to define the word "emergency." Is it not an emergency when a man is laid off from his job because the plant is shut down as a result of transportation being unavailable? Is not the problem compounded when one man is laid off while another who is in a so-called "emergency" industry continues to earn? There should be allowed no arbitrary picking and choosing.

If negotiations at the bargaining table are going to be expedited and free from influence that alters the balance of the bargaining parties, the President should not be given the power to order partial service.

In the view of this company, the best bill is probably HR–9989. This bill would establish a procedure for the handling of labor disputes that in most cases would avoid the probability of strikes. The various options offered for dealing with an emergency dispute would allow the President to pick a method best suited to the particular circumstances surrounding the individual agreement. The availability of the various options which includes the possibility of binding arbitration would be an incentive for the bargaining parties to come to an agreement. There are weaknesses in this bill but a close analysis reveals that probably the provisions set forth would be the best for all parties involved.

As has been stated, Vulcan is concerned about the ability of rail-labor disagreements to stop rail service. Legislation must be enacted by this Congress that will enable labor disagreements to be settled without resort to strikes.

STATEMENT OF D. W. PIXLEY, ASSISTANT, GENERAL TRAFFIC MANAGER, THATCHER GLASS MANUFACTURING CO., ELMIRA, N.Y.

I appreciate the opportunity to present my views and those of my employer to this Committee. I am also gratified to see that some attention is being given to this old and vexing problem and am hopeful that, despite the recent UTU settlement, this committee will continue its efforts to get some workable legislation passed.

Our company has plants located in Elmira, N.Y.; Wharton, N.J.; Tampa, Fla.; Lawrenceburg, Ind.; Streator, Ill.; and Saugus, Calif. We manufacture a wide variety of glass containers for the food and beverage industries.

Glass container production is a continuous process, 24 hours a day, seven days a week. Approximately 95 per cent of our raw materials move via rail and a continual flow is vital to our production. There are no practical alternatives to rail service in most instances and we look upon their service as a franchise vital to the public interest.

Because of transit time involved as well as time consumed to get rail cars in and loaded at origin, it is impossible to react quickly to threatened transportation interruptions. First of all, many consumers of these raw materials are trying to protect their inventories in a similar fashion. This reduces the amount of material available for stockpiling because of car supply and supplier production problems.

This material must be ordered in time to insure delivery by the time the "deadline" is supposed to become fact. This interrupts normal traffic flows and tends to bunch cars at destinations. We are forced to absorb demurrage and even are forced to plan to accrue demurrage. When the crisis passes, we are then faced with a situation that finds car supply in disarray for weeks afterward and our inventories highly inflated. We also find that we have spent hours of valuable time making countless phone calls, diverting cars, lining up alternate transportation wherever we can and when it's all over, we have produced nothing for our company. Multiply this by the involved industries and the cost must be monumental.

If it were possible to predict, with any degree of certainty, when a stoppage would occur, our problems would be minimized. But, when a postponement takes place, the stockpiling procedure has to be repeated again and again for each and every subsequent threat. The risk of shutting down a plant for lack of raw materials is unthinkable.

In anything as vital to the nation's economy and public welfare as transportation, strikes, selective or nationwide, should not be allowed to take place. We are fully aware of the rights of labor, they have the right to be heard. We do feel that the date the contract expires should be set for either a settlement or cessation of talks at which point compulsory arbitration should take place. To protect labor and force management to talk, any new benefits could be retroactive.

All of the alternatives in the various bills that have been submitted envision waiting periods and, consequently, a multiude of crises. These all perpetrate hardship on industry as they attempt to keep their plants in operation whether or not an actual stoppage occurs.

The flexibility of alternatives available to the President under some of the proposed legislation will confuse not only labor and management but the shipping public as well and it is not inconceivable we will be worse off than we are now!

We favor legislation that will give full consideration to our interests as well as those desired by labor and management.

We are of the opinion machinery must be set up that will provide for no nonsense collective bargaining with time limits established, but without resorting to strike measures.

Thank you for the opportunity to explain the problems created for our industry.

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