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NATIONAL EMERGENCY DISPUTES, 1971-72

GOVERNMENT
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HEARINGS

BEFORE THE

SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON
LABOR AND PUBLIC WELFARE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST AND SECOND SESSIONS

ON

S. 560, S. 594, S. 832, S. 1093, S. 1934, S. 2060, S. 2369, S. 2583, S. 2655, S. 2850, S. 2959

LEGISLATION RELATING TO SETTLEMENT OF EMERGENCY LABOR-MANAGEMENT DISPUTES

JUNE 15; SEPTEMBER 16, 20, 28; OCTOBER 7, 1971

PART 1

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

AUTHENTICATED
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NATIONAL EMERGENCY DISPUTES, 1971–72

TUESDAY, JUNE 15, 1971

U.S. SENATE,
SUBCOMMITTEE ON LABOR OF THE
COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D.C.

The subcommittee met at 10 a.m., in room 4232, New Senate Office Building, Senator Harrison A. Williams, Jr. (chairman of the Subcommittee on Labor), presiding.

Present: Senators Williams and Packwood.

Committee staff present: Robert E. Nagle, general counsel to full committee; Gerald M. Feder, counsel to subcommittee; and Eugene Mittelman, minority counsel.

The CHAIRMAN. We will convene our Senate Labor Subcommittee hearings on emergency disputes legislation.

In the past 15 months, Congress has been called upon by the President to enact emergency legislation to terminate a nationwide strike or lockout in the railroad industry three times. Understandably, this has generated concern among many people about the vitality of the laws on the books covering collective bargaining.

One of the major problems, as I have seen it, is the nationwide nature of the strike and lockout in the railroad industry. In order to protect the public interest, I have introduced legislation, along with Chairman Staggers of the House Committee on Interstate and Foreign Commerce, to authorize procedures under which railroad disruptions would not automatically become nationwide; and to authorize the Secretary of Transportation to order partial operation of the railroads to insure transportation of goods vital to the national health and safety, such as defense materials and coal, and to insure that passenger trains, including commuter service, will continue to operate.

The administration, on the other hand, has proposed legislation dealing with industries beyond the railroad industry. The administration proposal would include other transportation industries and would give the President three options in resolving transportation labor disputes: an additional cooling-off period; partial operation, or an imposed settlement which the administration calls "final-offer selection."

In addition, bills have been introduced by Senators Javits, Taft, and Brock. Senator Javits' bill, as well as Senator Brock's bill, apply to all industries while that of Senator Taft only applies to the railroad industry.

This committee will consider all of these bills and any other proposals which are offered.

(A copy of the bills referred to follows:)

92D CONGRESS
1ST SESSION

S. 560

IN THE SENATE OF THE UNITED STATES

FEBRUARY 3 (legislative day, JANUARY 26), 1971

Mr. GRIFFIN (for himself and Mr. DOLE) introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To provide more effective means for protecting the public interest in national emergency disputes involving the transportation industry, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Emergency Public Interest Protection Act of 1971".

CONGRESSIONAL FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds:

(1) That present procedures for dealing with national emergency disputes under the Railway Labor Act tend to encourage resort to governmental intervention in such dis-

putes rather than utilization of the collective-bargaining processes to solve labor-management disputes.

(2) That present procedures for dealing with disputes in the transportation industry, in general, have proved insufficient to prevent serious disruptions of transportation services.

(b) The Congress declares it to be the purpose and policy, through the exercise by Congress of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare, 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 or safety—

(1) by providing a single set of procedures for dealing with national emergency disputes in the transportation industries;

(2) by establishing procedures which will encourage the parties to make effective use of various private collective-bargaining techniques to resolve disputes;

(3) by establishing procedures which will both protect the public interest and recognize the interests of the parties involved in the dispute;

(4) by providing the President with appropriate alternative means for dealing with national transportation emergency disputes;

(5) by amending the Railway Labor Act to eliminate reliance upon governmental machinery or intervention for adjusting grievances and for collective bargaining in the railroad and airline industries; and

(6) by establishing a National Special Industries Commission to study and make recommendations concerning those industries which are or may be particularly vulnerable to national emergency disputes.

TITLE I—AMENDMENTS TO THE LABOR-MANAGEMENT RELATIONS ACT RELATING TO EMERGENCY DISPUTES IN THE TRANSPORTATION INDUSTRY

SEC. 101. (a) Title II of the Labor-Management Relations Act, as amended, is redesignated as title II part A.

(b) (1) Section 208 (a) is amended by substituting a colon for the period at the end thereof and by adding the following proviso: "*Provided*, That, when such petition is sought to enjoin a strike or lockout in an industry subject to part B of this title it shall be heard and determined by a three-judge district court in accordance with section 2284 of title 28, United States Code."

(2) Section 208 (c) is amended by substituting a semicolon for the period at the end thereof and adding the following: "except that where the proviso in section 208 (a) is applicable, appeal shall be to the United States Supreme

Court in accordance with section 1253 of title 28, United States Code."

(c) Section 212 is hereby repealed.

SEC. 102. Title II of the Labor-Management Relations Act, as amended, is hereby further amended by adding a new part II B at the end of part II A to read as follows:

"PART B—ALTERNATIVE PROCEDURES FOLLOWING INITIAL EIGHTY-DAY COOLING-OFF PERIOD

"SEC. 213. APPLICABILITY OF THIS PART.—This part shall apply only to the following transportation industries: (1) railroads, (2) airlines, (3) maritime, (4) longshore, and (5) trucking.

"SEC. 214. If no settlement is reached before the injunction obtained pursuant to section 208 of this Act is discharged, the President may, within ten days, invoke any one, but only one, of the procedures set forth in sections 217, 218, and 219 of this Act with regard to a national emergency dispute subject to this part.

"SEC. 215. Notice of which procedure the President has selected must immediately be transmitted to the Congress, unless the Congress has adjourned or is in a recess in which case such notice shall be transmitted as soon as Congress reconvenes. Such procedure shall remain in effect, unless within ten days after the President invokes such procedure, either House passes a resolution stating that that

House rejects the procedure invoked by the President.

"SEC. 216. If either House passes a resolution pursuant to subsection (c) of this section rejecting the procedure invoked by the President, or, if the President does not choose to invoke any of the procedures set forth in sections 217, 218, and 219 of this Act, the President shall submit to the Congress a supplemental report including such recommendations as he may see fit to make.

"SEC. 217. ADDITIONAL COOLING-OFF PERIOD.—The President may direct the parties to the controversy to refrain from making any changes, except by agreement, in the terms and conditions of employment for a specified period of not more than thirty days from the date of his direction. During such period the parties shall continue to bargain collectively, and the board of inquiry may continue to mediate the dispute with the assistance of, and in close coordination with, the director of the Federal Mediation and Conciliation Service.

"SEC. 218. PARTIAL OPERATION.—(a) The President may appoint a special board of three impartial members for the purpose of having the board make the following determinations:

"(1) Whether and under what conditions a partial strike or lockout in lieu of a full strike or lockout in an entire industry or substantial part thereof could take place without imperiling the national health or safety; and

"(2) Whether, under such conditions, the extent of such partial strike or lockout would, in the judgment of the board, appear to be sufficient in economic impact to encourage each of the parties to make continuing efforts to resolve the dispute.

"(b) (1) If the board makes a determination that there are conditions under which a partial strike or lockout can take place in accordance with the criteria specified in subsection (a), it shall issue an order specifying the extent and conditions of partial operation that must be maintained: *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.

"(2) If the board makes a determination that a partial strike or lockout cannot take place in accordance with such criteria, it shall submit a report to the President.

"(c) The parties shall not interfere by resort to strike or lockout with the partial operation ordered by the board. The board's order shall be effective for a period determined by the board, but not to exceed one hundred and eighty days.

"(d) The board's order or any modification thereof shall be conclusive unless found arbitrary or capricious by the district court which granted the injunction pursuant to section 208 of this Act.

"(e) (1) The board shall issue its order no later than thirty days from the date of its appointment by the President, unless the parties, including the Government, agree to an extension of time but such extension shall reduce pro tanto the maximum effective period of the board's order.

"(2) On notice to the parties, the board may at any time during the period of partial operation modify its order as it deems necessary to effectuate the purposes of this section.

"(f) Until the board makes its determination and during any period of partial operation ordered by the board no change, except by agreement, shall be made in the terms and conditions of employment. If the board determines that the implementation of any particular term of the existing terms and conditions of employment is inconsistent with the conditions of partial operation, it may order the suspension or modification of that term but only to the extent necessary to make it consistent with the conditions of partial operation.

"(g) The following rules of procedures shall be applicable to the board's functions under this subsection:

"(1) NOTICE OF HEARING.—Upon appointment by the President the board shall promptly notify and inform all parties, including the Government, of the time, place, and nature of the hearings, and the matters to be covered therein.

"(2) HEARING TO BE PUBLIC.—The board shall hold public hearings, unless it determines private hearings are necessary in the interest of national security, or the parties, including the Government, agree to present their positions in writing. The record made at such hearings shall include all documents, statements, exhibits, and briefs, which may be submitted, together with the stenographic record. The board shall have authority to make whatever reasonable rules are necessary for the conduct of an orderly public hearing. The board may exclude persons other than the parties at any time when in its judgment the expeditious inquiry into the dispute so requires.

"(3) PARTICIPATION BY BOARD IN THE HEARING.—The board, or any member thereof, may, on its own initiative, at such hearing, call witnesses and introduce documentary or other evidence, including a plan for partial operation, and may participate in the examination of witnesses for the purpose of expediting the hearing or eliciting material facts.

"(4) PARTICIPATION BY PARTIES IN HEARING.—The parties, the Government, or their representatives shall be given reasonable opportunity: (A) to be present in person at every stage of the hearing; (B) to be represented adequately; (C) to present orally or otherwise any material evidence relevant to the issues including a plan for partial operation; (D) to ask questions of the opposing party or a

witness relating to evidence offered or statements made by the party or witness at the hearing, unless it is clear that the questions have no material bearing on the credibility of that party or witness or on the issues in the case; (E) to present to the board oral or written argument on the issues.

"(5) STENOGRAPHIC RECORDS.—An official stenographic record of the proceedings shall be made. A copy of the record shall be available for inspection by the parties.

"(6) RULES OF EVIDENCE.—The hearing may be conducted informally. The receipt of evidence at the hearing need not be governed by the common law rules of evidence.

"(7) REQUESTS FOR THE PRODUCTION OF EVIDENCE.—The board shall have the power to subpoena. It shall request the parties to produce any evidence it deems relevant to the issues. Such evidence should be obtained through the voluntary compliance of the parties, if possible.

"(h) If a settlement is reached at any time during the hearing, the board shall adjourn the hearing and report to the President within ten days the fact that a settlement has been reached and the terms of such settlement.

"(i) (1) Members of the board shall receive compensation at a rate of up to the per diem equivalent of the rate for GS–18 when engaged in the work of the board as prescribed by this Act, including traveltime, and shall be allowed travel expenses and per diem in lieu of subsistence as authorized by

law (5 U.S.C. 5703) for persons in the Government service employed intermittently and receiving compensation on a per diem, when actually employed, basis.

"(2) For the purposes of carrying out its functions under this Act the Board is authorized to employ experts and consultants or organizations thereof as authorized by section 3109 of title 5, United States Code, and allow them while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703(b) of title 5, United States Code, for persons in the Government service employed intermittently, while so employed.

"SEC. 219. FINAL OFFER SELECTION.—(a) (1) The President may direct each party to submit a final offer to the Secretary of Labor within three days. Each party may at the same time submit one alternative final offer. The Secretary of Labor shall transmit the offers to the other parties simultaneously.

"(2) If a party or parties refuse to submit a final offer, the last offer made by such party or parties during previous bargaining shall be deemed that party's or parties' final offer.

"(3) Any offer submitted by a party pursuant to this section must constitute a complete collective bargaining agreement and resolve all the issues involved in the dispute.

"(b) The parties shall continue to bargain collectively

for a period of five days after they receive the other parties' offers. The Secretary of Labor may act as mediator during the period of the final offer selection proceedings.

"(c) If no settlement has been reached before the end of the period prescribed in subsection (b) of this section, the parties may within two days select a three-member panel to act as the final offer selector. If the parties are unable to agree on the composition of the panel, the President shall appoint the panel.

"(d) No person who has a pecuniary or other interest in any organization of employees or employers or employers' organizations which are involved in the dispute shall be appointed to such panel.

"(e) The provisions of sections 218(h) and 218(i)(1) and (2) of this Act shall apply to the panel.

"(f) The panel shall conduct an informal hearing in accordance with section 218(g) of this Act insofar as practicable, except that—

"(1) the Government shall have no right to participate; and

"(2) the thirty-day period in which the panel shall complete its hearings and reach its determination shall run from the time that the President directed the parties to submit final offers.

"(g) The panel shall at no time engage in an effort to

mediate or otherwise settle the dispute in any manner other than that prescribed by this section.

"(h) From the time of appointment by the President until such time as the panel makes its selection, there shall be no communication by the members of the panel with third parties concerning recommendations for settlement of the dispute.

"(i) Beginning with the direction of the President to submit final offers and until the panel makes its selection, there shall be no change, except by agreement of the parties, in the terms and conditions of employment. In no instance shall such period exceed thirty days.

"(j) The panel shall 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 shall be given to, nor shall any evidence be received concerning, the collective bargaining in this dispute including offers of settlement not contained in the final offers.

"(k) The panel shall select the most reasonable, in its judgment, of the final offers submitted by the parties. The panel may take into account the following factors:

"(1) past collective-bargaining contracts between the parties including the bargaining that led up to such contracts;

"(2) comparison of wages, hours, and conditions

of employment of the employees involved, with wages, hours, and conditions of employment of other employees doing comparable work, giving consideration to factors peculiar to the industry involved;

"(3) comparison of wages, hours, and conditions of employment as reflected in industries in general, and in the same or similar industry;

"(4) security and tenure of employment with due regard for the effect of technological changes on manning practices or on the utilization of particular occupations; and

"(5) the public interest, and any other factors normally considered in the determination of wages, hours, and conditions of employment.

"(l) The final offer selected by the panel shall be deemed to represent the contract between the parties.

"(m) The determination of the panel shall be conclusive unless found arbitrary and capricious by the district court which granted the injunction pursuant to section 208 of this Act.

"SEC. 220. (a) Any board or panel established under part B of title II of this Act may act by majority vote.

"(b) A vacancy on any such board or panel shall not impair the right of the remaining members to exercise all of the powers of such board or panel. In case of a vacancy

due to death or resignation, the President may appoint a successor to fill such vacancy.

"SEC. 221. Whenever the term 'Government' is used in title II of this Act it shall be deemed to mean the United States Government acting through the Attorney General or his designee."

TITLE II

AMENDMENTS TO THE RAILWAY LABOR ACT

SEC. 201. The National Mediation Board is hereby renamed the Railroad and Airline Representation Board, and the functions of the Railroad and Airline Representation Board shall be those specified in section 202 (f) of this Act.

SEC. 202. The Railway Labor Act is further amended as follows:

(a) Section 2 Seventh of title I is amended to read as follows:

"Seventh. No carrier, its officers or agents, or representatives shall change or seek to change the rates of pay, rules, or working conditions as embodied in agreements or arrangements except in the manner prescribed in such agreements and in title I, section 6, of this Act, as amended."

(b) Section 3 First (i) of title I is amended by striking the period following the words "upon the disputes" and inserting thereafter: ": *Provided, however,* That all such disputes shall no longer be referred to the Adjustment

Board commencing sixty days after the effective date of this amendment to the Act.

"All such disputes which are not so referred within such period and all such disputes arising thereafter shall be submitted to arbitration in accordance with the following procedure. Upon failing to reach a satisfactory adjustment at the level of discussion hereinbefore mentioned, the parties shall within five days seek to reach mutual agreement on the selection of an arbitrator. If the parties fail to reach agreement within such period, the Federal Mediation and Conciliation Service shall submit to the parties a list of five qualified arbitrators. Each party shall alternately reject a different arbitrator named on the list until one arbitrator remains who shall thereupon arbitrate the dispute. To the extent that the parties are unable to agree to the rules for arbitration, including the distribution of costs, the arbitrator shall make all necessary rules therefor.

"All disputes which have been referred to the Adjustment Board may be removed by the grievant to the arbitration process herein if the dispute is not then being heard by the Adjustment Board.

"The aforementioned method of 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.

"The Adjustment Board shall be dissolved after it has processed to completion all of the disputes before it or upon two years from the effective date of this amendment to the Act, whichever first occurs. If all the disputes before the Adjustment Board have not been processed to completion by the time of the Board's dissolution date, all such disputes shall be removed by the grievant to the arbitration process hereinabove described."

(c) Section 3 Second of title I is amended by adding the following language at the end of the first paragraph following the words "jurisdiction of the Adjustment Board.":

"The provisions of paragraph (i) of this section, as amended, shall apply in the same manner and to the same extent with respect to system, group or regional boards of adjustment."

(d) Section 3 Second of title I is amended by adding the following language at the end of section 3 Second following the words "awards of the Adjustment Board.":

"No dispute which has not been referred to a special board of adjustment by the effective date of this amendment to the Act may be referred to such special board thereafter."

(e) Section 4 Second of title I is amended by striking

the word "mediation" in the third sentence of paragraph Second and inserting therefor the word "representation".

(f) Both paragraphs of section 4 Fifth of title I are amended to read as follows:

"Fifth. The functions of the Representation Board shall be generally those relating to the determination of bargaining representatives including duties particularized in title I, section 2 Eighth and Ninth of this Act, as amended."

(g) Section 4 of title I is further amended by adding the following paragraphs after paragraph Fifth:

"Sixth. All functions of the National Mediation Board which in the judgment of the President are primarily related to mediation shall be transferred to the Federal Mediation and Conciliation Service.

"Seventh. All cases which are being mediated by the National Mediation Board on the effective date of this amendment to the Act shall be transferred to the Federal Mediation and Conciliation Service no later than thirty days after the effective date of this amendment to the Act. All cases arising thereafter under this Act, as amended, requiring mediation, shall be subject to the jurisdiction of the Federal Mediation and Conciliation Service.

"Eighth. All unexpended appropriations for the operation of the National Mediation Board that are available at the time of the dissolution of the Board shall be apportioned

between the Railroad and Airline Representation Board and the Federal Mediation and Conciliation Service by the President according to the relative needs of each based on the division of functions prescribed herein."

(h) Section 6 of title I is amended to read as follows:

"Section 6. Carriers and representatives shall give the other at least sixty days' written notice of an intended modification or termination in agreements or arrangements affecting rates of pay, rules, or working conditions. The party desiring such change or termination shall also notify the Federal Mediation and Conciliation Service of the existence of a dispute within thirty days after such notice to the other party, provided no agreement has been reached by that time. The parties shall continue in full force and effect, without resorting to strike or lockout or other economic coercion, all the terms and conditions of the existing agreement or arrangement for a period of sixty days after such notice is given or until the expiration date of the agreement containing the rates of pay, rules, or working conditions sought to be changed, provided such agreement exists, whichever occurs later.

"With respect to rates of pay, rules or working conditions for which there exists no fixed expiration date, the time for serving the sixty-day notice in the first instance, and the first instance only, shall be established by agree-

ment of the parties to the arrangement; if they cannot agree, the party seeking to serve the sixty-day notice may invoke the arbitration procedure prescribed in section 3 First (i), as amended, in order to fix the date on which such notice may be served. In making his decision, the arbitrator shall take into account the probable intention of the parties as revealed by custom and practice with respect to past adjustment of rates of pay, rules, or working conditions. In no case, however, shall the arbitrator decide that the time for serving the first sixty-day notice shall be more than two years after the enactment of this amendment to the Act.

"The parties shall bargain collectively with respect to such intended modification or termination which means that the parties shall have the mutual obligation to meet at reasonable times and confer in good faith with respect to rates of pay, rules, and working conditions or the negotiation of an agreement and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession."

(i) Section 201 of title II is amended by striking the words "except the provisions of section 3 thereof."

(j) Section 202 of title II is amended (1) by striking the words ", except section 3 thereof,", and (2) by adding

the following language after the end of the first sentence therein:

"The functions and duties of the Representation Board, as prescribed in title I, section 4, shall apply as well to carriers by air and their employees or representatives."

(k) Section 204 of title II is amended by striking the period following the words "upon the disputes" at the end of the first sentence and inserting thereafter ": *Provided, however,* That all such disputes shall no longer be referred to such Adjustment Boards commencing sixty days after the effective date of this amendment to the Act but shall be handled in the manner specified in title I, section 3 First (i), as amended. Such adjustment boards shall be dissolved after they have processed to completion all of the disputes before them or upon two years from the effective date of this amendment to the Act, whichever first occurs. If all the disputes before such adjustment boards have not been processed to completion by the time of the board's dissolution date, all such disputes shall be removed by the grievant to the arbitration process prescribed in title I, section 3 First (i), as amended."

TITLE III—SPECIAL INDUSTRIES COMMISSION

SEC. 301. The National Special Industries Commission is hereby established. The Commission shall be composed

of seven members all of whom shall have a background by reason of education or experience in labor relations.

(a) The Commission members shall be appointed by the President for a term not to exceed two years.

(b) The Commission members shall receive compensation at a rate of up to the per diem equivalent of the rate for GS–18 when engaged in the work of the Commission, together with any necessary travel and subsistence expenses.

(c) The Commission shall be authorized to study and investigate industries (determined by the Secretary of Labor to be particularly vulnerable to national emergency disputes), combinations or groups thereof, and problems relating thereto, including but not limited to—

(1) the ways and means by which the collective-bargaining process might be improved, altered, revised, or supplemented so as to avoid or minimize strikes and lockouts which affect an entire industry, or region, or a substantial part thereof;

(2) the effectiveness and usefulness of various forms of mediation, conciliation, arbitration, and other possible procedures and methods for aiding or supplementing the collective-bargaining process;

(3) the administration, operation, and possible need for revision of this Act and its effect on collective

bargaining, strikes, or lockouts affecting an entire industry or region, or substantial portion thereof;

(4) such other problems and subjects which relate in any way to collective bargaining, strikes, or lockouts as the Commission deems appropriate.

(d) A vacancy in the membership of the Commission shall not affect the powers of the remaining members to execute the functions of the Commission, and shall be filled in the same manner as the original appointment was made. The President shall designate a Chairman and a Vice Chairman from among its members.

(e) In carrying out its duties, the Commission or any duly authorized subcommittee thereof, is authorized to hold such hearings or investigations, to sit and act at such places and times, to require by subpena or otherwise the attendance of such witnesses and production of such books, papers, and documents, to administer such oaths, to take such testimony, to produce such printing and binding, to make such expenditures as it deems advisable. The Commission may make such rules respecting its organization and procedures as it deems necessary: *Provided, however,* That no recommendation shall be reported from the Commission unless a majority of the Commission assent. Subpenas may be issued over the signature of the Chairman of the Commission or by any member designated by him or by the Commission,

and may be served by such person or persons as may be designated by such Chairman or member. The Chairman of the Commission or any member thereof may administer oaths to witnesses. The cost of stenographic services shall be fixed at an equitable rate by the Commission. Members of the Commission, and its employees and consultants, while traveling on official business for the Commission may receive either a $50 per diem allowance or their actual and necessary expenses provided an itemized statement of such expenses is attached to the voucher.

(f) The Commission is empowered to appoint and fix the compensation of such experts, consultants, technicians, and staff employees as it deems necessary and advisable. The Commission is authorized to utilize the services, information, facilities, and personnel of the departments and establishments of the Government.

SEC. 302. The Commission shall, within a period of two years from the date of the appointment of its members, report to the President concerning its findings. Such report shall also contain any recommendations for dealing with problems caused by any weaknesses in the collective-bargaining process, including any recommendations for legislation which the Commission deems necessary to the solution of such problems. The Commission may also recommend, if it deems it advisable, legislation to bring other

industries within the coverage of part B of title II of the Labor-Management Relations Act, as amended.

TITLE IV

MISCELLANEOUS PROVISIONS

SEC. 401. SUITS: BY AND AGAINST REPRESENTATIVES.—(a) Suits for violation of agreements or arrangements between carriers or common carriers by air and their employees or the representatives thereof, as those terms are defined in the Railway Labor Act, or between any such representatives, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any representative of employees, as defined in the Railway Labor Act, and any carrier or common carrier by air, as defined in the Railway Labor Act, shall be bound by the acts of its agents. Any such representative may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against such representative in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) For the purpose of actions and proceedings by or against representatives in the district courts of the United States, district courts shall be deemed to have jurisdiction of a representative (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a representative, in his capacity of such, shall constitute service upon the representative.

(e) For the purposes of this section in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

SEC. 402. REPEAL.—Sections 5, 7, 8 (both), 9, and 10 of title I, and sections 203 and 205 of title II of the Railway Labor Act, as amended, are hereby repealed.

SEC. 403. INAPPLICABILITY OF THE NORRIS-LAGUARDIA ACT.—The provisions of the Act of March 23, 1932, entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", shall not be applicable to any

judicial proceeding brought under or to enforce the provisions of this Act.

SEC. 404. RIGHTS OF EMPLOYEES.—Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent; nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this Act.

SEC. 405. RAILROAD UNEMPLOYMENT INSURANCE.—Section 4 (a) (v) of the "Railroad Unemployment Insurance Act of 1938" (52 Stat. 1098) is hereby amended by inserting a semicolon following the words "at which he was last employed" and striking the remaining language in the paragraph.

SEC. 406. APPROPRIATIONS.—There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

SEC. 407. SEPARABILITY.—If any provision of this Act, or the application of such provision to any person or circum-

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stance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

92D CONGRESS
1ST SESSION

S. 594

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4 (legislative day, JANUARY 26), 1971

Mr. JAVITS introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To amend the Labor-Management Relations Act, 1947, and the Railway Labor Act to provide for the settlement of certain emergency labor disputes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Emergency Labor Disputes Act of 1971".

SEC. 2. (a) Congress hereby finds—

(1) that the present procedures established by sections 206–10 of the Labor-Management Relations Act, 1947, and section 10 of the Railway Labor Act for dealing with labor disputes which threaten the health and safety of the American people or tend to deprive any sec-

tion of the country of essential transportation services are inadequate and have, in certain cases, produced a deterioration of the collective bargaining process as well as an intensification of emergencies created by such disputes;

(2) the use of present procedures for resolving such labor disputes has not prevented serious disruptions in operations and services essential to the health and safety of the Nation or a substantial part of its population or territory; and

(3) a permanent range of flexible procedures permitting prompt action by the President to deal with national or regional emergencies created by labor disputes is necessary to prevent imperiling the health and safety of the Nation or a substantial part of its population or territory by such disputes and to encourage and maintain free collective bargaining.

(b) It is the purpose of this Act to make available to the President on a permanent basis a range of flexible procedures to be utilized by him in taking emergency action, to prevent the interruption of operations or services essential to the health and safety of the Nation or a substantial part of its population or territory because of actual or threatened strikes or lockouts.

SEC. 3. Sections 206–210 of the Labor-Management Relations Act, 1947, are amended to read as follows:

"SEC. 206. (a) Whenever in the opinion of the President of the United States, after consultation with the Director, a threatened or actual strike or lockout or other labor dispute in an industry affecting commerce may, if permitted to occur or to continue, imperil the health or safety of the Nation or a substantial part of its population or territory, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. Such report shall include a statement of the facts with respect to the dispute, including each party's statement of its own position, and, if the President so directs at any time, there shall be included in such report or in a supplemental report the recommendations of the board of inquiry for the settlement of some or all of the issues in dispute. The President shall file a copy of such report with the Service and shall make its contents available to the public.

"(b) Upon receiving a report or a supplemental report from a board of inquiry, the President may direct that for a specified period not to exceed 30 days no change in the conditions out of which the dispute arose shall be made by the parties to the dispute, except by agreement. During such period the parties to the dispute shall be under a duty to

bargain collectively, but neither party shall be under a duty to accept in whole or in part any recommendations of the board of inquiry.

"SEC. 207. (a) A board of inquiry shall be composed of a chairman and such other members as the President shall determine, and shall have power to sit and act in any place within the United States and to conduct such hearings either in public or in private, as it may deem necessary or proper, to ascertain the facts with respect to the causes and circumstances of the dispute.

"(b) Members of a board of inquiry shall receive compensation, at the daily rate prescribed for GS–18 under section 5332 of title 5, United States Code, for each day actually spent by them in the work of the board, together with necessary travel and subsistence expenses.

"(c) For the purpose of any hearing or inquiry conducted by any board appointed under this title, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (U.S.C. 19, title 15, sections 49 and 50, as amended), are hereby made applicable to the powers and duties of such board.

"SEC. 208. (a) Upon receiving a report from a board of inquiry, or upon the expiration of any period fixed by the

President under section 206 (b) for bargaining, the President may direct the Attorney General to bring a civil action in any district court of the United States having jurisdiction of the parties to enjoin such strike or lockout or the continuance thereof, and if the court finds that such threatened or actual strike or lockout—

"(i) affects an industry engaged in commerce; and

"(ii) if permitted to occur or to continue, will imperil the health or safety of the Nation or a substantial part of the population or territory thereof, it shall have jurisdiction to issue an order enjoining any such strike or lockout, or the continuance thereof, and to issue such other orders as may be appropriate.

"(b) Any action brought under this section shall be heard and determined by a three-judge district court in accordance with section 2284 of title 28, United States Code. The order or orders of the court shall be subject to review by the Supreme Court in accordance with section 1253 of title 28, U.S.C.

"SEC. 209. (a) Whenever a district court has issued an order under section 208 enjoining acts or practices which imperil or threaten to imperil the health or safety of the Nation, or a substantial part of the population or territory thereof, it shall be the duty of the parties to the labor

dispute giving rise to such order to make every effort to adjust and settle their differences, with the assistance of the Service created by this Act. Neither party shall be under any duty to accept, in whole or in part, any proposal of settlement made by the Service.

"(b) Upon the issuance of such order, the President shall reconvene the board of inquiry which has previously reported with respect to the dispute. At the end of a sixty-day period (unless the dispute has been settled by that time), the board of inquiry shall report to the President the current position of the parties and the efforts which have been made for settlement, and shall include a statement by each party of its position and a statement of the employers' last offer of settlement. The report shall also include the final recommendations of the board if the President so directs. The President shall make such report available to the public. If the board of inquiry so recommends, and the President so directs, the National Labor Relations Board shall, within the succeeding fifteen days, take a secret ballot of the employees of each employer involved in the dispute on the question of whether they wish to accept the final offer of settlement made by their employer as stated by him and shall certify the results thereof to the Attorney General within five days thereafter.

"(c) Whenever a labor dispute with respect to which

the provisions of section 208 of this Act have been invoked has not been settled prior to the expiration of the sixty-day period referred to in subsection (b) of this section, the President may, at any time thereafter, issue a proclamation declaring an emergency and invoking the provisions of this section if he finds that the conditions set forth in section 206 of this Act are still operative. Upon issuing such a proclamation the President shall issue an executive order prescribing the procedures to be followed by the parties thereafter and any other actions which he determines to be necessary or appropriate to protect the health and safety of the Nation or that substantial part of the population or territory thereof which is relevant to such labor dispute. Such executive order shall be in effect for the shortest period of time consistent with the emergency and a resolution of the dispute, and shall (1) provide for the maintenance or resumption of operations and services essential to the national or regional health and safety, (2) encourage resolution of the dispute through collective bargaining, (3) encourage and preserve future collective bargaining with industry affected, and (4), to the extent consistent with meeting the emergency, avoid undue interference with the rights of the parties to the dispute. Such executive order shall be immediately transmitted to the Congress, and shall be effective at the end of the first period

of fifteen calendar days of continuous session of the Congress after the date on which such order is transmitted to Congress unless, between the date of transmittal and the end of the fifteen-day period, either House passes a resolution stating in substance that the House does not favor the order, in which case it shall not take effect. The provisions of sections 906(b), 908, and 910–913 of title 5, United States Code, shall be applicable to any such resolution.

"SEC. 210. (a) The provisions of this title and orders of the President issued thereunder shall be enforceable upon suit by the Attorney General, through such orders as may be appropriate by any court having jurisdiction of any of the parties.

"(b) Upon the issuance of an executive order under section 209(c) of this Act, the Attorney General may move to modify any order issued under section 208 of this Act in order to carry out the provisions of the executive order, and the court shall so modify its order unless the executive order is found to be arbitrary or capricious or in violation of the Constitution.

"(c) The Attorney General shall move the court to vacate an order issued under section 208 with respect to a dispute, and such motion shall be granted, upon any of the following events:

(1) Settlement of the dispute,

(2) The expiration of eighty days from the date of such order without the President having issued an executive order under section 209 (c) with respect to the dispute,

(3) Unless otherwise provided in such resolution, the adoption by either House of a resolution stating in substance that that House does not favor an executive order issued under section 209 (c) with respect to the dispute.

(4) The President directs the Attorney General to so move.

"(d) In the event that pursuant to an executive order issued under section 209 (c) the United States shall take possession of and operate, in whole or in part, any business enterprise of an employer involved in a given dispute, such enterprise shall be operated by the United States for the account of the employer: *Provided*, That the employer shall have the right to elect, by written notice filed with the court within ten days of such taking of possession, to waive all claims to the proceeds of such operation and to receive in lieu thereof just, fair, and reasonable compensation for the period of such possession and operation by the United States, to be paid by the United States as follows: (A) The President shall ascertain the amount of just, fair, and reasonable compensation to be paid as rental for the appropriation and tem-

porary use of such enterprise while in the possession of the United States, such determination to be made as of the time of the taking hereunder, and taking into account the existence of the labor dispute which interrupted or threatened to interrupt the operation of such enterprise and the effect of such interruption or threatened interruption upon the value to the employer of the use of such enterprise; (B) if the amount so ascertained is not acceptable to the employer as just, fair, and reasonable compensation for the appropriation and temporary use of the property taken hereunder and as full and complete compensation therefor, the employer shall be paid 75 per centum of such amount and shall be entitled to sue the United States in the Court of Claims or in any district court of the United States in the manner provided for by sections 1357 and 1491 of title 28 of the United States Code to recover such further sums as when added to the amount so paid shall constitute just, fair, and reasonable compensation for the appropriation and temporary use of the property so taken.

"(e) In any action brought under this title, subpenas for witnesses who are required to attend a United States district court may run into any other district.

"(f) In granting relief under this title, the jurisdiction of the court shall not be limited by the provisions of sections 6 and 20 of the Act entitled 'An Act to supplement existing

laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914, as amended (15 U.S.C. 17, and 29 U.S.C. 52) or the provisions of the Act entitled 'An Act to amend the Judicial Code, to define and limit the jurisdiction of courts sitting in equity, and for other purposes', approved March 23, 1932 (29 U.S.C. 101-115)."

SEC. 4. Section 212 of the Labor-Management Relations Act, 1947, is amended to read as follows:

"REPEAL OF SECTION 10 OF THE RAILWAY LABOR ACT

"SEC. 212. Section 10 of the Railway Labor Act is hereby repealed: *Provided*, That such section shall continue in effect with respect to any emergency board in existence on the effective date of this Act. Disputes heretofore subject to section 10 of the Railway Labor Act shall be subject to provisions of this title."

SEC. 5. Title II of the Labor-Management Relations Act, 1947, is amended by adding at the end thereof the following new section:

"RIGHTS OF EMPLOYEES

"SEC. 213. Nothing in this title shall be construed to limit the right of any employee to resign from his position of employment."

92D CONGRESS
1ST SESSION

S. 832

IN THE SENATE OF THE UNITED STATES

FEBRUARY 17, 1971

Mr. WILLIAMS (for himself and Mr. KENNEDY) introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

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, That section 10 of the Railway Labor Act (45 U.S.C. 160) is hereby amended by inserting after "SEC. 10," the subsection designation "(a)". Said section 10 is further amended by adding at the end thereof the following:

"(b) It shall be unlawful for any carrier at any time to lock out any craft or class of its employees, or any segment of any such class or craft, or in any manner to diminish its transportation service in consequence of any dispute sub-

ject to this Act unless such carrier is caused to diminish such service by a strike of all or some portion of its employees, and then only as permitted by applicable agreements and in accordance with the notice and other provisions of said agreements.

"(c) Whenever any carrier has proposed a change in agreements affecting rates of pay, rules, or working conditions in accordance with section 6 of this Act and all procedures required under this Act have been exhausted with respect to such change, such carrier may make such change effective without agreement, except where (1) such change was proposed by the carrier in response to or in anticipation of a change or changes in such agreements proposed by a representative of employees and considered concurrently therewith and the carrier's transportation service has not been interrupted by a strike of the employees whose representative initiated the proposed change; or (2) such change is not permitted by other provisions of this Act.

"(d) Whenever a representative of employees has proposed a change in agreements affecting rates of pay, rules, or working conditions in accordance with section 6 of this Act and all procedures required under this Act have been exhausted with respect to such change, the employees represented by such representative may strike, subject to the limitations and obligations of partial operation imposed by sub-

section (e) of this section, all of the carriers to whom such proposal was directed, or may selectively strike any of such carriers or carrier systems without concurrently striking other carriers to whom such proposal was also directed and who may have been jointly or concurrently involved with the struck carrier or carriers in the previous handling of the dispute under this Act. For the purposes of this subsection as it applies to rail carriers, a strike shall be a 'selective' strike if not more than three such carriers or groups of such carriers operating in a system in any one of the eastern, the western, or the southeastern regions are concurrently struck and the aggregate revenue ton-miles transported by all such carriers in any one region who are concurrently struck did not in the preceding calendar year exceed 40 per centum of the total revenue ton-miles transported by all carriers in such region in such year. The eastern, the western, and the southeastern regions as used herein mean, respectively, the carriers represented by the Eastern, Western, and Southeastern Carriers' Conference Committees and any other carriers operating in the territories in which such carriers respectively operate.

"(e) (1) Whenever a selective strike or a strike of any combination of carriers occurs, such carrier or carriers and representative or representatives of the employees on strike shall provide service and transportation for such persons and commodities as may be directed by the Secretary

of Transportation pursuant to the provisions of subparagraph (2). Such service and transportation shall be provided pursuant to the rates of pay, rules, and working conditions of existing agreements.

"(2) The Secretary of Transportation after consultation with the Secretary of Defense and the Secretary of Labor shall determine the extent to which services and transportation of any struck carrier or carriers are essential to the national health or safety, including but not necessarily limited to, transportation of all defense materials, coal for the generation of electricity, and the continued operation of passenger trains including commuter service. Such determination shall be made on the basis of facts known to the Department of Transportation, shall be made in writing, shall be based on the findings of facts stated in the determination, and shall be conclusive unless shown to be arbitrary or capricious.

"(f) Nothing in this section, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect any existing limitations or qualifications on that right."

SEC. 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.

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92D CONGRESS
1ST SESSION

S. 1093

IN THE SENATE OF THE UNITED STATES

MARCH 3 (legislative day, FEBRUARY 17), 1971

Mr. TAFT introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To amend the Railway Labor Act to promote railway efficiency, to provide increased compensation for railway employees, to decrease the possibility of the disruption of railway transportation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 10 of the Railway Labor Act (45 U.S.C. 160) is amended by inserting "(a)" immediately after "SEC. 10," and by adding at the end thereof the following new subsection:

"(b) (1) Notwithstanding any other provisions of this Act, whenever any carrier proposes a change in rules affecting operating employees as contained in agreements

made in accordance with section 6 of this Act, the carrier may make such change effective as proposed, if (A) any cost savings realized as a result of such change affecting rules will be shared 50 per centum each by the carrier proposing such a change and the operating employees of such carrier and (B) any reduction in the number of operating employees of such carrier contemplated by the proposed change affecting rules will be accomplished by attrition.

"(2) It shall be unlawful for any carrier to lock out any of its employees or any class or craft of its employees or in any manner to terminate its transportation service in consequence of any dispute subject to the provisions of this subsection.

"(3) It shall be unlawful for the employees of any carrier to strike or engage in any other work slowdown in consequence of any dispute subject to the provisions of this subsection.

"(4) Nothing in this subsection shall be construed to prevent carriers and representatives of the employees from entering into an agreement affecting work rules.

"(5) For the purposes of clause (A) of paragraph (1) of this subsection, the term 'operating employees' shall be defined to include all engineers, firemen, hostelers, outside hosteler helpers, conductors, trainmen, and yard service employees.

"(6) For the purposes of clause (A) of paragraph (1) of this subsection, payments to operating employees shall be on a per capita basis and shall be made not later than four months following the end of the fiscal year. In the event that any employee was not employed by a carrier for the entire fiscal year preceding the payment date, the payment to such employee hereunder shall be prorated to cover the period of employment.

"(7) In the event that any representative of affected employees contests the amount of cost savings as determined by the carrier under clause (A) of paragraph (1) of this subsection, said representative and the carrier shall mutually designate and compensate a certified public accountant, whether an individual, partnership, or corporation, which accountant shall make a determination of the cost savings, which determination shall thereupon be final and binding."

(b) The heading of section 10 of such Act is amended to read as follows:

"UNRESOLVED DISPUTES"

SEC. 2. (a) Section 201 of the Railway Labor Act is amended by inserting "section 10 (b)" after "section 3".

(b) Section 202 of such Act is amended by inserting "section 10 (b)" after "section 3".

SEC. 3. Nothing in this Act shall be construed to prevent the right of any employee to resign from his position of employment.

SEC. 4. This Act shall take effect upon its enactment and shall apply to any proposed change in agreements affecting rules regardless of when any such proposal was initiated.

92D CONGRESS
1ST SESSION

S. 1934

IN THE SENATE OF THE UNITED STATES

MAY 24, 1971

Mr. BROCK introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To expand upon the economic freedom and public responsibility of American industry, to encourage the opportunity for the American worker to bargain collectively in his own best interests without economic deprivation, and to guarantee the American consumer and taxpayer protection from the abuse of excessive concentration of power.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Management-Labor Commission and Court Act".

STATEMENT OF POLICY

SEC. 2. (a) Continuing industrial peace is paramount to the interests of the Nation and is necessary to employers and employees alike. This peace can best be achieved through

established laws and procedures for collective bargaining between the representatives of management and labor. Settlements of issues and disputes should be continued through active and sincere voluntary negotiations by the parties concerned to agree on rates of pay, laws and conditions of work, length of contract, and any other issues of employment.

(b) This Act is addressed to only that limited segment of our management-labor forum wherein the Nation's health and safety would be impaired through a cessation of interstate commerce. It is presumed that the great majority of our labor disputes do not involve the above criteria and will continue to be negotiated and settled under existing collective-bargaining practices, laws, and Federal facilities. When the criteria for judicial action are met, this Act will provide for appropriate representation of the public interest and the consumer during the bargaining, arbitration, and adjudicative process. Disputes not meeting the criteria for jurisdiction can be handled by the expertise of this jurisidction if the parties of the dispute have previously and voluntarily indicated this interest. It is anticipated that many intrastate activities which affect the public interest to a substantial degree will voluntarily partake of this facility. In addition to manufacturing and other businesses, such activities include the public service oriented professions of education, transportation, trash removal, and police and fire protection.

ESTABLISHMENT OF MANAGEMENT-LABOR COMMISSION

SEC. 3. There is hereby established a Management-Labor Commission (hereinafter referred to as the "Commission") to be composed of seven Management-Labor Commissioners (hereinafter referred to as the "Commissioners").

NATIONAL EMERGENCY STRIKES AND LOCKOUTS

SEC. 4. For purposes of this Act, a strike or lockout shall be deemed to be a national emergency strike or lockout, and therefore within the purview of this Act, if it affects an entire industry, or a substantial part thereof, engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce, and will, if permitted to continue, imperil the national health or safety.

APPOINTMENT OF COMMISSIONERS

SEC. 5. (a) The President shall appoint a panel of distinguished citizens who shall be assigned the function of selecting three candidates for each vacancy on the Commission. The President shall, by and with the advice and consent of the Senate, appoint to fill each vacancy on the Commission one of the candidates selected by the panel to fill the vacancy.

(b) The terms of office of Commissioners shall be fourteen years, except that (1) the terms of office of the

Commissioners first appointed shall commence on the date of enactment of this Act and shall expire one at the end of the second year, one at the end of the fourth year, one at the end of the sixth year, one at the end of the eighth year, one at the end of the tenth year, one at the end of the twelfth year, and one at the end of the fourteenth year, after such date, as determined by the President at the time of appointment, (2) any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term of office for which his predecessor was appointed shall be appointed only for the remainder of such term, and (3) upon the expiration of the term of office of a Commissioner he shall continue to serve until his successor is appointed and has qualified.

(c) The panel of citizens referred to in subsection (a), and the President, shall both take action necessary to insure that the interests of consumers are adequately represented on the membership of the Commission, as well as the interests of management and labor.

ORGANIZATION OF THE COMMISSION

SEC. 6. (a) The President shall designate one of the Commissioners to act as Chairman of the Commission, and one Commissioner to act as Vice Chairman of the Commission.

(b) (1) Section 5313 of title 5, United States Code,

is amended by adding at the end thereof the following:

"(19) Chairman, Management-Labor Commission."

(2) Section 5314 of such title is amended by adding at the end thereof the following:

"(46) Commissioners, Management-Labor Commission."

(c) Subject to the civil service and classification laws, the Commission is authorized to select, appoint, employ, and fix the compensation of such officers and employees, as shall be necessary to enable it to carry out its powers and duties under this Act.

(d) The Chairman of the Commission shall be its chief executive and administrative officer and shall exercise the responsibility of the Commission with respect to (1) the appointment and supervision of personnel employed by the Commission, (2) the distribution of business among the Commission's personnel, and (3) the use and expenditure of funds. For executing and administering the functions of the Commission on its behalf, the Chairman shall be governed by the general policies of the Commission and by its decisions, findings, and determinations. The Vice Chairman shall perform the duties of the Chairman during his absence or disability. Four Commissioners shall constitute a quorum of the Commission.

(e) The provisions of sections 9 and 10 (relating to

the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (15 U.S.C. 49, 50), are hereby made applicable to the jurisdiction, powers, and duties of the Commission.

JURISDICTION AND DUTIES OF THE COMMISSION

SEC. 7. (a) If the Commission believes there is a likelihood that a national emergency strike or lockout will occur, it shall forthwith make conciliation, mediation, and arbitration services available to the parties to the dispute, but only if all parties to the dispute agree.

(b) Whenever, in the opinion of the President, a national emergency strike or lockout is threatened or in effect, he shall direct the Attorney General to petition the Commission to assume jurisdiction of the dispute. If the Commission then determines that a national emergency strike or lockout is threatened or in effect, the Commission shall assume jurisdiction of the dispute. The Commission shall also assume jurisdiction of any dispute which threatens or has led to a strike or walkout in an industry if, but only if, all parties to the dispute have petitioned the Commission to assume such jurisdiction.

(c) When the Commission assumes jurisdiction of a dispute under subsection (b), it shall issue an order prohibiting the continuation of the strike or lockout for a period

of one hundred and ten days, or until an agreement resolving all issues in the dispute has been reached. Such an order may include requirements affecting rates of pay and working conditions to be applicable during the period the order is in effect.

(d) When the Commission takes jurisdiction of a strike or lockout, the Chairman of the Commission shall designate two or more members of the Commission as a board of inquiry. It shall be the duty of the board of inquiry to conduct an inquiry into the dispute. Within eighty days after the Commission has assumed jurisdiction of a dispute the board shall make a full report on the results of its inquiry to the full Commission. Such a report shall contain the recommendations of the board with respect to the resolution of all issues in the dispute. The Commission may require the parties to a dispute to attend hearings before the board of inquiry and produce testimony and documentary evidence with respect to the causes and circumstances of the dispute, and to attend conferences or sessions of the board of inquiry in order to consider and discuss the positions of the parties and possibilities or proposals for settlement; and the Commission may make such orders as are necessary or appropriate to require the parties, or any of them, to make every effort in good faith voluntarily to adjust and settle their differences.

(e) If, at the end of eighty days after it has assumed

jurisdiction of a national emergency strike or walkout, the parties have not reached an agreement, within thirty days from the end of such period, the Commission shall issue an order to the parties, shall prescribe the terms and conditions of employment to be in effect, and the period during which they shall be in effect. Such an order may incorporate by reference the provisions of collective bargaining agreements which are not in dispute.

ESTABLISHMENT OF MANAGEMENT-LABOR COURT

SEC. 8. There is hereby established a Management-Labor Court (hereinafter referred to as the "court") to be composed of a chief judge and four assistant judges.

APPOINTMENT OF JUDGES

SEC. 9. (a) The President shall appoint a panel of distinguished citizens who shall be assigned the function of selecting three candidates for each vacancy on the court. The President shall, by and with the advice and consent of the Senate, fill each vacancy on the court by appointing one of the candidates selected by the panel to fill the vacancy.

(b) The terms of office of the judges on the court shall be ten years, except that (1) the terms of office of the judges first appointed shall commence on the date of enactment of this Act and shall expire one at the end of the second year one at the end of the fourth year, one at the end of the sixth year, one at the end of the eighth year, and one at the end

of the tenth year after such date, as determined by the President at the time of appointment, (2) any judge appointed to fill a vacancy occurring prior to the expiration of the term of office for which his predecessor was appointed shall be appointed for the remainder of such term, and (3) upon the expiration of the term of office of a judge he shall continue to serve until his successor is appointed and has qualified.

ORGANIZATION OF THE COURT

SEC. 10. (a) The President shall designate one of the judges to act as chief judge, and the remainder as assistant judges.

(b) The chief judge of the court shall receive the same compensation as is received by the chief judge of a United States district court and each of the assistant judges of the court shall receive the same compensation as is received by judges of a United States district court.

(c) The court shall sit in the District of Columbia.

(d) The court may appoint and fix the compensation of such officers and employees, and may incur such other expenses as may be necessary to enable it to carry out its functions.

(e) The court and each judge thereof shall possess all the powers of a district court of the United States for preserving order, compelling the attendance of witnesses and the

production of evidence, and the provisions of section 401 of title 18, United States Code (relating to authority to punish for contempt) and section 1651 of title 28 of such Code (relating to the issuance of writs) shall be applicable to the court. Process of the court may be served within the territorial jurisdiction of any court of the United States.

(f) The proceedings of the court shall be conducted in accordance with such rules of practice and procedure (other than rules of evidence) as the court may prescribe and in accordance with the rules of evidence applicable in trials without a jury in the United States District Court for the District of Columbia.

JURISDICTION OF THE COURT

SEC. 11. (a) When the Commission has issued an order under section 4 resolving a dispute it shall thereby be divested of its jurisdiction over the matter, and thereafter the court shall be vested with jurisdiction to hear, determine, and render judgment with respect to all questions of law or fact arising under the order.

(b) Decisions of the court shall be final unless they are arbitrary or capricious or are violative of a right conferred by the Constitution of the United States, in which case the Supreme Court shall have exclusive appellate jurisdiction.

SUSPENSION OF NATIONAL LABOR RELATIONS BOARD PROCEEDINGS

SEC. 12. Section 10 of the National Labor Relations Act is amended by adding at the end thereof the following new subsection:

"(n) Whenever a matter before the Board is included in a labor dispute over which the Management-Labor Commission is vested with jurisdiction, the Board shall discontinue all proceedings in such matter."

DEFINITIONS

SEC. 13. For purposes of this Act, the terms "commerce", "affecting commerce", and "labor dispute" have the same meaning such terms have when used in the National Labor Relations Act.

REPEALS

SEC. 14. (a) Sections 206, 207, 208, 209, and 210 of the Labor-Management Relations Act, 1947, are repealed.

(b) Section 10 of the Railway Labor Act is repealed.

EFFECTIVE DATE

SEC. 15. This Act shall become effective on the date of its enactment, except that proceedings already commenced on such date shall be carried through to completion without regard to the provisions of section 14.

92D CONGRESS
1ST SESSION

S. 2060

IN THE SENATE OF THE UNITED STATES

JUNE 14, 1971

Mr. DOMINICK introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To amend the Railway Labor Act and the Railroad Unemployment Insurance Act so as to provide more effective means for protecting the public interest in labor disputes involving transportation industry, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Emergency Transportation Labor Act of 1971."

TITLE I.

AMENDMENTS TO THE RAILWAY LABOR ACT

SEC. 101. (a) Section 1, Second, of title I of the Railway Labor Act is repealed and section 1, Third and Fourth,

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are redesignated as section 1, Second and Third, respectively.

(b) Section 1, Fifth, of title I of the Railway Labor Act is redesignated as section 1, Fourth, and is amended by deleting the words, "or subordinate official" and "*Provided, however,* That," substituting a period for the colon after the words "existing orders"; and inserting "(1)" after the word "include" and the words, "employed as a supervisor or (2) any individual" before the words, "while such."

(c) Section 1, Sixth, of title I of the Railway Labor Act is redesignated as section 1, Fifth, and is amended by eliminating the period at the end thereof and adding the words, "with full authority to make agreements without ratification by those whom they represent."

(d) Section 1, Seventh, of title I of the Railway Labor Act is redesignated as section 1, Sixth, and is amended by using the words "United States District Court for" in lieu of the words "Supreme Court of" and deleting the word "circuit."

(e) Section 1, of title I of the Railway Labor Act, is further amended by adding section 1, Seventh, to read as follows:

"Seventh. The term 'supervisor' means any individual having authority, in the interest of a carrier or carriers, to

hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

SEC. 102. (a) Section 2, Second, of title I of the Railway Labor Act is amended by deleting at the end thereof the words, "respectively, by the carrier or carriers and by the employees thereof interested in the dispute" and adding in lieu thereof the words, "and to make agreements settling matters in dispute. All such representatives shall be vested with full authority to effect final settlement of disputes and all agreements entered into by such representatives shall be binding whether or not ratified or approved prior to or subsequent to execution."

(b) Section 2, Third of title I of the Railway Labor Act is amended by adding as the ending of the first sentence the words, "except that any involved carrier will, upon request to the Mediation Board, be made a party to any representation dispute among its employees, and shall be permitted to participate as such in all proceedings, including but not limited to determination of the appropriate class or craft for representation purposes."

(c) Section 2, Fourth, of title I of the Railway Labor Act is amended by adding to the end of the second sentence thereof the words, "or to determine that no representative shall be chosen."; deleting the words "*Providing,* That," and the preceding colon; inserting in lieu of the colon, the words, "except as provided in section 2, Eleventh, of this Act."; and capitalizing the word "Nothing" which would follow thereafter.

(d) Section 2, Ninth, of title I of the Railway Labor Act is amended by inserting "(a)" after the word "Ninth."; inserting after the first word "employees" the words, "or between a carrier and its employees"; substituting the word "any" for the word "either" preceding the word "party" and adding after the word "party," the words "including the carrier on which the dispute arises,"; substituting the word "the" for the word "both" preceding the word "parties"; adding the words, "or that no representative has been selected," preceding the words "and certify"; adding the words ", if any," following the words, "so certified"; redesignating the last sentence as paragraph "(d)" to follow new paragraph to be designated "(c)"; adding to the sentence following the words "records of the" the words "labor organization and" and substituting the word "sections" for the word "paragraph" as the last word of new paragraph "(d)"; adding as the last sentence of paragraph "(a)" the words,

"In each election conducted under this paragraph, employees shall be entitled to vote for representation by any labor organization or labor representative, or for no representation."; and adding after paragraph "(a)" new paragraph "(b)" and "(c)" to read as follows:

"(b) If any dispute shall arise between a labor organization representing a craft or class of employees on a carrier and one or more other labor organizations representing a craft or class of employees on the carrier as to whether certain employees or prospective employees of the carrier come within the one craft or class or the other for purposes of this Act, it shall be the duty of the Mediation Board or of a committee of three neutral persons appointed by the Board to act in its behalf, upon request of any labor organization party to the dispute or of the carrier involved, to investigate such dispute and certify to the labor organizations and to the carrier involved, in writing within thirty days after the receipt by the Board of the invocation of its services, the craft or class within which the employees or prospective employees are included for purposes of representation under this Act. Upon receipt of a certification under this paragraph of the craft or class within which the employees or prospective employees are included, the carrier shall treat with the representative of the craft or class so certified as the representative

of such employees or prospective employees for the purposes of this Act.

"(c) If a dispute arises that may be resolved under either paragraph (a) or paragraph (b) of this section, the carrier involved need not treat with anyone as the representative of the employees or prospective employees involved in the dispute prior to receipt of the certification provided for in paragraph (a) or paragraph (b), whichever is applicable."

(e) Section 2, Eleventh (c), of title I of the Railway Labor Act is amended by deleting from the first sentence thereof the words, "that is, an employee engaged in any of the services or capacities covered in section 3, First (h) of this Act defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board," and by deleting the words "national in scope" wherever they appear in section 2, Eleventh (c).

SEC. 103. Section 3 of title I of the Railway Labor Act is repealed in its entirety and substituted therefor is a new section 3 to read as follows:

"SEC. 3. (a) Any dispute or disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions shall be handled in the usual manner up to and including the highest officer of the carrier designated to

handle such disputes; but, if no adjustment is reached in this manner, the dispute or disputes may be referred by petition of the parties or by a party to a special board of adjustment established as hereinafter provided.

"(b) A special board of adjustment to resolve a dispute or disputes shall be established by a written request made upon an individual carrier by the representative of any craft or class of employees of such carrier, or by the carrier upon any such representative. The carrier or the representative upon whom such request is made shall join in any agreement establishing it. Such board shall consist of one person date such request is made. The dispute or disputes which may be considered by such board shall be specified in the agreement establishing it. Such board shall consist of one person designated by the carrier and one person designated by the representative of the employees. If such carrier or representative fails to agree upon the establishment of such a board as provided herein, or to designate a member of the board, either the carrier or the representative may request the Mediation Board to designate a member of the board on behalf of the carrier or representative. Upon receipt of such request, the Mediation Board shall promptly designate and select an individual associated in interest with the carrier or the representative he is to represent. The members of the board so designated shall determine all matters not agreed upon

by the carrier and the representative of the employees with respect to procedure and jurisdiction of the special board of adjustment, including the question as to whether an additional party or parties may have an interest in any of the unadjusted disputes to be considered by such board and the manner in which the expenses of the board and compensation of any neutral appointed will be shared by the parties. If they are unable to agree, such matters shall be determined by a neutral member of the special board of adjustment selected or appointed and compensated in the same manner hereinafter provided for the appointment of a neutral member when the board is unable to agree upon an award. Such neutral member shall cease to be a member of the board when he has determined such matters except as provided in paragraph (f).

"(c) If the members of the special board of adjustment are unable to agree upon an award disposing of a dispute or disputes they shall forthwith agree upon and select a neutral person, to be known as 'referee,' to be a member of the board for the consideration and disposition of such dispute or disputes. In the event the members of such board are unable, within ten days after their failure to agree upon an award, to agree upon the selection of such neutral person, either member of the board may request the Mediation Board to appoint such neutral person and upon

receipt of such request, the Mediation Board shall promptly make such appointment. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this Act for the appointment of arbitrators.

"(d) The special board of adjustment shall hold hearings on each dispute submitted to it. The parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect. The parties may present, either orally or in writing, or both, statements of fact, supporting witnesses and other evidence, and argument of their respective positions with respect to each case. The board shall have authority to require the production of such additional evidence, either oral or written as it may desire from the parties.

"(e) If the special board of adjustment determines that an additional party or parties may have an interest in any unadjusted dispute submitted to it, such party shall be given due and reasonable notice of the time and place such dispute is to be heard by the board and an opportunity shall be afforded said third party to appear before the board and be heard and present evidence consistent with the rules and procedures adopted by the board, including the right to be present at any executive session of the board convened for the purpose of considering and adopting any proposed award. In

a dispute where notice has been given to additional parties, the neutral member of the special board of adjustment shall be one of the two members of the board rendering an award.

"(f) The awards of the special board of adjustment shall be in writing. No award shall be rendered in a dispute involving additional parties unless it is resolved as to all parties involved. A copy of the awards shall be furnished to all parties including any additional parties and the awards shall be final and binding upon all parties to the dispute including such additional party or parties. In case a dispute arises involving an interpretation of the award, the special board of adjustment upon request of any party shall interpret the award in the light of the dispute. If in a judicial proceeding, an award is held not binding on one or more of the parties to the dispute, including additional parties, the award shall be deemed not binding on any of the parties.

"(g) Except as provided in paragraph (e) of this section, a majority vote of all members of the board shall be competent to make an award with respect to any unadjusted dispute submitted to it.

"(h) In case of an award in favor of the petitioner, the board shall make an order, to make the award effective and, if the award includes a requirement for the payment of money, to pay the said sum on or before a day named. In the event the board determines that an award favorable to

the petitioner should not be made, the board shall make an order stating such determination.

"(i) If a party does not comply with an order of a board within the time limit specified by the board in its order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of a carrier, or through which the carrier operates, a petition setting forth briefly the case for which he claims relief, and the order of the board. Such suit shall proceed in all respects as other civil suits, except that on the trial of such suit, the findings of the board shall be conclusive on the parties. The district courts are empowered to make such order and enter such judgment as may be appropriate to enforce or set aside in whole or in part the order of the board or remand the proceedings to the board for such further action as it may direct; however, such order may not be set aside except for failure of the board to comply with the requirements of this Act, for failure of the order to conform, or confine itself to matters within the scope of its jurisdiction, or for fraud, or corruption by the neutral member of the board.

"(j) If any employee or group of employees, or any carrier, is aggrieved by any of the terms of an award, or by the failure of the special board of adjustment to include

certain terms in such an award, such employee or group of employees or carrier may file in any United States District Court in which a petition under paragraph (i) of this section could be filed, a petition for review of the board's order. The petitioner shall file in the court the record of the board proceedings on which it bases its action. The court shall have jurisdiction to affirm the order of the board or to set it aside, in whole or in part, or it may remand the proceedings to the board for further action as it may direct. On such review, the findings of the board shall be conclusive on the parties, except that the order of the board may be set aside, in whole or in part or remanded to the board for failure of the board to comply with the requirements of this Act, for failure of the order to conform, or confine itself, to matters within the scope of the board's jurisdiction, or for fraud or corruption by the neutral member of the board making the order. The judgment of the court shall be subject to review as provided in sections 1291 and 1254 of title 28, United States Code.

"(k) All actions under (i) and (j) of this section shall be commenced within two years from the date of the board's award.

"(l) Each member of any special board of adjustment representing a carrier or its employees shall be compensated by the party he represents. All expenses incurred in con-

nection with a board, including the compensation and incurred expenses of any neutral person, shall be paid for by the parties except that any additional party or parties shall not be required to share in such expenses.

"(m) The National Railroad Adjustment Board shall be dissolved within two years from the date of this Act or after it has processed to completion all of the disputes before it, whichever occurs first. Any party to a dispute now pending before the National Railroad Adjustment Board may, upon written notice to the other that he wishes to submit it to a special board of adjustment established as provided in this section, withdraw such a dispute from the National Railroad Adjustment Board. No dispute shall be referred to the National Railroad Adjustment Board commencing sixty days after the effective date of this Act.

"(n) Nothing in this section shall be construed to prevent any carrier, system, or group of carriers and any of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, from mutually agreeing to the establishment of special boards of adjustment on a system, group or regional basis for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that a party to such a special board of adjustment is dissatisfied with such arrangement, it may, upon ninety days' notice to the

other party, terminate such arrangement and have its unadjusted disputes disposed of as otherwise provided in this section."

SEC. 104. (a) Section 4, First, of title I of the Railway Labor Act is amended by deleting the first and third sentence in the first paragraph; substituting the word "five" for the word "three" in the fourth sentence of the first paragraph; and deleting the second paragraph.

(b) Section 4, Third, of title I of the Railway Labor Act is amended by deleting from the words in parentheses under "(3)" the words "Adjustment Board, Regional Adjustment Boards established under paragraph (x) of section 3, and the boards of arbitration, in accordance with the provisions of this section and sections 3 and 7, respectively," and deleting thereafter in the same sentence the words "in the Adjustment Board and in the boards of arbitration,".

(c) Section 4, Fifth, of title I of the Railway Labor Act is repealed in its entirety.

SEC. 105. Section 5, First (b), of title I of the Railway Labor Act is amended by deleting from the first sentence the words "referable to the National Railroad Adjustment Board" and substituting in lieu thereof the words "subject to resolution pursuant to section 3 of this Act"; adding the word "an" preceding the last word of the first sentence of the third paragraph, and adding the words "which will

settle the controversy or provide a means of reaching settlement" at the end of the sentence; and deleting the remainder of section 5, First (b), following the word "once" in the second sentence of the third paragraph, substituting in lieu thereof of words "notify both parties in writing that its mediatory efforts have failed and shall notify the Secretaries of Labor, Commerce, and Transportation as required by section 10 of this Act."

SEC. 106. (a) Section 7, Third (e), of title I of the Railway Labor Act is amended by deleting the second sentence and substituting in lieu thereof the sentence, "All other expenses incurred in connection with a board of arbitration, including the compensation and expenses of any neutral person or arbitrator, shall be paid for by the parties."

(b) Section 7, Third (g), of title I of the Railway Labor Act is deleted and section 7, Third (h) is redesignated section 7, Third (g).

SEC. 107. Section 5, Third (b), section 8(d), and section 9, Fifth and Sixth, of title I of the Railway Labor Act, are amended by deleting the word "circuit" from the phrase "circuit court of appeals."

SEC. 108. Section 10, of title I of the Railway Labor Act is repealed in its entirety and substituted therefor is a new section 10 to read as follows:

"SEC. 10. First. If a dispute between a carrier or car-

riers and its or their employees is not adjusted under the foregoing provisions of this Act, the Board shall at once notify the Secretaries of Labor, Commerce, and Transportation who shall, within ten days, jointly appoint a Transportation Labor Panel to investigate such dispute. The Panel shall be composed of such number of persons as the Secretaries may deem desirable, one of whom shall be designated as chairman. Such Panel shall be created separately in each instance.

"Second. The Panel shall not attempt to adjust the dispute through mediation or conciliation and shall not make any recommendations regarding the terms and conditions for settlement of the dispute, except as may otherwise be provided in this Act.

"Third. Following the Board's notification to the Secretaries of Labor, Commerce, and Transportation and for thirty days after exhaustion of the last procedure possible under this section, including the procedure under Sixth A, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

"Fourth. Within fifteen days of the date of appointment of the Transportation Labor Panel, it shall, if the dispute has not been resolved, make a specific recommendation to the Secretaries of Labor, Commerce, and Transportation

as to which of the procedures specified in paragraph Sixth of this section it believes to be most appropriate for the further handling of the dispute. The Panel shall, in determining its recommendation, give due consideration to the general purposes of this Act as stated in section 2.

"Fifth. The three Secretaries shall accept and implement forthwith or reject the recommendation of the Transportation Labor Panel within five days. If the three Secretaries reject the Panel's recommendation, they shall, concurrently with such rejection, select and implement forthwith any one of the three remaining alternative procedures provided in paragraph Sixth of this section.

"Sixth. The Transportation Labor Panel shall, pursuant to paragraph Fourth of this section, recommend to the Secretaries of Labor, Commerce, and Transportation one of the procedures specified in the following subparagraphs for the further handling of the unadjusted dispute.

"A. Take no further action in the unadjusted dispute;

"B. Appoint a factfinding board composed of three neutral members to further investigate the merits and facts of the dispute with a hearing in which the parties may participate and make within thirty days its recommendations as to the terms of settlement of the dispute;

"C. Direct the parties to the dispute to make an

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agreement to arbitrate the dispute in accordance with sections 7 and 8 of this Act to the extent not inconsistent herewith.

"(1) If the parties are unable to agree upon the terms of an arbitration agreement within ten days after the date of such direction, the Transportation Labor Panel shall determine within ten days thereafter the terms under which the arbitration is to be conducted and such determination shall have the same effect, including the preclusion of resort to either strike or lockout, as an agreement to arbitrate arrived at by the parties to the dispute in accordance with sections 7 and 8 of this Act.

"(2) The arbitration board shall consist of an odd number of members, not less than five, a majority of whom shall be public members appointed by the Secretaries of Labor, Commerce, and Transportation (one of whom shall be designated chairman), with the remaining members divided equally between and appointed by the carrier or carriers involved and the representative or representatives of the employees involved. If the parties so agree, the arbitration board shall consist of three members and the carrier or carriers, and the representatives of the employees shall each name one arbitrator; a

third arbitrator, who shall be the chairman, shall be appointed by the three Secretaries. The number of members, including the number of public members, shall be designated in the arbitration agreement or in the determination of the Transportation Labor Panel.

"(3) The arbitration board shall make a just and reasonable award which, in its judgment, constitutes a fair and equitable settlement of the dispute.

"(4) An arbitration award made pursuant to this subsection shall be filed as provided in section 8(k) of this Act, except that the United States District Court for the District of Columbia is hereby designated as the court in which the award is to be filed, and shall be subject to section 9 of this Act. The award shall continue in force for such time as the arbitration board shall designate in its award, not to exceed two years from its effective date; unless the parties agree otherwise, and thereafter until changed in accordance with the provisions of this Act.

"D. Direct each party to submit its final offer with respect to the matters in dispute to the National Mediation Board within three days and transmit its offer or

offers to the party or parties at the same time. Within three days after their initial submission and exchange of final offers, either party may submit an additional final offer.

"(1) If a party refuses to submit a final offer, the last offer made by such party during previous bargaining or mediation as determined by the National Mediation Board shall be deemed that party's final offer.

"(2) Each offer or additional offer submitted by a party pursuant to this section must constitute a complete resolution of all the issues involved in the dispute.

"(3) The parties shall continue to bargain collectively for a period of seven days after they receive the other parties' offer or offers. The National Mediation Board may act as mediator during such period.

"(4) If the parties reach an unconditional agreement on any part of the matters in dispute during such seven-day period, they may jointly advise the National Mediation Board that the final offer or offers submitted by them are to be revised to remove such matters therefrom.

"(5) If no settlement has been reached before the end of the period prescribed in subsection

(3) of this subparagraph, the parties shall, within two days thereafter, select a three-member Final Offer Board, one member to be the chairman, to act as final offer selectors. If the parties are unable to agree on the composition of the board, the three Secretaries shall appoint such members, designating one member the chairman thereof.

"(6) The Final Offer Board shall conduct hearings in which the parties may participate. Such hearings shall be completed and the board shall make its determination as hereinafter provided within thirty days after the date on which the board was appointed.

"(7) The board shall at no time engage in an effort to mediate or otherwise settle the dispute in any manner other than that prescribed by this section.

"(8) From the time of appointment of the board until it makes its determination, there shall be no communication by the members of the board with third parties concerning recommendations for settlement of the dispute.

"(9) The board shall select the final offer which it determines upon the basis of the record before it to be the most reasonable of the final offers submitted

by the parties. The board shall not compromise or alter the final offer it selects.

"(10) The final offer selected by the board shall be deemed to represent the contract between the parties as to the matters in dispute and shall have the same effect, including the preclusion of resort to either strike or lockout, as though arrived at by the agreement of the parties under this Act.

"(11) The final offer selected by the board pursuant to this subsection shall be filed as provided in section 8(k) of this Act, except that the United States District Court for the District of Columbia is hereby designated as the court in which the final offer selected is to be filed, and to the extent not inconsistent herewith, shall be subject to section 9 of this Act.

"Seventh. Any panel or board established hereunder may act by majority vote. A vacancy on any board or panel established hereunder shall not impair the right of the remaining members to exercise all of the powers of the board or panel. In the event any member is unable or unwilling to serve or a vacancy occurs, his successor shall be selected in the same manner as in the original selection. Public or neutral members appointed to serve on any board or panel provided for by this section shall be paid reasonable com-

pensation for their services in an amount to be fixed by the three Secretaries and shall be reimbursed for necessary traveling expenses and expenses actually incurred for subsistence while serving as such members. Members appointed by the three Secretaries shall be wholly disinterested in the controversy, impartial, without bias as between the parties, and shall not be financially or otherwise interested in any carrier or organization of employees. All expenditures of such board or panel shall be allowed and paid on the presentation of itemized vouchers approved by the chairman.

"Eighth. For the purpose of carrying out its functions under this Act, any panel or board which may be created under this section is authorized to employ experts and consultants or organizations thereof as authorized by section 3109 of title 5, United States Code, and allow them, while away from their home or regular place of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 (b) of title 5, United States Code, for persons in the Government service employed intermittently while so employed.

"Ninth. Any panel or board which may be created under this section may, if the parties consent or agree thereto, extend any time limits contained in this section."

SEC. 109. Title I of the Railway Labor Act is further amended by adding section 15 to read as follows:

"SEC. 15. (a) It shall be unlawful for any person or labor organization or for any agent or member of such organization, to engage in, or to induce, encourage, or coerce any employee of any carrier to engage in a strike or refusal, in the course of his employment, to perform his regularly assigned duties, where an object thereof is to force, require, or induce any carrier or employee of any carrier to cease handling or transporting the property of, or to cease doing business with any person, or to cease its normal and regular interchange or other common carrier relations with any other carrier. Nothing contained in this section shall be construed to make unlawful where not otherwise unlawful, any primary strike or primary picketing.

"(b) Any United States District Court within the territorial jurisdiction of which any violation of this section shall have been committed or shall be threatened shall have jurisdiction, at the instance of any aggrieved carrier or person, to grant the remedy of injunction, prohibitive or mandatory, which may be appropriate in the premises; and in any such action or proceeding the provisions of section 6 and 20 of the Act of October 15, 1914, as amended (15 U.S.C. 17, and 29 U.S.C. 52), and the provisions of the Act entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes,' approved March 23, 1932 (29 U.S.C. 101-115), shall not be deemed to apply."

SEC. 110. Amend section 201 of title II of the Railway Labor Act by deleting the words "or subordinate official" and adding at the end thereof the following:

"The term 'employee' shall not include any individual employed as a supervisor. The term 'supervisor' means any individual having authority, in the interest of a carrier or carriers, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. The term 'employee' shall include any person employed as a pilot, copilot, or other flightcrew member, or as a purser, who works in such capacity in commercial operations more than 20 per centum of his working time."

SEC. 111. Amend section 204 of title II of the Railway Labor Act by adding the word "special" following the words "lawfully exercised by" in the second paragraph thereof.

SEC. 112. Amend section 204 of title II of the Railway Labor Act by deleting all language following the first semicolon in the third paragraph and substitute a period therefor.

SEC. 113. Sections 205 and 206 are repealed in their entirety.

SEC. 114. Sections 207 and 208 are redesignated sections 205 and 206.

TITLE II

AMENDMENTS TO THE RAILROAD UNEMPLOYMENT INSURANCE ACT

SEC. 201. (a) Section 4(a-2)(iii) of the Railroad Unemployment Insurance Act is amended by deleting the words "subject to the provisions of subsection (b) of this section," at the beginning of the paragraph; deleting the remainder of the paragraph after the word "employed"; and substituting a semicolon for the comma after the word "employed".

SEC. 201. (b) Section 4(a-2) of the Act is further amended by adding the following subsection:

"(iv) any day with respect to which the Board finds that, though not subject to the disqualification provided in paragraph (iii), he failed to report for work and perform his assigned duties during a stoppage of work because of a strike in the establishment, premises, or enterprise at which he was last employed."

SEC. 201. (c) Section 4(b) of the Act is repealed in its entirety, and sections 4(c), 4(d), and 4(e) are redesignated as sections 4(b), 4(c), and 4(d), respectively.

92D CONGRESS
1ST SESSION

S. 2369

IN THE SENATE OF THE UNITED STATES

JULY 29, 1971

Mr. FANNIN (for himself, Mr. BENNETT, Mr. ERVIN, and Mr. GOLDWATER) introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To amend the national emergency provisions of the Labor-Management Relations Act, 1947, so as to provide for dissolution of injunctions thereunder only upon settlement of disputes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 209 (b) of the Labor-Management Relations Act, 1947 (29 U.S.C. 179 (b)), is amended by striking out the words "and shall certify the results thereof to the Attorney General within five days thereafter".

(b) Section 210 of such Act (29 U.S.C. 180) is amended by striking out the words "Upon the certification of the results of such ballot or upon a settlement being reached, whichever happens sooner" and inserting in lieu thereof "Upon a settlement being reached".

92D CONGRESS
1ST SESSION

S. 2583

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 27, 1971

Mr. MILLER introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To amend the Labor Management Relations Act, 1947, to provide for the settlement of emergency labor disputes affecting commerce which imperil the health and safety of a major region of the Nation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the first sentence of section 206 of the Labor Management Relations Act, 1947, is amended to read as follows: "Whenever, in the opinion of the President, a threatened or actual strike or lockout in an industry affecting commerce will, if permitted to occur or to continue, imperil the health and safety of the Nation or a major region thereof, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe.".

(b) (1) Section 208 (a) (i) of such Act is amended to read as follows:

"(i) is in an industry affecting commerce; and".

(2) Section 208 (a) (ii) of such Act is amended by striking out the words "health or safety of the Nation or a major region thereof".

(c) Section 209 (a) of such Act is amended by striking out the words "national health or safety" and inserting in lieu thereof the words "health or safety of the Nation or a major region thereof".

92D CONGRESS
1ST SESSION

S. 2655

IN THE SENATE OF THE UNITED STATES

OCTOBER 5, 1971

Mr. STAFFORD introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To amend the Railway Labor Act to provide more effective means for protecting the public interest in national emergency disputes involving the railroad and airline transportation industries, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 10 of the Railway Labor Act (45 U.S.C. 160) is amended to read as follows:

"EMERGENCY PROCEDURES

"SEC. 10. If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this Act and should, in the judgment of the Mediation Board,

threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon, in his discretion, invoke the procedures provided in title III of this Act by notification to the parties concerned and to the National Mediation Board. Upon such notification by the President, and for sixty days thereafter, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.".

SEC. 2. The Railway Labor Act is amended by adding at the end thereof the following new title:

"TITLE III

"SEC. 301. Upon notification by the President of the invocation of the procedures of this title as provided in section 10 of this Act, the National Mediation Board shall, within thirty days, recommend to the President specific actions under this title which it deems most appropriate to the settlement of the dispute and the protection of the public interest. Such recommendations shall not be made public, nor shall they be disclosed in whole or in part to the parties concerned in the dispute. During subsequent proceedings under this title, the National Mediation Board shall, at any time it deems desirable or at the request of the President, submit additional procedural recommendations to the President for

his consideration. Such additional recommendations shall not be made public nor disclosed in any way to the parties concerned in the dispute. No recommendations made under this section shall be binding on the President.

"SEC. 302. During the sixty-day period provided in section 10 of title I of this Act, the President may, in his discretion, create a board to investigate and report respecting such dispute. The report of the board shall include substantive recommendations for agreements between the parties to the dispute. The President shall transmit such recommendations to the parties, and may make such recommendations public if he so desires. Such board shall be composed of such number of persons as the President may deem desirable. No member of the board shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of the members of any such board shall be fixed by the President. Such board shall be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President within the sixty-day period referred to in section 10 of title I of this Act. There is authorized to be appropriated such sums as may be necessary for the expenses of such board, including the compensation and the necessary traveling expenses and expenses actually incurred for subsistence, of the members of the board. All expenditures of the board shall be allowed

and paid on the presentation of itemized vouchers therefor approved by the chairman.

"SEC. 303. If, at the end of the sixty-day period referred to in section 10 of title I of this Act, no agreement has been reached by the parties to the dispute, and if the President finds that the dispute threatens substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, he shall proceed under the provisions of section 305, 306, or 307 of this title. Until final agreement to the dispute is reached, the President shall continue to proceed under these sections in such sequences as he may deem appropriate, except that he shall proceed initially under the provisions of section 306 unless he finds that the national health and safety would thereby be immediately imperiled.

"SEC. 304. The provisions of sections 305, 306, and 307 of this title shall apply immediately upon the President's announcement in each instance. If the provisions of either section 305 or 307 are selected by the President while any selective strikes are in progress under section 306, those strikes shall be terminated, and the provisions of section 305 or 307 will apply, immediately.

"ADDITIONAL COOLING-OFF PERIOD

"SEC. 305. If the President elects to proceed under the provisions of this section, he shall direct the parties to the

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controversy to refrain for a period of not more than thirty days from making any changes, except by agreement, in the terms and conditions of employment which were in effect at the time of the President's notification invoking the provisions of title III of this Act. During such period the parties shall continue to bargain collectively, and the National Mediation Board shall continue to mediate the dispute.

"SELECTIVE STRIKES

"SEC. 306. (a) If the President elects to proceed under the provisions of this section, the employees affected by the dispute may, after notice of not less than ten days to the carriers concerned, selectively strike, subject to the limitations and obligations of partial operation imposed by subsection (b) of this section, any of the carriers or carrier systems to whom such proposal was directed without concurrently striking other carriers to whom such proposal was also directed and who may have been jointly or concurrently involved with the struck carrier or carriers in the previous handling of the dispute under this Act. For the purposes of this section a strike in the railroad industry shall be a 'selective' strike if not more than two such carriers or groups of such carriers operating in a system in any one of the eastern, the western, or the southeastern regions are concurrently struck and the aggregate revenue ton miles transported by all such carriers in any one region who are concurrently

struck did not in the preceding calendar year exceed 20 per centum of the total revenue ton miles transported by all carriers in such region in such year. If only one railroad carrier is struck in any one region, the revenue ton mile limitation shall not apply in that region. The eastern, the western, and the southeastern regions as used in this subsection mean, respectively, the carriers represented by the Eastern, Western, and the Southeastern Carriers' Conference Committees and any other carriers operating in the territories in which such carriers respectively operate.

"(b) Whenever a selective strike or a strike of any combination of carriers occurs, such carrier or carriers and representative or representatives of the employees on strike shall provide service and transportation for such persons and commodities as may be directed by the President pursuant to the provisions of this subsection. In order to proceed under this subsection, the President must find that such services or transportation cannot in any way be provided by alternate rail, truck, water, or air transportation, and must find that the termination of such services or transportation would immediately imperil the national health or safety. The Secretary of Transportation, the Secretary of Defense, the Secretary of Commerce, the Office of Emergency Preparedness, the Joint Board on Fuel Supply and Rail Transport, and other interested governmental agencies shall advise the President as to

the necessity for such services and transportation, which shall include, but not necessarily be limited to, transportation of defense materials, coal for the generation of power, operation of passenger trains, including commuter service, and operation of key interchange points or jointly owned facilities of a struck carrier.

"(c) Whenever the President has proceeded under the provisions of this section, it shall be unlawful for any carrier to lock out any craft or class of its employees, or any segment of any such class or craft, or in any manner to diminish its transportation service in consequence of any dispute subject to this section unless such carrier is caused to diminish such service by a strike of all or some portion of its employees, and then only as permitted by applicable agreements and in accordance with the notice and other provisions of such agreements.

"(d) In any dispute subject to the provisions of this section, any agreements affecting rates of pay, rules, or working conditions between the employees or their representatives and any carriers which have been struck under this section shall be immediately offered jointly, without change, to all carriers who have been jointly or concurrently involved in the previous handling of the dispute under this Act. If all such carriers do not, within ten days after any such offer, jointly accept such agreements without

change, the agreements shall be then offered, individually, to each such carrier. If any such carrier does not, within ten days after having received such individual offer, individually accept such agreements without change, the employees affected by the dispute may selectively strike such carrier, subject to the limitations specified in subsection (a) of this section.

"(e) In the event that separate disputes within a single industry are simultaneously subject to this section, the limitations provided in subsection (a) and subsection (b) of this section shall apply jointly to all selective strikes within that industry.

"FINAL OFFER SELECTION

"SEC. 307. (a) If the President elects to proceed under the provisions of this section, he shall direct each party to submit a sealed final offer to the Secretary of Labor within five days. Each party may at the same time submit one alternative sealed final offer. If any party refuses to submit a final offer, the last offer made by such party during previous bargaining shall be deemed that party's final offer, and shall be prepared, sealed, and submitted to the Secretary by the National Mediation Board. Any offer submitted by a party pursuant to this section must resolve all the issues involved, and shall be restricted to matters arising from the no-

tices filed under section 6 of the Act concerning the particular dispute.

"(b) The parties may, within ten days after the President has proceeded under the provisions of this section, select a three-member panel to act as the final offer selector. If the parties are unable to agree on the composition of the panel, the President shall select the panel.

"(c) The provisions of section 302 of title III of this Act shall apply to the panel.

"(d) The panel shall immediately upon its selection, conduct an informal hearing in which it may direct either party or the Government to provide any relevant information regarding the dispute or the factors referred to in subsection (e) of this section.

"(e) Thirty days after the selection of the panel, if no complete agreement has been reached by the parties, the Secretary shall transmit to the panel the sealed final offers, and the panel shall select within five days, the most reasonable, in its judgment, of those final offers. The party which submitted the final offer selected by the panel shall not be identified by the panel, and the remaining final offers shall not be disclosed in any way, and shall be returned to the parties. The panel may take into account the following factors:

"(1) past collective bargaining contracts between the parties including the bargaining that led up to such contracts;

"(2) comparison of wages, hours, and conditions of employment of the employees involved, with wages, hours, and conditions of employment of other employees doing comparable work, giving consideration to factors peculiar to the industry involved;

"(3) comparison of wages, hours, and conditions of employment as reflected in industries in general, and in the same or similar industry;

"(4) security and tenure of employment with due regard for the effect of technological changes on manning practices or on the utilization of particular occupations; and

"(5) the public interest, and any other factors normally considered in the determination of wages, hours, and conditions of employment.

"(f) The panel shall not compromise nor 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 shall be given to, nor shall any evidence be received concerning, the collective bargaining in the particular dispute, including offers of settlement not contained in the final offers, except that the panel shall receive in evidence and give considera-

tion to the report of any board created under section 302 of this Act with respect to the particular dispute.

"(g) During the period commencing when the President has proceeded under the provisions of this section, the parties are directed to undertake collective bargaining in good faith under the auspices of the National Mediation Board. If, before the panel has announced its selection of a final offer, any complete agreement is reached concerning the issues under dispute, notwithstanding the final offers submitted in accordance with this section, then the provisions of this section no longer apply, the final offers will be returned to the parties without being disclosed in any way, and the agreements reached will be considered final and binding.

"(h) From the time the President proceeds under the provisions of this section, until the panel selects the final offer it judges most reasonable or until agreement is reached between the parties under subsection (g), no changes shall be made in the terms and conditions of employment which were in effect at the time of the President's notification invoking the provisions of title III of this Act.

"(i) The final offer selected by the panel shall be deemed to represent the contract between the parties, and shall be conclusive unless found arbitrary and capricious."

92D CONGRESS
1ST SESSION

S. 2850

IN THE SENATE OF THE UNITED STATES

NOVEMBER 12, 1971

Mr. TAFT introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To amend the Labor-Management Relations Act, 1947, and the Railway Labor Act to provide for the settlement of certain emergency labor disputes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Emergency Labor Disputes Act of 1971".

SEC. 2. (a) Congress hereby finds—

(1) that the present procedures established by sections 206–10 of the Labor-Management Relations Act, 1947, and section 10 of the Railway Labor Act for dealing with labor disputes which threaten the health and safety of the American people or tend to deprive any sec-

tion of the country of essential transportation services are inadequate and have, in certain cases, produced a deterioration of the collective-bargaining process as well as an intensification of emergencies created by such disputes;

(2) the use of present procedures for resolving such labor disputes has not prevented serious disruptions in operations and services essential to the health and safety of the Nation or a substantial part of its population or territory; and

(3) a permanent range of flexible procedures permitting prompt action to deal with national or regional emergencies created by labor disputes is necessary to prevent imperiling the health and safety of the Nation or a substantial part of its population or territory by such disputes and to encourage and maintain free collective bargaining.

(b) It is the purpose of this Act to make available a range of flexible procedures to be utilized in taking emergency action, to prevent the interruption of operations or services essential to the health and safety of the Nation or a substantial part of its population or territory because of actual or threatened strikes or lockouts.

SEC. 3. Sections 206–209 of the Labor-Management Relations Act, 1947, are amended to read as follows:

"SEC. 206. (a) Whenever in the opinion of the President of the United States a threatened or actual strike or lockout or other labor dispute in an industry affecting commerce may, if permitted to occur or to continue, imperil the health or safety of the Nation or a substantial part of its population or territory, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. Such report shall include a statement of the facts with respect to the dispute, including each party's statement of its own position, and, if the President so directs at any time, there shall be included in such report or in a supplemental report the recommendations of the board of inquiry for the settlement of some or all of the issues in dispute. The President shall file a copy of such report with the Secretary of Labor and shall make its contents available to the public.

"(b) Upon receiving a report or a supplemental report from a board of inquiry, the Secretary may initiate one or more of the following actions: (1) He may direct for a specified period not to exceed 30 days no change in the conditions out of which the dispute arose shall be made by the parties to the dispute, except by agreement. During such period the parties to the dispute shall be under a duty to bargain collectively, but neither party shall be under a duty

to accept in whole or in part any recommendations of the board of inquiry.

"(2) (a) He may issue an order specifying the extent and condition of partial operation that must be maintained; *Provided*, That in no event, shall his order place a greater economic burden on any party than that which a total cessation of operations would impose.

"(b) The parties shall not interfere by resort to strike or lockout with the partial operation ordered by the Secretary. The Secretary's order shall be effective for a period determined by the Secretary, but not to exceed one hundred and eighty days.

"(c) The Secretary's order or any modification thereof shall be conclusive unless found arbitrary or capricious by the district court which granted the injunction pursuant to section 208 of this Act.

"(d) (1) The Secretary shall issue his order no later than thirty days from the receipt of the report from the President, unless the parties, including the Government, agree to an extension of time but such extension shall reduce pro tanto the maximum effective period of the board's order.

"(2) On notice to the parties, the Secretary may at any time during the period of partial operation modify its order as it deems necessary to effectuate the purposes of this section.

"(e) Until the Secretary makes his determination and during any period of partial operation ordered by the Secretary, no change, except by agreement, shall be made in the terms and conditions of employment. If the Secretary determines that the implementation of any particular term of the existing terms and conditions of employment is inconsistent with the conditions of partial operation, he may order the suspension or modification of that term but only to the extent necessary to make it consistent with the conditions of partial operation.

"(3) (a) He may direct each party to submit to him a final offer within three days. Each party may at the same time submit one alternative final offer. The Secretary shall transmit the offers to the other parties simultaneously.

"(b) If a party or parties refuse to submit a final offer, the last offer made by such party or parties during previous bargaining shall be deemed that party's or parties' final offer. Any offer submitted by a party pursuant to this section must constitute a complete collective-bargaining agreement and resolve all the issues involved in the dispute.

"(c) The parties shall continue to bargain collectively for a period of five days after they receive the other parties' offers. The Secretary may act as mediator during the period of the final offer selection proceedings.

"(d) If no settlement has been reached before the end of the period prescribed in subsection (c) of this section, the parties may within two days select a three-member panel to act as the final offer selector. If the parties are unable to agree on the composition of the panel, the President shall appoint the panel.

"(e) No person who has a pecuniary or other interest in any organization of employees or employers or employers' organizations which are involved in the dispute shall be appointed to such panel.

"(f) The provisions of sections 207(b) and 207(c) of this Act shall apply to the panel.

"(g) The panel shall conduct an informal hearing in accordance with section 207(c) of this Act insofar as practicable, except that—

"(1) the Government shall have no right to participate; and

"(2) the thirty-day period in which the panel shall complete its hearings and reach its determination shall run from the time that the Secretary directed the parties to submit final offers.

"(h) The panel shall at no time engage in an effort to mediate or otherwise settle the dispute in any manner other than that prescribed by this section.

"(i) From the time of selection of the panel until such

time as the panel makes its selection, there shall be no communication by the members of the panel with third parties concerning recommendations for settlement of the dispute.

"(j) Beginning with the direction of the Secretary to submit final offers and until the panel makes its selection, there shall be no change, except by agreement of the parties, in the terms and conditions of employment. In no instance shall such period exceed thirty days.

"(k) The panel shall 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 shall be given to, nor shall any evidence be received concerning, the collective bargaining in this dispute including offers of settlement not contained in the final offers.

"(l) The panel shall select the most reasonable, in its judgment, of the final offers submitted by the parties. The panel may take into account the public interest, and any other factors normally considered in the determination of wages, hours, and conditions of employment.

"(m) The final offer selected by the panel shall be deemed to represent the contract between the parties.

"(n) The determination of the panel shall be conclusive unless found arbitrary and capricious by the district court which granted the injunction pursuant to section 208 of this Act.

"(4) (a) He may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lockout or the continuing thereof, and if the court finds that such threatened or actual strike or lockout—

"(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and

"(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lockout, or the continuing thereof, and to make such other orders as may be appropriate.

"(b) In any case, the provisions of the Act of March 23, 1932, entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes', shall not be applicable.

"(c) The order or orders of the court shall be subject to review by the appropriate circuit court of appeals and by the Supreme Court upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, sec. 1254).

"SEC. 207. (a) The board of inquiry shall be composed

of a chairman and such other members as the President shall determine, and shall have power to sit and act in any place within the United States and to conduct such hearings either in public or in private, as it may deem necessary or proper, to ascertain the facts with respect to the causes and circumstances of the dispute.

"(b) Members of the board of inquiry or panel appointed under section 206(b)(3) shall receive compensation, at the daily rate prescribed for GS–18 under section 5332 of title 5, United States Code, for each working day on the board or panel, together with necessary travel and subsistence expenses.

"(c) For the purpose of any hearing or inquiry conducted by any board or panel appointed under this title, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (U.S.C. 19, title 15, sections 49 and 50, as amended), are hereby made applicable to the powers and duties of the board and panel.

"(d) Any board or panel established under this Act shall act by majority vote.

"(e) A vacancy on any such board or panel shall not impair the right of the remaining members to exercise all of the powers of such board or panel. Such vacancy shall

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be filled by the same procedure as provided for initial appointment outlined in this Act.

"SEC. 208. (a) The provisions of this title and orders or determinations issued thereunder shall be enforceable upon suit by the Attorney General, through such orders as may be appropriate by any court having jurisdiction of any of the parties.

"(b) Any action brought under this section shall be heard and determined by a three-judge district court in accordance with section 2284 of title 28, United States Code. The order or orders of the court shall be subject to review by the Supreme Court in accordance with section 1253 of title 28, U.S.C.

"SEC. 209. (a) Notwithstanding any other provisions of this Act, whenever any employer proposes a change in work rules affecting employees as contained in any labor agreement, unless such work rules relate solely to the health or safety of employees, the employer may make such change effective as proposed, if (1) any cost savings realized as a result of such change affecting rules will be shared 50 per centum each by the employer implementing such a change and the nonprofessional and nonsupervisoral employees, as defined in title I of the Labor Management Relations Act of 1947, and (2) any reduction in the number of operating

employees of such employer contemplated by the proposed change affecting rules will be accomplished by attrition.

"(b) Nothing in this subsection shall be construed to prevent carriers and representatives of the employees from entering into an agreement affecting work rules.

"(c) For the purposes of clause (1) of subsection (a) of this section, payments to employees shall be on a per capita basis and shall be made not later than four months following the end of the fiscal year. In the event that any employee was not employed by an employer for the entire fiscal year preceding the payment date, the payment to such employee hereunder shall be prorated to cover the period of employment.

"(d) In the event that any representative of affected employees contests the amount of cost savings as determined by the employer under clause (1), subsection (a) of this section, said representative and the employer shall mutually designate and compensate a certified public accountant, whether an individual, partnership, or corporation, which accountant shall make a determination of the cost savings, which determination shall thereupon be final and binding."

SEC. 4. Section 210 of the Labor-Management Relation Act, 1947, is repealed.

SEC. 5. Section 212 of the Labor-Management Relations Act, 1947, is amended to read as follows:

"REPEAL OF SECTION 10 OF THE RAILWAY LABOR ACT

"SEC. 212. Section 10 of the Railway Labor Act is hereby repealed: *Provided*, That such section shall continue in effect with respect to any emergency board in existence on the effective date of this Act. Disputes heretofore subject to section 10 of the Railway Labor Act shall be subject to provisions of this title."

SEC. 6. Title II of the Labor-Management Relations Act, 1947, is amended by adding at the end thereof the following new section:

"RIGHTS OF EMPLOYEES

"SEC. 213. Nothing in this title shall be construed to limit the right of any employee to resign from his position of employment."

SEC. 7. INAPPLICABILITY OF THE NORRIS-LA GUARDIA ACT.—The provisions of the Act of March 23, 1932, entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes, shall not be applicable to any judicial proceeding brought under or to enforce the provisions of this Act.

92D CONGRESS
1ST SESSION

S. 2959

IN THE SENATE OF THE UNITED STATES

DECEMBER 6 (legislative day, DECEMBER 4), 1971

Mr. TAFT (for himself and Mr. FONG) introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To amend the Labor-Management Relations Act, 1947, and the Railway Labor Act to provide for the settlement of certain emergency labor disputes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Emergency Labor Disputes Act of 1971".

SEC. 2. (a) Congress hereby finds—

(1) that the present procedures established by sections 206–210 of the Labor-Management Relations Act, 1947, and section 10 of the Railway Labor Act for dealing with labor disputes which threaten the health or safety of the Nation or a substantial part of its population

or territory, or deprive any section of the country of essential transportation services need to be amended to provide a greater flexibility in preventing national or regional emergencies created by labor disputes;

(2) present procedures for resolving such labor disputes need to be amended to prevent serious disruptions in operations and services essential to the health or safety of the Nation or a substantial part of its population or territory; and

(3) additional procedures need to be made available to permit prompt action to deal with national or regional emergencies created by labor disputes is necessary to prevent imperiling the health or safety of the Nation or a substantial part of its population or territory by such disputes and to encourage and maintain free collective bargaining.

(b) It is the purpose of this Act to make available a range of flexible procedures to be utilized in taking emergency action, to prevent the interruption of operations or services essential to the health or safety of the Nation or a substantial part of its population or territory because of actual or threatened strikes or lockouts.

SEC. 3. Sections 206–209 of the Labor-Management Relations Act, 1947, are amended to read as follows:

"SEC. 206. (a) Whenever in the opinion of the Presi-

dent of the United States a threatened or actual strike or lockout or other labor dispute in an industry affecting commerce may, if permitted to occur or to continue, imperil the health or safety of the Nation or a substantial part of its population or territory, or deprive any section of the country of essential transportation services, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. Such report shall include a statement of the facts with respect to the dispute, including each party's statement of its own position, and, if the President so directs at any time, there shall be included in such report the recommendations of the board of inquiry for the settlement of some or all of the issues in dispute. The President shall file a copy of such report with the Secretary of Labor and shall make its contents available to the public.

"(b) Upon receiving the report from a board of inquiry, the Secretary may initiate one or more of the following actions:

"(1) (A) He may issue an order for a specified period not to exceed thirty days that work shall resume or continue, but otherwise no change in the conditions out of which the dispute arose shall be made except by an agreement. During such period the parties to the dispute shall be under a duty

to bargain collectively, but neither party shall be under a duty to accept in whole or in part any recommendations of the board of inquiry.

"(B) The Secretary's order shall be conclusive unless found arbitrary or capricious by a three-judge Federal district court, pursuant to section 2284 of title 28, United States Code. The judgment of the court shall be subject to review by the Supreme Court in accordance with section 1253 of title 28, United States Code.

"(2) (A) He may issue an order for partial operation specifying the extent and condition of partial operation that must be maintained: *Provided,* That in no event shall his order place a greater economic burden on any party than that which a total cessation of operations would impose.

"(B) The parties shall not interfere by resort to strike or lockout with the partial operation ordered by the Secretary. The Secretary's order shall be effective for a period determined by the Secretary, but not to exceed one hundred and eighty days.

"(C) The Secretary's order shall be conclusive unless found arbitrary or capricious by a three-judge Federal district court, pursuant to section 2284 of title 28, United States Code. The judgement of the court shall be subject to review by the Supreme Court in accordance with section 1253 of title 28, United States Code.

"(D) (i) The Secretary shall issue his order for partial operation no later than thirty days from the receipt of the report from the President, unless the parties, including the Government, agree to an extension of time.

"(ii) On notice to the parties, the Secretary may at any time during the period of partial operation modify its order as it deems necessary to effectuate the purposes of this section.

"(E) Until the Secretary makes his determination and during any period of partial operation ordered by the Secretary, no change, except by agreement, shall be made in the terms and conditions of employment. If the Secretary determines that the implementation of any particular term of the existing terms and conditions of employment is inconsistent with the conditions of partial operation, he may order the suspension or modification of that term but only to the extent necessary to make it consistent with the conditions of partial operation.

"(3) (A) He may direct each party to submit to him within three days a list of all resolved and unresolved issues in the dispute. The Secretary shall, within four days after the expiration of the three-day period, prepare a complete list of the unresolved issues, and send a copy of such issues to each party. After receipt of the issues from the Secretary, each party shall within five days submit to the

Secretary a final offer covering each of the unresolved issues. Each party may at the same time submit one alternate final offer covering all the unresolved issues. The Secretary shall forthwith transmit the final offers and any alternative offers to the parties.

"(B) The parties shall continue to bargain collectively for a period of five days after the Secretary has transmitted the final offers and any alternative offers. During such five days the Secretary may act as a mediator. If no settlement is reached during such five-day period, the parties shall within two days thereafter mutually appoint a three-member panel to act as the final offer selector. If the parties are unable to agree on the composition of the panel, the President shall appoint the panel.

"(C) No person who has a pecuniary or other interest in any organization of employees or employers or employers' organizations which are involved in the dispute shall be appointed to such panel.

"(D) The provisions of sections 207(b) through 207(e) of this Act shall apply to the panel.

"(E) The panel shall conduct an informal hearing and shall select a final offer within thirty days from the date when the panel was appointed. The Government shall not participate in the hearing or in the selection of the offer.

"(F) The panel shall at no time engage in an effort

to mediate or otherwise settle the dispute in any manner other than that prescribed by this section.

"(G) From the time of selection of the panel until such time as the panel makes its selection, there shall be no communication by the members of the panel with third parties concerning recommendations for settlement of the dispute.

"(H) Beginning with the direction of the Secretary to submit final offers and until the panel makes its selection, there shall be no change, except by agreement of the parties, in the terms and conditions of employment.

"(I) The panel shall consider only the final offers and alternative offers made pursuant to subsection A of this section. The panel shall not compromise or alter any final offer or alternative offer. Selection of a final offer shall be based on the content of the final offers and no consideration shall be given to, nor shall any evidence be received concerning, the collective bargaining in this dispute including offers of settlement not contained in the final offers.

"(J) The panel shall select the final offer or alternative offer which it determines to be the most reasonable. The panel shall take into account the public interest, and any other factors normally considered in the determination of wages, hours, and conditions of employment. If any party has failed or refused to submit a final offer, the panel shall

forthwith and without a hearing select the final offer of the other party.

"(K) The final offer selected by the panel together with the resolved issues shall be binding between the parties, whether or not subsequently signed by both parties thereto.

"(L) The determination of the panel shall be conclusive unless found arbitrary and capricious by a three-judge Federal district court, pursuant to section 2284 of title 28, United States Code. The judgment of the court shall be subject to review by the Supreme Court in accordance with section 1253 of title 28, United States Code.

"(4) (A) Upon receiving the report from the board of inquiry, the Secretary may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lockout or the continuation thereof for a period not to exceed eighty days. If the court finds that such threatened or actual strike or lockout:

"(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and

"(ii) if permitted to occur or to continue, will imperil the health or safety of the Nation or a substantial

part of its population or territory, or deprives any section of the country of essential transportation services; it shall have jurisdiction to enjoin any such strike or lockout, or the continuation thereof for a period not to exceed eighty days. The court additionally shall issue such other orders as may be appropriate for the enforcement of this subsection.

"(B) In any case, the provisions of the Act of March 23, 1932, entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes', shall not be applicable.

"(C) The order or orders of the court shall be subject to review by the appropriate circuit court of appeals and by the Supreme Court upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, sec. 1254).

"SEC. 207. (a) The board of inquiry shall be composed of a chairman and such other members as the President shall determine, and shall have power to sit and act in any place within the United States and to conduct such hearings either in public or in private, as it may deem necessary or proper, to ascertain the facts with respect to the causes and circumstances of the dispute.

"(b) Members of the board of inquiry or panel appointed under section 206(b)(3) shall receive compensation, at the daily rate prescribed for GS–18 under section

5332 of title 5, United States Code, for each working day on the board or panel, together with necessary travel and subsistence expenses.

"(c) For the purpose of any hearing or inquiry conducted by any board or panel appointed under this title, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (U.S.C. 19, title 15, secs. 49 and 50, as amended), are hereby made applicable to the powers and duties of the board and panel.

"(d) Any board or panel established under this Act shall act by majority vote.

"(e) A vacancy on any such board or panel shall not impair the right of the remaining members to exercise all of the powers of such board or panel. Such vacancy shall be filled by the same procedure as provided for initial appointment outlined in this Act.

"SEC. 208. (a) The provisions of this title and orders or determinations issued thereunder shall be enforceable upon suit by the Attorney General, through such orders as may be appropriate by any court having jurisdiction of any of the parties.

"(b) Any action brought under this section shall be heard and determined by a three-judge district court in

accordance with section 2284 of title 28, United States Code. The order or orders of the court shall be subject to review by the Supreme Court in accordance with section 1253 of title 28, United States Code.

"SEC. 209. (a) Notwithstanding any other provisions of this Act, whenever any employer proposes a change in work rules affecting employees as contained in any labor agreement, unless such work rules relate principally to the health or safety of employees, the employer may make such change effective as proposed, if (1) any cost savings realized as a result of such change affecting rules will be shared 50 per centum each by the employer implementing such a change and the nonprofessional and nonsupervisorial employees, as defined in title I of the Labor-Management Relations Act of 1947, and (2) any reduction in the number of operating employees of such employer contemplated by the proposed change affecting rules will be accomplished by attrition.

"(b) Nothing in this subsection shall be construed to prevent carriers and representatives of the employees from entering into an agreement affecting work rules.

"(c) For the purposes of clause (1) of subsection (a) of this section, payments to employees shall be on a per capita basis and shall be made not later than four months following the end of each fiscal year. In the event that any employee

was not employed by an employer for the entire fiscal year preceding the payment date, the payment to such employee hereunder shall be prorated to cover the period of employment.

"(d) In the event that any representative of affected employees contests the amount of cost savings as determined by the employer under clause (1), subsection (a) of this section, said representative and the employer shall mutually designate and compensate a certified public accountant, whether an individual, partnership, or corporation, which accountant shall make a determination of the cost savings, which determination shall thereupon be final and binding.".

SEC. 4. Section 210 of the Labor-Management Relations Act, 1947, is repealed.

SEC. 5. Section 212 of the Labor-Management Relations Act, 1947, is amended to read as follows:

"REPEAL OF SECTION 10 OF THE RAILWAY LABOR ACT

"SEC. 212. Section 10 of the Railway Labor Act is hereby repealed: *Provided*, That such section shall continue in effect with respect to any emergency board in existence on the effective date of this Act. Disputes heretofore subject to section 10 of the Railway Labor Act shall be subject to provisions of this title."

SEC. 6. Title II of the Labor-Management Relations Act, 1947, is amended by adding at the end thereof the following new section:

"RIGHTS OF EMPLOYEES

"SEC. 213. Nothing in this title shall be construed to limit the right of any employee to resign from his position of employment."

SEC. 7. INAPPLICABILITY OF THE NORRIS-LA GUARDIA ACT.—The provisions of the Act of March 23, 1932, entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", shall not be applicable to any judicial proceeding brought under or to enforce the provisions of this Act.

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The CHAIRMAN. In considering this legislation, I believe all of us, including the public, must be continually aware of some questions which are basic to our American way of life. We must consider the meaning of the free collective bargaining process in the 1970's as well as the right of labor to withhold its services and the right of management to cease production.

We must carefully explore the right of society to compel some of its members to work at a specific job under terms specified by society or one of its institutions.

At one extreme we have the clear right of society, during time of war, to order its members to service in the national defense. At the other extreme we have a clear constitutional prohibition against involuntary servitude. Our problem, of course, falls between the extremes.

Ultimately, we must also consider whether any method of imposing a labor settlement will work. This is not a theoretical question. It was only a few months ago that the Government's power to do just that was sorely tested in the postal dispute.

A recent report on emergency disputes states as follows:

> As with almost any critical problem with which Congress must wrestle, the problem of crisis strikes has produced a number of suggested "fail-sale" solutions. Some of the suggested remedies . . . have specious surface appeal of efficiency, simplicity, and logic. But on careful examination, most of these can be shown to be damaging to free collective bargaining and our economic system.

This statement, which validly suggests careful consideration of the proposals, is not from a report of a so-called prolabor legislator; it is not even from the AFL–CIO. It is from the most recent analysis and recommendations on emergency disputes prepared jointly by the National Association of Manufacturers and the U.S. Chamber of Commerce.

We are about to begin this very difficult problem with the statement of Secretary Hodgson, Secretary of Labor, but before that, I turn to my colleague, Senator Packwood.

Senator PACKWOOD. Mr. Chairman, Mr. Secretary, as far as I am concerned the present law makes a farce and a mockery out of rationale. We are going to have to decide once and for all—and I hope this hearing is the start of that decision—as to whether unions—and especially in the vital transportation industries—have a right to strike or not.

I haven't determined for myself what my own decision will be but I can assure you, as Secretary and you, as chairman, that I am not going to vote for any more emergency settlements in Congress until we have reached a policy decision.

Your statement is a good start. The bills we have got before us are a good start. But I hope this Congress has the tenacity and courage to come forth with a decision that gives unions and management some idea of what to look for prospectively instead of having to wait until a deadline and an emergency situation.

The CHAIRMAN. Mr. Secretary?

STATEMENT OF HON. JAMES D. HODGSON, SECRETARY OF LABOR; ACCOMPANIED BY LAURENCE H. SILBERMAN, UNDERSECRETARY; W. J. USERY, JR., ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS; AND PETER G. NASH, SOLICITOR

Secretary HODGSON. Thank you very much, Mr. Chairman.

The Chairman and members of the subcommittee: I am glad you have given me this opportunity to be with you this morning to discuss the administration's proposal to deal with the problem of emergency labor disputes in the transportation industry.

It was just last month that I was here discussing with you the crisis brought about by a threatened walkout of the railway signalmen. As the President said in his message to Congress of May 17 concerning that crisis:

> The time has long since passed for active consideration and action by the Congress on the proposals which I have twice presented to it to resolve emergencies such as this in an equitable and conclusive manner and, thus to preclude the necessity of congressional action on each individual dispute.

The examination which this subcommittee begins today will, and must, I believe, result in much needed statutory reform in a critical area of labor relations policy:

Reform which will redound to the benefit of labor and management, alike;

Reform which will ease the burden on the Congress and the courts;

Reform which will rationalize labor relations in the transportation industry, serve the public need for critical services and enhance free collective bargaining in one of our Nation's most basic industries, transportation.

The members of this subcommittee are very aware of the extraordinarily difficult time experienced in recent years in transportation industries in general, and the railroad industry in particular, in the negotiation of collective bargaining agreements.

The Railway Labor Act has proven incapable of establishing a meaningful collective-bargaining atmosphere. The Taft-Hartley Act—though its record is clearly better—has not always been able to prevent national emergency work stoppages in the sectors of the transportation industry it covers.

It is to correct these deficiencies and to provide more effective protection for the public against the harmful, disruptive effects of major work stoppages in the transportation industry that I am here today to urge passage of S. 560, the administration's Emergency Public Interest Protection Act.

To understand the critical situation in which we find collective bargaining in the transportation industry, let us look at the historical experience we have had over the years with the Taft-Hartley Act and the Railway Labor Act. To make a judgment on these two statutes we must ask the question: How effective have they been in providing a climate for the private settlement of labor disputes in the transportation industry?

Turning first to the Taft-Hartley Act, we find that most major industries except railroads and airlines are subject to its emergency procedures.

Briefly, these procedures empower the President to appoint a board of inquiry when he believes that a work stoppage or a threat of one imperils the Nation's health or safety. After the board of inquiry has reported on the issues involved in the dispute, the President may direct the Attorney General to petition a Federal district court to enjoin the strike for an 80-day cooling-off period. During the 80-day period, the board of inquiry makes a second finding of fact and the employees are given the opportunity to vote on the employer's last offer.

If at the end of the 80-day cooling-off period, the parties still have not resolved the dispute, the injunction expires—the string runs out. Unless the parties voluntarily agree to continue negotiation there will either be a strike or Congress will have to be asked hastily to enact ad hoc legislation proscribing any work stoppage.

In its 24-year history, these Taft-Hartley emergency disputes provisions have been invoked 29 times. In four instances the disputes were settled before an injunction was issued. With respect to the remaining 25 disputes, 13 were settled within the 80-day cooling-off period and 12 were settled afterward.

Of those settled after the expiration of the cooling-off period, five of the 12 were settled without resort to a strike while seven were settled after strikes of varying duration. Of the seven disputes involving strikes, six occurred in the longshore and one in the maritime industries. Among these were a 3-month shutdown of Pacific coast shipping and several partial and total shutdowns of east coast ports whose duration ranged from 10 days to 3 months.

It may be concluded from this brief statistical history that the Taft-Hartley emergency disputes provisions warrant high marks for its successes. With the exception of longshore and maritime industries, it can be credited with preventing many potential and actual work stoppages some of which could have had a deleterious effect on the health and safety of the country.

Therefore it is not our position that the framework provided by the Taft-Hartley Act for encouraging collective bargaining has collapsed or has been unresponsive to the public interest. Rather, we believe that this framework can serve as a basis upon which to build a more effective and responsive structure for the transportation industry.

Let us now turn to the other side of the ledger and review our historical experience with the Railway Labor Act. As you know, the Railway Labor Act is the older of the two statutes and provides emergency procedures for work stoppages in the railroad and airline industries.

When a railroad or airline and its employee bargaining representative are unable to resolve thier differences in negotiations, the National Mediation Board is empowered to enter the bargaining on its own initiative, and work to assist the parties. If unsuccessful, the Board is required to proffer voluntary arbitration to the parties. If either refuses, the Board issues a written notice that its mediation efforts have failed and withdraws from the case. For the next 30 days, the parties may neither strike nor lockout.

Should the National Mediation Board decide that a strike or lockout threatens major disruption to essential transportation services nationally or in any section of the country, it may so inform the President. The President may in his discretion appoint an emergency board to study the conditions surrounding the dispute, ascertain the positions of both parties, and make recommendations for settlement.

A strike or lockout is proscribed for up to 30 days while the emergency board studies the dispute and for an additional 30 days following its report. If at the expiration of this period no settlement has occurred, then the options available to the President are narrowed to requesting special legislation from Congress or letting a work stoppage occur.

How well have these procedures encouraged collective bargaining and dispute settlement during the 45-year history of the Railway Labor Act?

It should be noted at the outset that there have been only three nationwide rail strikes, each lasting but a few days and only one major airline strike lasting 43 days.

But beneath this statistical tranquility lies a history of deadlock and discord, replete with presidential seizures, even more emergency legislation by the Congress, and the expenditure of uncounted hours and manpower resources in efforts to resolve these disputes and protect the public interest.

The history of the act reveals that its machinery has failed time and time again. Only strong individually applied measures by the Chief Executive and Congress have averted major rail disruptions.

In 1943, President Roosevelt seized the railroads and arbitrated a dispute that the machinery of the act had failed to settle. In 1946, President Truman seized the railroads and a strike still occurred. In that dispute, President Truman even asked Congress for the authority to draft the strikers. In both 1948 and 1950, seizures and injunctions were again employed to avert a nationwide rail strike.

More recently, the Railway Labor Act has been buffeted by some of the most tumultuous labor disputes in its history. In 1967, the wage dispute between six shopcraft unions and most of the major rail lines forced Congress to act no less than three times to avert a nationwide rail strike.

The firemen manning dispute first came to Congress in 1963 at which time a joint resolution requiring arbitration of the dispute seemed to settle the matter. Since that time, however, the issue has been reopened in bargaining and has resulted in litigation; the basic dispute remains unsettled and is subject to strike action at any time.

Congress acted again to legislate a settlement, without strike, in the shop craft negotiations of 1970. Again in Decmber of 1970, Congress halted a nationwide strike involving three nonoperating unions and the United Transportation Union. The dispute involving the UTU is now subject to strike action. In the Signalmen's dispute of a few weeks ago, Congerss was called upon to act to avert a nationwide strike, at least until October 1971.

Over the history of this act, we can actually point to 190 emergency boards being created to deal with transportation crises; this is an average of more than four per year.

Thus, while only a few major rail strikes have occurred during the history of the Railway Labor Act, the national trauma which accompanies each such crisis brings with it economic disruption, bitterness, and public disenchantment with the collective bargaining system.

We have seen this especially in the last 2 years, where one threatened shutdown has followed another and where the governmental processes could respond only through last-minute efforts to stave off disaster. This activity clearly shows that our Nation cannot sustain a nationwide disruption of essential service and therefore has effectively removed from labor one of its most powerful economic weapons, the national strike.

We must develop a better system for dealing with labor relations problems in the transportattion industry. I think S. 560, the Emergency Public Interest Protection Act, is a good bill and can do the job. I would like this morning to discuss this bill with you—the philosophy which shaped its provisions and why we feel it is superior to other alternatives.

In developing this proposal, there were essentially two routes open to us: A procedure aimed at terminating emergency work stoppages once they have begun or the development of a proposal, the primary emphasis of which is to encourage settlement without such a stoppage but providing the means for terminating emergencies in the event that they do occur.

In our judgment the latter approach is more sound and is consistent with the two objectives stressed by the President in submitting this proposal to the 91st Congress.

The first is that the health and safety of the Nation must be protected against damaging widespread stoppages.

The second is 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.

With these factors in mind, the emergency disputes provisions of the bill would build on the Taft-Hartley Act, supplying the President with three new options for all transportation industries which would be available at the end of the present Taft-Hartley procedures. The options are:

(1) Extension of the cooling-off period;
(2) Partial operation of the troubled industry; and
(3) A procedure of final-offer selection.

To create a new climate for collective bargaining, the bill would also substantially reform the procedures of the Railway Labor Act.

(*a*) It would require that collective bargaining agreements run for a specified term.

(*b*) It would substitute private grievance and arbitration procedures during the term of agreements and would abolish the National Railroad Adjustment Board.

(*c*) In place of the present emergency provisions, the procedures under the amended Taft-Hartley Act would apply, and the mediation function of the National Mediation Board would be transferred to the Federal Mediation and Conciliation Service.

In addition, the bill also eliminates the provision in the Railroad Unemployment Insurance Act which allows striking railway employees

to secure unemployment compensation benefits and establishes a National Special Industries Commission to make a comprehensive study of industries subject to emergency disputes.

In determining what procedures would be desirable for dealing with emergency situations, it is our view that the mere availability of a carefully selected range of options will yield a degree of uncertainty as to the possibility and the type of governmental intervention, and will influence the disputants to bargain earnestly from the beginning of the dispute.

Thus, each option has been selected not only as an effective response to a specific type of situation, but also as one element in a total package of options, the purpose of which is to encourage the parties to bargain and, thus, to settle the dispute themselves short of an emergency work stoppage.

The President would also have greater flexibility in dealing with emergency disputes; several alternatives would be available to him to tailor action to the needs of specific situations.

Under the administration's proposal, the President is only empowered to deal with disputes which threaten national health and safety, as in the present Taft-Hartley provisions. This is deemed more desirable in terms of furthering private bargaining than the present Railway Labor Act procedure which may be activated by a regional emergency.

In sum, the proposal establishes options which will deal effectively with emergencies so as to protect the Nation's health and safety and which, intrinsicly and by reason of their multiplicity and form provide an incentive to collective bargaining.

Accordingly, when national health and safety is threatened, the President would have the authority, subject to congressional veto, to choose any one, but only one, of the following three options after the 80-day cooling-off period has run its course.

First, he would be authorized to order an additional 30-day cooling-off period in which no strike or lockout would be permitted. An extended cooling-off period might be used when it appeared that the parties were close to an agreement when time ran out on them.

For instance, if settlement prospects were near and the circumstances were such that the parties were reluctant to agree voluntarily to an extension of time, this option could be selected. Also, there might be times when the President, electing neither partial operation or final offer selection, would want to delay a work stoppage up to 30 days while Congress considered the matter.

Second, the President could appoint a Board to determine whether partial or selective operation of the troubled industry could be implemented. The Board would determine the scope of the partial operation which could be in effect for a period of not more than 180 days. Its task would be to determine by means of a hearing whether and under what conditions partial operation of the affected industry would be consistent with the provision of services minimally necessary to the national health and safety.

Two conditions are imposed on partial operation. One is that the Board must believe that the economic pressure resulting from the partial shutdown would be sufficient to encourage the parties to resolve the dispute.

The other is that partial operation must not place a greater economic burden on any party than would a complete shutdown. Before and during the period of partial operation, no change could be made in the terms and condition of employment, except by agreement of the parties or action of the Board. Where substantial bargaining is obviously necessary and the use of the traditional strike and lockout pressures would be beneficial to the furtherance of negotiations consistent with the national health and safety, such an option might well be selected.

Third, the President could select a procedure which provides for the empaneling of a Final Offer Selection Board whose task would be to determine by means of a hearing which final offer, submitted by a party to the dispute, shall comprise the collective bargaining agreement between the parties.

Preliminary to this process, each party would be directed by the President to submit one or two final offers, as the parties wish, to the Secretary of Labor. Each final offer must amount to a complete labor contract, resolving all the issues in the dispute. After the submission of offers, there would occur a mandatory, 5-day period of bargaining. If the dispute remains unresolved at the end of this period, the Board would determine which final offer is the most reasonable. Such offer, without alteration, would comprise the collective bargaining agreement of the parties.

The "final offer selection" alternative is one of the most innovative concepts in the labor law field. It would have the effect, when chosen by the President, of forcing the positions of the parties closer together since it requires a selection without modification of the most reasonable offer of a party.

The parties would be pushed toward the middle ground—the zone of disagreement would be narrowed—because the penalty imposed for a party's maintaining an extreme position would be the likelihood of rejection of its offer by the panel. The presence of this option will encourage collective bargaining in the early stage of negotiations, thus providing greater possibility of an early settlement.

In selecting the options to place at the President's disposal, it was our goal to develop a range of alternatives which would encourage settlement of the dispute by the parties themselves. It is the purpose of our new statutory structure to limit Government intervention in free collective bargaining to an absolute minimum consistent with the public interest.

This philosophy led to the formulation of the range of options that you find in the administration's bill, and led to the rejection of certain other proposals.

For instance, compulsory arbitration is not included among the options because of the "position distancing" influence it exerts on the bargaining process. It is inconsistent with a philosophy of our options, that of encouraging collective bargaining, narrowing the issues and the zone of disagreement, and of limiting Government intervention to a minimum.

The threat of compulsory arbitration tends to maximize rather than minimize the differences between the parties since the general expectation is that the arbitrator tends to split the difference between the

parties. Some observers have argued that if compulsory arbitration were mixed among other options, these effects would be somewhat diluted.

However, in this sense "final offer selection" has the opposite effect from compulsory arbitration in that it has a tendency to narrow the issues and stimulate collective bargaining, and the inclusion of compulsory arbitration would clearly diminish the true value as a possible option.

Similarly, we decided against the inclusion of a so-called "seizure" provision. We foresee grave problems with any plan which provides for government takeover and operation of a part of the transportation industry during a crisis situation. The inherent difficulty is in designing a system of seizure that would encourage collective bargaining; that is, one which exerts sufficient pressure on both sides without advantaging one side or the other.

As a companion to the emergency disputes provision of the bill, and equally important, is the reform we propose for the Railway Labor Act.

The procedures of the Railway Labor Act which most obviously undermine, rather than strengthen, collective bargaining are the bargaining and emergency disputes provisions of the act.

Under the procedures of the act, collective bargaining agreements are not required to have termination dates and are unchangeable by either side unless and until the procedures of the act are fulfilled; that is, formal notice, conferences, mediation, and finally, release by the National Mediation Board.

Until the Board determines that a settlement cannot be reached through mediation, the parties are barred from resorting to strike or lockout. Often these procedures result in "negotiation" for months or years, thus unreasonably deferring employee wage and benefit increases and carrier operating changes.

The result is hardening of positions, and inevitable delay, all with no discernible termination date to bargaining. The combination of these two factors makes effective bargaining increasingly difficult and helps explain the failure of the process and the ultimate reliance upon governmental action to resolve disputes.

What is needed are procedures that will serve to provide an incentive for real voluntary negotiation—and to assist the parties in resolving their disputes rather than serving as a steppingstone for further governmental intervention.

The administration's bill would make major changes in these procedures. Specific contract termination dates would be required. Parties desiring a change in the contract would be required to serve written notice thereof at least prior to the expiration date of the contract. After expiration of the contract, the parties would be free to resort to self-help, and if that action threatened national health and safety, the emergency provisions of Taft-Hartley, as amended by this bill, would be available.

In addition, and of particular importance in establishing an effective collective bargaining atmosphere, our proposal seeks to equalize the economic pressures of any strike, and, thus increase the incentive to agree in order to avoid a strike.

The bill, therefore, eliminates the provisions of the Railroad Unemployment Insurance Act which allows striking railroad employees to secure unemployment insurance benefits.

Thus, our proposal eliminates unreasonable delay and creates the salutory pressure of a meaningful deadline, all in furtherance of the collective bargaining process.

Presently, grievances arising under the provisions of existing collective bargaining agreements are handled in the railroad industry by the National Railroad Adjustment Board, a government-supported board. Our proposal would eliminate the Board over a 2-year period and replace it with a private grievance and arbitration mechanism, not only to eliminate Government intervention but also to reduce the strains on the bargaining relationships between labor and management occasioned by the Board's case backlog which is estimated to exceed 3,000 cases.

If the provisions of this bill are to be effectively utilized and improved, it is important to understand why these labor crises affecting the national health and safety tend to be concentrated in certain industries. It is essential that we establish a better framework of information on this problem.

For this reason, we have proposed in our bill that a Special Industries Commission be established to study and make recommendations to the President as to the best ways to remedy the weaknesses of collective bargaining in industries marked by critical labor relations problems.

In summary, we believe that the most effective approach to this problem is one which will support and strengthen free collective bargaining in the Nation, that will provide for a mimimum of Government interference with that process and yet provide a range of measures to protect the Nation's health and safety. We consider this a matter of the highest priority and urge prompt and favorable action on S. 560.

As the President reiterated in his most recent message to Congress recommending the enactment of the Emergency Public Interest Protection Act: I urge that this time we not wait for the next emergency, but rather join together in acting upon it now.

The CHAIRMAN. Thank you very much, Mr. Secretary.

This legislation that you propose, S. 560, deals with what industries?

Secretary HODGSON. The essential transportation industries, Mr. Chairman: Railroads, airlines, trucking, maritime, longshore.

The CHAIRMAN. You are brought to this proposal because of the public's interest in being free from perils to national health and safety that could arise from work stoppages in these industries; is that what underlies this legislation?

Secretary HODGSON. I think that if we had to use one word to describe the basis on which we selected the application of these procedures, that world would be "need." The basis was this: We looked at the kinds of industries which in the past and in the foreseeable future could really affect in a critical way the American economy, national safety and health, and they seem to be those industries that result in the distribution of goods that are needed for maintaining our society and economy, and the movement of goods and people.

These were the industries most commonly involved in crises with which both the President and the Congress have had to deal, so we

have limited the bill to these industries at this time. Because we so limited it, we knew that there were other areas that might need attention at some time in the future. Accordingly, we decided that it would be useful to create a Special Study Commission to examine the need for any additional legislation.

But our opinion is now that the transportation industry is the one that experience has proven to require attention of the kind that we are proposing in our bill.

The CHAIRMAN. Is that other, the broader special study, underway now?

Secretary HODGSON. It will not be until it is authorized by legislation.

The CHAIRMAN. Would that have to be authorized?

Secretary HODGSON. Yes, in the form we are proposing it, we believe it would. In fact we would like the support and endorsement of such a study by the Congress because it is a study that needs to be done by people of stature and with considerable intensity and with the prestige that comes from congressionally endorsed bills.

The CHAIRMAN. Is that included in this bill?

Secretary HODGSON. Yes, it is. It is in the latter portion of the bill and hasn't nearly had the publicity, of course, that the other features have had. But we consider it a particularly important feature of the bill.

We know that there are a number of problems not specifically dealt with in this bill. For instance, there are labor disputes that have very critical effects in a region. We didn't want to propose a blanket approach including regional and local activities and work stoppages. The national problem comes first. It is the one we ought to deal with now. The other matters should be studied.

The CHAIRMAN. What are the areas, specifically, that you suggest a special study group should consider?

Secretary Hodgson. Regional disputes of critical impact on a region would certainly be one.

Second, there may be some industries in which a dispute, if it goes on long enough, is sufficiently protracted and is in a sufficiently critical industry, might require a similar kind of attention.

In the past, for instance, the Taft-Hartley procedures have been applied to the coal industry. Most authorities would look at this in retrospect and question whether that was truly a national emergency, but such judgments are of an ad hoc nature.

A study that is more comprehensive and definitive would have greater stature, and I think, is needed in this case.

The CHAIRMAN. I suppose everybody is wondering whether we are going to ask you about communications, whether that is one of these areas.

Secretary HODGSON. Communications probably would deserve study but in our sleuthing of this history of the communications disputes, the feeling was that while there were some minor disruptions and sometimes some inconveniences, in general a level of service was maintained that did not amount to a national emergency.

The CHAIRMAN. The areas that have been covered under S. 560 now, railroads, airlines, trucking, maritime and longshore—we, of course, are completely aware of the emergencies that have developed concerning railroads, what history is there that puts trucking into this area of special consideration?

Secretary HODGSON. Historically the bargaining in the trucking industry has been somewhat fragmented. There would be a dispute settlement procedure covering a certain portion of the country but of recent years the trucking industry is increasingly starting to negotiate on a nationwide basis.

And this presents the very significant possibility of a nationwide shutdown of the trucking industry. We have not yet experienced in this country a nationwide trucking strike. So from the standpoint of experience we cannot say exactly what the effect of that would be. It would be an option available to the President here to examine whether or not a nationwide strike in the trucking industry, would indeed call for the imposition of the provisions that are set forth here.

If he decided it was not of sufficient magnitude, of course the provisions would not have to be involved. But if it was of sufficient magnitude and had the effects we have noticed in the railroad industry, for instance, then he could utilize the authority which the act provides.

The CHAIRMAN. If this were law and the options under the bill were available to the President, where would the Congress fit into this?

Secretary HODGSON. I think—two or three points:

First of all, the President might decide that none of these options were suitable for dealing with the question. Then he could come to Congress. There might be some circumstances where that would be the case. So we don't say that as a result of this bill no labor matter will ever come to Congress again. It could.

But it certainly minimizes that possibility and gives the President better tools for dealing with emergency disputes. That is the first point.

The second: If the President should choose the 30-day option, and if indeed the settlement was not reached in that 30 days, then Congress could be called upon for action at that point.

There is also a possibility that the partial or selective option might not produce a settlement in the 180 days and at that time it might be necessary to call upon the Congress. The President has one of two choices: Either allow a full strike or request some action by Congress.

And finally in the final offer selection provision, if a court should determine that the selector had acted in an arbitrary manner, then congressional action might be necessary.

These are all "iffy" kinds of things but the possibility of Congressional involvement is very real.

One other circumstance involves the Congress here and that is that Congress has 10 days to disagree with the action taken by the President in choosing the form of option that he ultimately selects.

The CHAIRMAN. Well I think this leads into an inquiry by Senator Packwood who started the hearing with the statement he wants no more emergency disputes in Congress.

Senator PACKWOOD. Mr. Secretary, the rumor is around that the administration initially wanted this bill to apply to all industries but that it was restricted to transportation basically at the request of management. Is that true?

Secretary HODGSON. The administration studied this problem from the standpoint of need and we started out with the idea of examining

the whole universe of need but well before the final form of the bill was developed it was decided that the area of need was the transportation industry and so we zeroed in on that.

Senator PACKWOOD. You have proposed three options but they are not alternatives. You have to choose one. There seems to be little likelihood that the first would be chosen unless you had commitments that the strike would be settled in 30 days.

Secretary HODGSON. Or in the case, as I indicated, that we felt that neither the partial operation nor the final selector provision was suitable, and some time was needed by Congress to decide what it wished to do. In that case the 30-day provision would be useful.

Senator PACKWOOD. Under the partial operation provision, would part of one railroad be operated, or are you talking about some lines operating and others not?

Secretary HODGSON. Clearly the concept of a selective strike, in which some lines operated and some did not, is included as an alternative available to the board that will determine what form of partial operations should be undertaken.

There could also be some other approach, such as one providing for the movement of essential goods. As we say in our testimony, one consideration upon which the board's judgment will be based is that the partial operation must not be more economically disadvantageous to the parties than a complete strike.

Senator PACKWOOD. So you picture partial operation as partial operation of one line? That is, part of a line operating and part not operating.

Secretary HODGSON. That could be. We have left that open to the board.

Senator PACKWOOD. Let's say we are going to exercise the second option in a potential railroad strike. Do I assume that you would automatically exclude from the partial shutdown a railroad serving a city, if it were the only railroad serving that city, or the principal railroad to prevent a fairly good-sized city from being stangled by a partial shutdown?

Secretary HODGSON. I don't think you can say that. Because that would mean that we were endeavoring to get at regional emergency strikes in this situation. And we have not provided that. What we are endeavoring to get at are the kinds of strikes that cripple the Nation's economy and society to the extent that they could have an effect on national health and safety.

There are other things to be considered, of course. One of the classic examples perhaps of where partial operation could be employed would be in the kind of strike that would tie up movement of goods by sea, where the Nation itself might not be particularly adversely affected—but for example the State of Hawaii that depends almost completely upon shipping for its goods might be severely affected.

Senator PACKWOOD. Let's look at airlines for a minute. Apart from Senators who can't get home, I fail to see how an airline strike really endangers or threatens the movements of freight or the Nation's welfare.

Why include airlines?

Secretary HODGSON. We wouldn't want to second guess that in advance but clearly the airlines are in a different category.

Senator PACKWOOD. Why have them in the bill at all? How is a 3- to 6-month national airline strike, in terms of goods or people, a threat or a danger to the structure of this country?

Secretary HODGSON. For one thing, we don't expect this bill, when it is enacted, to last just a year or two. This proposal is intended to deal with national emergency disputes in the transportation industry for some time to come. Everybody that examines the air freight future senses that this is going to become an increasingly major kind of effective transportation for this Nation. So stoppages are going to be an increasingly critical problem.

But also I would suggest that you recall back in 1965 or 1966 when there was an airline strike that only involved a limited number of airlines, not even all of them, and yet there was much sentiment that this did involve what amounted to a national emergency and it got widespread attention on that basis.

What we are saying is that airline disputes may involve a national emergency. As the industry grows the likelihood that such emergency will arise may increase. The determination of whether we should apply these provisions to such a strike should be left up to the President.

Senator PACKWOOD. Under that theory, a 6-month steel strike may involve a national emergency of substantially greater economic proportions than the airlines.

Secretary HODGSON. I guess we just have a difference in view of the possible essentiality of these various kinds of industries.

Senator PACKWOOD. As long as we are considering possibilities, and problematical situations what will the administration do if the second or third option is chosen, and at the end of the 180 days in the case of the second, or when the arbitration decision is handed down in the third, the unions simply won't accept the arbitration and refuse to go to work or wait out the 180 days on strike?

Secretary HODGSON. The possibility of an illegal strike is always present. This cannot prevent that.

Senator PACKWOOD. It is not illegal under the second option.

Secretary HODGSON. Under the second option, no. As I indicated earlier, if at the end of 180 days the strike continued to exist, there would be only one of two choices available to the President: Either he could let the strike go on, with whatever impact it may have on the Nation, or he could come to Congress with it.

So I wouldnt want us to indicate in any way that our legislation here precludes any possible action on the part of the Congress in the future. It certainly goes far to minimize that contingency in a way that will not only deal with individual disputes but will orient the whole climate toward bargaining in a meaningful and practical way.

Senator PACKWOOD. I have no other questions at the moment, Mr. Chairman.

The CHAIRMAN. I would say Senator Javits would have liked to be here but I believe Gene Mittelman, the minority counsel has some questions.

Mr. MITTELMAN. Mr. Secretary, building on what Senator Packwood has said, I think there are really three critical issues in considering this legislation.

First of all, what kinds of industries we are going to cover: second are we going to cover regional as well as national emergencies; and

third, what kind of remedies are we going to give the President the power to invoke in any specific dispute.

I think the differences between S. 594 and the administration's bill can be looked at generally in the sense that Senator Javits wants to get the whole job done now instead of just a piece of it. And the question is: When you look at these differences, at the difficulties that this legislation has had finding any degree of acceptance, or any degree of consensus in the Congress, or out of it, when we are finally considering this legislation, why not try to do the whole job now and not leave these loose ends to be considered by Congress as further emergencies arise?

Secretary HODGSON. We feel that we need to put the attention on the area where, as you put it, the job needs to be done. And the reason we feel that is that we are champions of collective bargaining. We think it is a worthwhile institution. It is one that has by and large proved itself, but it has some deficiencies.

The limitations on its effectiveness appear to be confined to reasonably narrow areas. One such area relates to national emergency disputes. So we have examined that need, and how to deal with it. Our purpose is not to provide a substitute but to do what we can to enhance it and that is the basis on which we have approached it.

We didn't say the bill should apply to everything and there should be what amounts to a blank check on the part of the President to do anything. I would doubt the Congress would really want to do that. And I am sure that the parties to bargaining that believe in the collective bargaining process don't really want to be faced with that kind of situation.

Mr. MITTELMAN. Well let's take the subject of regional emergencies.

Two years ago in New York City there was a fuel, oil delivery strike in the transportation industry—in one of the transportation industries covered by the administration's bill. Yet as I read the bill not matter what the hardship that that kind of a strike would have caused to the people of New York City in terms now of health and safety, not just economics—homes were without heat, hospitals were without heat—there was a real health crisis in New York City.

Yet the administration's bill would not permit the President to intervene in that kind of dispute.

Don't you think that that is the kind of dispute where there ought to be some power on the part of the Federal Government to deal—or at least some governmental authority to step in and protect the health and safety of the city of New York?

Secretary HODGSON. Well you people in New York seem to have an undue amount of problems these days. You have got bridges that get closed and tugboats that won't operate and sometimes it seems you can't get there from here.

But it seems to us that the problem you recite is the very kind of problem that we ought to study. Which way do you solve it? Do you do it on a national basis? We feel that we want to approach the national emergency question first and then go after the others through a study mechanism and it may be that we will come up with a suggestion.

But we are not now prepared to say this kind of thing you are talking about has anywhere near the same magnitude or should be a subject for U.S. congressional action in the same way.

Mr. MITTELMAN. Well the Railway Labor Act covers certain kinds of regional disputes, those that threaten to "deprive any section of the country of essential transportation service." And the administration's bill is actually narrowing that definition.

In one sense it is taking away some of the protection that the country now has in the area of railroad and airline disputes. So it seems to me that you have made a substantive judgment that we ought not to legislate at all insofar as regional emergencies are concerned and, regardless of the consequences, no matter how severe to individual sections of the country, so long as you can't make a case for a nationwide crisis, we ought to let these disputes take their course.

I just am raising the question.

Secretary HODGSON. Well you have a choice of alternatives here. It seems to me that there is a natural reluctance on the part of those who are interested in preserving collective bargaining and that applies to most of the Congress, I believe, to most of the parties in bargaining, to organized labor, most of management, about major governmental intervention in that kind of situation.

And so what we are interested in as I say is attacking the essential problem and then taking a second look at what we would call a second-level kind of problem, still an important one but still a second-level kind of problem.

Mr. MITTELMAN. Turning now to the nature of the remedies authorized by the bill, I have been here for 4 years and have gone through four major railroad crises. I know one thing that I think has impressed me more than anything else is the need for flexibility in handling these disputes.

In your previous testimony in your answers to Senator Packwood's and Senator Williams' questions you indicated that these three alternatives might not be enough to deal with any given situation and you foresee possible disputes where another approach might be warranted and the President might want to submit some recommendation to Congress.

Secretary HODGSON. That is not what I said. I didn't say I foresaw those. I said I am not smart enough and neither is anyone else to foresee all the possibilities that might occur, and so it is still possible that some situation might arise where the President would decide that any of these options would be inappropriate.

Mr. MITTELMAN. Well, knowing the difficulty that this crisis legislation faces and it seems to be increasing each time it comes here, more and more Members have voiced their objections as to having been put in the position of arbitration labor disputes, and I think that is increased even more in view of the fact that the last three times we have started legislating wage increases as part of these emergency measures—don't you foresee a great deal of difficulty given the fact that you have three permanent alternatives laid out in the statute—if the President comes here with a different one, it seems to me he is just inviting a battle on the floor of Congress as to whether he should have invoked a permanent remedy, or if you ought to give him a special remedy? Shouldn't we do this job right the first time and give him enough flexibility in the first instance so that he doesn't have to come back here except in the most extreme circumstances?

Obviously you can't write a perfect bill, but shouldn't we give him enough flexibility so that he can really have the power to tailor the remedy to fit the circumstance of the peculiar dispute?

Secretary HODGSON. I think it is more fundamental than that. It seems to me Congress has three options, in this situation, none of which is wholly desirable. The first option is to make no change at all and for the Congress to set itself up in the business of labor relations. Because it is quite clear that the threat of a dispute going to Congress is no longer such a big threat any more to the parties, this is increasingly coming to pass, and so we can expect there are going to be more frequent kinds of disputes coming before the Congress. That is the first.

The second option, is to provide some sort of substitute for collective bargaining, like compulsory arbitration, that will get parties in the posture of taking a position rather than trying to reach an agreement. If you know that compulsory arbitration is an available end process why do you try to retreat to some high, dry position, where you can proceed from.

Or the third possibility is to try to find some procedure of going about this that is not a substitute for collective bargaining but is a way of encouraging and enhancing collective bargaining.

We say let's let the Persident use those devices which would provide him with a sufficient range of mechanisms for dealing with national emergency disputes.

Mr. MITTELMAN. I think that Senator Javits has a little more reservation than you do about whether—for example, final offer selection, whether it is applicable to the broad range of disputes that could come up under this statute. Isn't it true, Mr. Secretary, that the final offer selection method is better adapted to a dispute in which there is really one major issue than to a dispute in which there are a number of simmering controversies all of which are interrelated? In terms of what you want to accomplish, in terms of getting a reasonable settlement, isn't final offer of selection better calculated to deal with the dispute, let's say, where wages is really the issue as opposed to a dispute where you have all kinds of issues, work rules, seniority, and all the other kinds of issues that sometimes arise in labor disputes?

Secretary HODGSON. I would go further than that and say the more complex the issues involved, the more difficult is any kind of procedure for dealing with them. The more simple are the issues, the easier it is to deal with them. But the final offer selection procedure can deal with very complex matters.

At first I had questions of the kind that you say Senator Javits has about these options, but in examining this thing with the kind of background and experience I have had in collective bargaining, I am convinced that the panel can handle these issues readily when given the time to conduct hearings and understand the kinds of provisions that will be put before it.

Mr. MITTELMAN. Let's take an example that seems to come up frequently on the railroads where you have an issue of wages tied into work rules. The big issue would generally be considered to be wages and just to make some assumptions for a moment, let's assume that the railroads are convinced that their wage offers are much more reasonable than the union's offer.

Aren't they going to be tempted to kind of slip in a few work rules that they might not have otherwise gotten if this final offer selection process was not applicable? Isn't that the kind of thing you are inviting if you authorize only final offer selection method for every dispute?

Secretary HODGSON. What you are inviting, it seems to me, is the parties to try to make their offer as reasonable and attractive as they can to objective judgments, and "slipping in" anything by any party carries risks and hazards. These hazards will minimize the possibility of slipping in unreasonable provisions.

Mr. MITTELMAN. One last question.

Referring to your comments on seizure on page 13 of your testimony which you rejected as an alternative, isn't it true that at least in some circumstances requiring an employer to conduct partial operations might constitute a seizure and be so held by the courts?

Secretary HODGSON. Tell me what you mean by that—the Government doesn't take over the management of the operation.

Mr. MITTELMAN. But in legal consequence you require an employer to operate where he otherwise might have chosen not to.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Prouty would like to address some questions to you in writing.

We have other bills, of course, in the area before us, Mr. Secretary, and we will have to hear them through and think them through. I don't know whether we suggested that you address yourselves this morning to these other bills. I don't believe we did. At a later time after we have the administration's bill presented from the various other departments—and as a matter of fact we are extending an invitation now to Secretary Volpe and Secretary Laird to be here on July 8, I believe it is.

And then if we could at another time catch up with your judgments on the other bills and perhaps have you come up again to flesh out this skeleton of options here and just what will be the judgments, the considerations, that go into selecting one of the three options. I think we need a little more flesh on the bones.

Secretary HODGSON. We appreciate the opportunity of coming here so much. We will be glad to come back some other time and talk about somebody else.

The CHAIRMAN. Thank you very much.

(Whereupon, at 11:20 a.m., the hearing was adjourned, to reconvene at the call of the Chair.)

NATIONAL EMERGENCY DISPUTES, 1971–72

THURSDAY, SEPTEMBER 16, 1971

U.S. SENATE,
SUBCOMMITTEE ON LABOR OF THE
COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D.C.

The committee met at 11 a.m., pursuant to recess in room 4232, New Senate Office Building, Senator Harrison A. Williams, Jr. (chairman of the subcommittee), presiding.

Present: Senators Williams and Javits.

Committee staff present: Robert E. Nagle, general counsel to full committee; Gerald M. Feder, counsel to subcommittee; and Eugene Mittelman, minority counsel.

The CHAIRMAN. This morning we are resuming our hearings on the question of emergency labor disputes legislation.

We have before us six bills dealing with the subject. I have introduced one and so have Senators Javits, Dominick, and Taft. In addition, Senator Griffin has introduced a bill on behalf of the administration.

With the great variety of approaches offered by these six proposals, I am hopeful we will find during these hearings the basis for satisfactorily resolving some issues that have long been a matter of great contention but which have eluded all previous efforts to find solutions that are widely acceptable.

One important element of this situation is the fact that in recent years Congress has been called upon a number of times to enact emergency legislation to terminate a nationwide strike or lockout in the railroad industry. Understandably this has generated concern among many in Congress about the vitality of the laws now on the books covering collective bargaining.

Since our last hearing, however, there has been a particularly notable development. Last July, as a consequence of a recent court decision permitting selective railroad strikes, a railroad strike which would have otherwise brought on a nationwide shutdown was voluntarily restricted to a relatively few lines thereby avoiding a national emergency.

The fact that for the first time a major rail dispute was settled through this selective strike method without need for congressional intervention is a matter of great importance to the subject before us and I am sure that its significance will be explored throughout our continuing hearings.

We are pleased to have as our first witness this morning Secretary of Transportation Volpe who is accompanied by others from his Department of Transportation.

Welcome, Mr. Secretary.

I would like to recognize Senator Javits at this time.

Senator JAVITS. I wish to make a brief statement at the opening of these hearings.

For 10 years—I think it is at least 10 years—I have introduced legislation to deal with emergency strikes. This is an area in which the United States is completely out of date. The whole Nation is vulnerable to stoppage, either at the will of management or at the will of labor.

Now, Mr. Chairman, the difference between my view and that of the administration is a very profound one and I wish to record it because I hope the witnesses will address themselves to it.

It is my view that we must deal not only with national stoppages but regional stoppages as well. I have seen 500 operators of tugboats tie up New York City and that is nothing to be thought of lightly in terms of anarchy and even starvation.

So therefore I believe that we are at last face to face with the moment of truth with respect to the operation of the Government as it represents all the people and the right which I have fought for all my life, of the individual worker to bargain, and if he can't win, to strike, to assert the justice of his own position, and of management, on the part of the owners of a business, to decide what they can and cannot do.

These need to be reconciled but I consider the failure to reconcile them one of the major deficiencies of our system.

I hope—and I know this is not attended with all the panoply of hearings upon matters of infinitely less importance—that the witnesses will understand the profundity of the efforts which are now being made.

Many workers feel that if we do what we are talking about, legislating here, that we are depriving them of the fundamental constitutional and human rights. I believe society must be permitted to operate—consistently with the maximum freedom of collective bargaining—and we are at last face to face with it, and it is not a moment too soon.

Finally, may I say that I consider the success of the President's new economic policy to hinge very heavily upon what we decide here. So far the self-restraint of labor has been one of the most admirable aspects of American public life.

That need not always be so. We have never had a general strike in this country but other countries have. This can destroy and bring to a halt the plans of any nation and that is exactly what we are dealing with here.

So I hope, Mr. Chairman, and I don't make these points but to emphasize that the administration will treat with this matter on the highest level, and that is the level of the Presidency, with the greatest deliberation and the greatest seriousness, because in my judgment it is one of the fundamental issues which faces the future of this society.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Javits.

Mr. Secretary?

STATEMENT OF HON. JOHN A. VOLPE, SECRETARY OF THE DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY JOHN W. BARNUM, GENERAL COUNSEL; AND THOMAS H. TRIMACO, ASSISTANT GENERAL COUNSEL

Secretary VOLPE. Thank you very much, Mr. Chairman, Senator Javits.

First of all may I present the two gentlemen seated with me this morning?

On my immediate left, my General Counsel, John Barnum, and to his left, the Assistant General Counsel for Legislation, Thomas Trimaco

I appreciate very much the opportunity to be here today to testify on S. 560, the Emergency Public Interest Protection Act of 1971.

In the weeks preceding Congress' recess last month, this country was experiencing a series of selective railroad strikes. While that dispute has been settled, the basic problem of labor relations in the transportation industry still remains.

As Secretary Hodgson testified before this committee, to preserve the Railway Labor Act will only serve to enmesh us in further labor disputes in this troubled industry.

Let me only remind the committee that less than 2 weeks from today the congressionally imposed cooling-off period for the signalmen's strike ends. As of today, it is uncertain whether we must eventually return to the Congress to ask for emergency relief.

Let me tell you why the administration believes we must act, and act now. As you know, labor relations within the railroad and airline industries are governed by the Railway Labor Act of 1926. Since the passage of the act, 190 emergency boards have been convened to deal with transportation crises. During just the last 2 years, Congress has had to act three times following the failure of efforts under the Railway Labor Act to bring about final resolution of work disputes.

In comparison, the emergency provisions of the Taft-Hartley Act have only been needed 29 times since its enactment in 1947. Further, on only seven of these 29 occasions did a strike actually resume after the cooling-off period.

Faced with the failure of the Railway Labor Act and the relative success of the Taft-Hartley Act, the course of this administration was clear. No longer should the commerce of this country be allowed to grind to a halt. Therefore, last year the President proposed innovative legislation dealing with emergency disputes in the transportation industry.

Our proposed measure is based on Taft-Hartley, but reaches beyond it to incorporate new techniques to enhance collective bargaining. It would place under the emergency disputes provisions of that one statute all transportation industries.

The bill covers three major areas where we have found shortcomings under the Railway Labor Act.

The first deals with bargaining and arbitration procedures. Collective bargaining agreements under the act are not required to have termination dates and call for a complex series of negotiations before they can be altered. The administration's proposal would require

specific contract termination dates and written notice of desired contractual changes at least 60 days prior to that date. After expiration, the parties could resort to self-help until an emergency situation imperiled the national health or safety.

Likewise, under the Railway Labor Act, a National Railroad Adjustment Board arbitrates grievances. This process is so slow and inefficient that the Board's backload is currently more than 3,000 cases. The administration seeks, therefore, to phase out the Board in favor of a private grievance and arbitration mechanism.

The second element of the legislation is built on the successful emergency procedures of the Taft-Hartley Act. Under Taft Hartley, and under our proposed legislation, when a threatened or actual strike or lockout imperils the national health or safety, the President may appoint a board of inquiry to examine the issues and submit a report to the President. After receiving this report, the President may seek an 80-day injunction against a strike or lockout. As I mentioned, this cooling-off mechanism has been followed by a resumption of a strike only seven times.

Lastly, while Taft-Hartley has been quite successful, there have been instances when a further step was needed. We have remedied this defect with the addition of three new presidential options at the end of the 80-day cooling-off period.

One would be an additional 30-day cooling off period. This option would undoubtedly be employed in situations where the parties have already reached an agreement in principle and only need a short time more to negotiate final details.

A second Presidential option would be to appoint a partial operation panel which would designate certain essential goods and require them to be moved. Partial operation could be in effect for as long as 180 days.

Finally, the President could exercise a third option called the final offer option. If he chose this latter option, each party would be required to submit a final offer and an alternative final offer. These final offers would be submitted to a board which would choose one of these offers, the most reasonable.

The final offer procedures, one of the most innovative new ideas in labor relations, is directed toward bringing the parties together during collective bargaining.

Faced with having a neutral panel choose in its entirety the most reasonable offer of the four presented to them, each side would be encouraged to put forward their most reasonable offers. The legislation provides for a 5-day bargaining period to follow the submission of the final offers so that the parties, realizing how close they might be, would voluntarily settle without the need for outside action.

The President, in recommending the enactment of this measure, said on February 3 of this year:

> The urgency of this matter should require no new emphasis by anyone; the critical nature of it should be clear to all.
>
> I believe we must face up to this problem, and face up to it now, before events overtake us, and while reasoned consideration is still possible.
>
> The legislation I propose today would establish a framework for settling emergency transportation disputes in a reasonable and orderly fashion, fair to the parties and without the shattering impact on the public of a transportation shutdown.

I have, Mr. Chairman and members of the committee, been Secretary of Transportation now for almost 3 years, although sometimes it seems like 30. I have seen the shattering impact on the public which the President spoke of, and I have experienced the frenzied activity needed to resolve transportation strikes, even on a temporary basis.

During just the last 19 months this Nation has been faced on four separate occasions with the dilemma of potential nationwide railroad strikes. In the spring of 1970, the Congress averted a strike by legislative action, first by postponing the strike for 37 days and then by enacting legislation that imposed a settlement. We were less fortunate the other three times.

In December of 1970 and this past May, the country experienced two short-lived strikes which, but for the speedy action of the administration and the Congress, would have crippled the Nation. This summer, as I have said, we experienced a series of selective strikes whose cumulative effect fell just short of a national emergency.

It is clear that any such disruption would have a serious impact on our efforts to stabilize and improve the economy. To end the strike in May, Mr. Chairman, the administration proposed and the Congress enacted emergency legislation. If the effect of the selective strikes earlier this summer had become more serious, or moved into a nationwide shutdown, it is clear we would have had to come to the Congress again.

Both the Congress and the administration recognize that permanent legislation is necessary to prevent the continual recurrence of such stopgap legislative efforts. Our proposal is meant to do just that. We cannot continue to ask the Congress to decide these issues on an ad hoc basis. That is why we are now proposing a mechanism for resolving disputes—one which allows labor and management to bargain out their differences without economically crippling the Nation.

This legislation is meant to tell labor and management that they can have flexibility in their bargaining, but at the end there must be a final settlement. We are not telling them what the terms must be—we are merely saying that they must reach an agreement.

I should like to make one thing clear. This is not a promanagement bill, nor is this a prolabor bill. It is a bill, as its title states, in the public interest. It is a bill which is meant only to protect the people of this Nation from becoming the innocent victims of a labor-management dispute within a single industry.

I have been on both sides of the labor management fence. As an owner of my construction business, I was management. I was priviledged to serve for 2 years as chairman of the Labor-Management Relations Committee, Massachusetts Chapter of the Association of General Contractors of America and for 7 years as a member of the association's National Labor-Management Relations Committee.

As the committee knows, however, I started with my hands as a plasterer's apprentice, and, in fact, I still hold an honorary lifetime membership in the International Plasterers Union. As a result, I feel that I understand many of the problems of labor-management negotiations. In fact, I was able to refresh my memory on labor-management negotiations for a full 13 hours one night during the recent selective strikes, and I am confident that this bill enhances the incentives for negotiation and the prospects for voluntary settlement.

The question has been raised as to why we have singled out the transportation industry for special legislation. The answer is simple. There is no other industry where the effects of work stoppages have such a devastating effect on our national welfare.

Simply stated, the transportation industry is the lifeline of our Nation's economy. Each mode plays its important part—be it trucking, airlines, railroads, or maritime—each catering to the kind of business it can most efficiently and effectively serve.

The other side of the coin, however, is that if one mode is shut down, the other modes cannot easily take up the slack. In some cases, they cannot take up the slack at all. For example, the transportation of steel or automobiles cannot readily be shifted to other modes on short notice if the railroads go on strike. Likewise, there is no modal substitute for rapid coast-to-coast passenger transport by airplane.

It appears that one of the prices we pay for the specialization in our transportation industry is that we are dependent upon it functioning as a whole. The shutdown of one of our transportation modes, or a substantial portion of any mode, unbalances the entire system, and has an impact upon the national health or safety. The severity of this situation calls for special remedy.

This, then, is the problem. We are faced with an industry which does not manufacture a product, but makes possible the manufacturing of almost all products. Transportation is the link which binds our many material sources to our industries; it is also the link which binds our industry to the consumer. In short, it makes possible the free flow of goods and services which is the keystone of our economic system.

The public interest precludes our allowing that process to flounder, yet our commitment to the essential fairness of the collective bargaining system precludes our altering it any more than is absolutely necessary. What the administration proposes, therefore, merely enlarges the options open to the President to facilitate and encourage fruitful collective bargaining.

Mr. Chairman, the President has reiterated his recommendation that the Emergency Public Interest Act be enacted. The administration recognizes the need for this legislation. We cannot continue to live from crisis to crisis. We all know that hindsight is better than foresight, and we must take advantage of our hindsight to plan for the future. This is what we as a government owe to the people. We strongly urge that this legislation be enacted.

Thank you very much. I will be pleased to answer any questions the committee may have.

The CHAIRMAN. Thank you very much, I forgot at the outset to thank you for altering your plans to meet the committee's needs, coming in at 11 rather than 10.

We will go to Senator Javits who has a conflict creeping in on him with another committee.

Senator JAVITS. Thank you very much for your usual graciousness, Mr. Chairman.

Mr. Secretary, you are testifying only to transportation and now, are you able to tell us whether a coal, a strike in the coal field, would or would not have implications of national peril such as you described for transportation?

Secretary VOLPE. I don't believe it would if we were talking about the entire transportation industry versus the entire coal industry. There are many of our industries that could operate without coal, but there are practically none of our industries that could operate without transportation.

Senator JAVITS. But you don't know? You are not satisfied——

Secretary VOLPE. I couldn't give you a positive answer as to the impact. It depends on how much of the coal industry was shut down and how much of the transportation industry was shut down.

Senator JAVITS. What about utilities?

Secretary VOLPE. I suppose if you were to have a shutdown of all the utilities it would—in my humble judgment—create a national peril.

Senator JAVITS. What about the longshoremen's strike which is threatened?

Secretary VOLPE. Well, the longshoremen's strike is one that has caused a great deal of difficulty. It has caused a great deal of unemployment, not only for the longshoremen, but in many other industries as you know.

On the other hand, as of this moment, the President has not felt under the terms of present law that he is in a position to call it a national emergency.

Senator JAVITS. Now, the longshoremen—is that included in the administration's bill?

Secretary VOLPE. Yes.

Senator JAVITS. It is a fact, isn't it, that we have moved in a Federal sense against even a single plant when it was a matter of defense?

Secretary VOLPE. That is true.

Senator JAVITS. So, isn't it a fact that the issue is much broader than transportation alone? There are other areas where the same peril exists, is that correct?

Secretary VOLPE. I think that there is no question but what you could find other areas in which perils exist. I think under the provisions of the Taft-Hartley law, however, that most of these perilous situations can and have been resolved, as indicated by the fact that over the course of 44 years we have had only 29 occasions where the emergency provisions of Taft-Hartley were invoked and only seven where strikes resumed after the cooling-off period.

Senator JAVITS. Over the course of the last 29 years we have only had three wars. Yet we maintain at the cost of well over 60 percent of the Federal budget a great Army, Navy, and Air Force; isn't that true?

Secretary VOLPE. Yes; but that is another matter.

Senator JAVITS. Now, Mr. Secretary, isn't it a fact that the peril to the Nation's health and safety is not the only peril? What about the peril to the health and safety of a region? My own region has 16 million people. Would you consider that to be an appropriate area where the United States should seek to give them, the people there, and the Nation, relief?

Secretary VOLPE. I believe that the act that the President has proposed would give him sufficient authority to determine that in a particular regional situation he could invoke the provisions of this act. He would have to satisfy himself, however, that there was sufficient impact to create a national peril.

Senator JAVITS. Mr. Secretary, if the administration's construction of its use of the word national includes the threat which a regional stoppage would cause to the Nation, may I submit to the administration—I know you are not in any position to answer it and I wouldn't even presume you are—the consideration of whether it would not be more desirable to simply face that issue in the legislation so that you wouldn't then have a litigation and somebody would contest the President's decision that a regional stoppage was in effect a direct threat to the national health and safety?

I submit that to the administration because I think that we ought to simply spell it out and to say that where a regional stoppage poses that kind of a threat in the judgment of the President that he ought to be able to move with respect to the measure of a regional stoppage instead of, as I say, having an issue which you hardly have time to get——

Secretary VOLPE. I would be happy to. The Department of Labor is really the lead agency in this field, but I will be happy to pass it on to Secretary Hodgson.

Senator JAVITS. Mr. Secretary, I just have one other question because both Senator Williams and I have to go to the floor.

The range of alternatives which the administration has under the administration's bill we believe to be mutually exclusive. In other words, if he chooses to invoke a 30-day cool-off period, then he can't use the last final offer proposition.

Is that correct?

Secretary VOLPE. That is correct, Senator.

Senator JAVITS. My own bill gives him a range of alternatives, a broader range than the administration's. He can use any or all but he is subject to congressional veto as a safety for all of us including labor.

Again I believe that the administration ought to rethink that proposition of exclusivity at the very least as being unduly——

Secretary VOLPE. I can only say this, Senator. Serious consideration has been given to this question. I have sat in on the discussions. In essence, we believe that if you have too many alternatives, too many people are apt to wait until that last alternative is invoked.

In other words, our position—and I assure you we will review it in light of your comments and the comments of others—is that the more options you have, the longer time it is going to take until you finally reach the point where the parties get together.

Now, that is a line of reasoning which you may or may not agree with.

Senator JAVITS. I thoroughly disagree with it because I believe that the whole classic advice of highly experienced labor negotiators and mediators has been precisely the arsenal of weapons, as they call it, theory, that is that the President should be equipped with a range of things that he can do and under my bill, whether it is the best or not—we will all find out—the ultimate protection is in he congressional veto and so rather than restricting him, you free him, but you give him an ultimate protection in the voices of the people through the Congress.

Thank you.

The CHAIRMAN. We have to go to the floor for a vote. I have some questions, but rather than have you wait, I would like to submit them to you in writing.

Secretary VOLPE. We would be happy to respond to whatever questions you may have.

The CHAIRMAN. Basically they deal with what you feel would be the criteria for deciding which of the options would be chosen in a given situation under the administration's bill.

Secretary VOLPE. If you and the staff make them available to us, we will certainly respond to them and be as clear as we possibly can.

The CHAIRMAN. I certainly appreciate your full cooperation to this committee.

(The questions and answers subsequently submitted follow:)

Questions submitted by Senator Harrison A. Williams, Jr., to Hon. John A. Volpe, Secretary of the Department of Transportation, with responses

1. Q. None of the three options provided by S. 560 could be invoked by the President unless there were a national emergency dispute - a strike or lockout which "imperils the national health or safety." What element in your view, would determine when we have reached the point of national emergency under this definition?

A. S. 560 amends Title II of the Labor Management Relation Act, which contains the requirement for a finding that a strike or lockout imperils "the national health or safety" as a condition precedent to invoking the emergency disputes provision of the Act. Since labor management relations in the railroad and airline industries have been controlled by the Railway Labor Act, no precedent exists at all for those two industries. Although a number of precedents have established that certain strikes have imperiled the national health or safety, no hard and fast criteria exist which could be applied to a particular strike or lockout to determine whether it is sufficiently adverse to the national interest to justify invoking Taft-Hartley. A number of factors have to be examined in each case. In the transportation industry, these factors include the nature

of the commodities whose movement is affected, the need for these commodities, the extent of present inventories and the nature and scope of the areas most immediately impacted by the strike or lockout. Generalizations as to what would constitute national injury would seem to be very difficult to devise except in extreme cases.

2. Q. Under S. 560, one of the options available to the President is to refer the dispute to a Board to decide to what extent selective strikes or other partial operations might be conducted. Another option is the final offer selection procedure. In the event S. 560 were in effect and a union or railroad employees announced a nationwide rail strike, what considerations do you believe should determine which of these options is chosen?

A. I would think that the President would make his choice based on the facts available at that time. The nature of the dispute, the probable scope of the impact of the strike or lockout, and the general situation of the country at the time of the dispute, among many other factors, would be taken into consideration by the President in arriving at his determination. I envision that he will make these decisions on a case-by-case basis and will not look for some formula to mechanically apply in every instance.

3. Q. If, in the event of an impending nationwide rail strike, the President chooses the partial operation or selective strike option, how would the Board go about deciding, within 30 days, exactly what portions of our entire rail system can be shut down and what portions cannot be?

A. Section 218 of S. 560 indicates the procedures to be used by the special board appointed by the President to consider the question of partial operations. Under subsection 218 (a), the board is given two criteria by which to determine whether a partial strike or lockout can take place. The board must find

> "(1) whether and under what conditions a partial strike or lockout in lieu of a full strike or lockout in an entire industry or substantial part thereof could take place without imperiling the national health or safety; and
>
> "(2) whether, under such conditions, the extent of such partial strike or lockout would, in the judgment of the board, appear to be sufficient in economic impact to encourage each of the parties to make continuing efforts to resolve the dispute."

Subject to these criteria, the board is free to permit partial strikes or lockouts and to determine their extent and the conditions under which they would take place. The board is limited in that it may sanction no partial operation which will,

> "place a greater economic burden on any party than that which a total cessation of operations would impose."

In addition, the boards order may only remain in effect for up to 180 days. Aside from these constraints, any order by the board or any modification of its original order by the board is conclusive unless found to be arbitrary or capricious.

The board may, of course, find that partial operations cannot take place in accordance with the criteria set out in section 218, in which case it reports that finding to the President.

The Act would be applied to the rail industry in the same way it would be applied to any transportation industry included within the framework of the bill. No specific directions regarding partial operations in the rail industry have been promulgated, and I do not think singling out any particular mode for separate treatment is called for. The criteria contained in

section 218 appear to be adequate for all the situations embraced by the Act.

4. Q. Can you provide our Committee with an analysis of the impact which resulted from the selective rail strikes which occurred between July 16 and August 2, 1971?

A. Attached is a preliminary report prepared by the Federal Railroad Administration on the impact of the July 16 to August 2, 1971, selective rail strike by the United Transportation Union. I would like to stress the fact that this is a preliminary report. The Department has contracted for the assistance of Faucett and Associates in the preparation of a more detailed and comprehensive evaluation of the impact of the strike. We expect that this report will be completed by January 1, 1972. We will forward a copy of the report to you when we have completed it. That report will furnish a more accurate assessment of the strike than the report which we are sending you at this time.

5. Q. There has been a shutdown of West Coast ports since July 1, 1971, due to a longshoremen's strike. Since the Administration has not invoked the 80-day cooling-off period available under the Taft-Hartley Act, it apparently has concluded that this strike does not imperil the national health or safety. Similarly, last year the Labor Department issued a very extensive analysis of the three lengthy East Coast dock strikes that occurred in the 1960's entitled "Impact of Longshore Strikes on the National Economy." That report concludes that while there was severe impact on some immediate port areas and adverse effect on certain businesses, "the strikes had no visible impact on the economy as a whole." It also concluded that there was no permanent loss of export markets nor any significant shortages of materials in this country. In view of this conclusion, how likely do you think it is that S. 560 would ever be applied to longshore strikes? When, in your view, would a longshore strike "imperil the national health or safety?"

A. As you are aware, the President has invoked the emergency disputes provision of the Taft-Hartley Act by seeking an injunction against the strike of the International Longshoremen's and Warehousemen's Union

affecting the West Coast ports. Since the provisions of S. 560 would be triggered by the same conditions needed to invoke Taft-Hartley, I think it is quite possible that S. 560 would be used in cases of strikes or lockouts in the longshore industry. As to the second part of the question, I think it is very difficult to generalize from a particular precedent and formulate a set of criteria which, if met, would constitute grounds for invoking the emergency disputes provision. I think it is quite clear, however, that the President's recent actions indicate that the longshore industry would not be exempted from the application of S. 560.

(Recess.)

The CHAIRMAN. We will reconvene.

I am sorry for the interruption.

Our next witness is Mr. Paul R. Chagnon, Deputy Director, Inland Traffic, Military Traffic Management and Terminal Service, Department of Defense.

Did I get all that right?

Mr. CHAGNON. Yes, sir.

The CHAIRMAN. All right. We are pleased to have you.

STATEMENT OF PAUL R. CHAGNON, DEPUTY DIRECTOR, INLAND TRAFFIC, MILITARY TRAFFIC MANAGEMENT AND TERMINAL SERVICE, DEPARTMENT OF DEFENSE, ACCOMPANIED BY JOSEPH J. COSIMANO, TRAFFIC MANAGEMENT SPECIALIST, DEPARTMENT OF THE ARMY

Mr. CHAGNON. Thank you, Mr. Chairman.

MTMTS is a single manager agency operating under the Secretary of the Army performing commercial traffic management functions for all elements of the Department of Defense.

The functions of logistics and traffic management are essentially divided among the shippers, the Army, Navy, Air Force, and Marine Corps, who decide what, or who, is to be transported, where the transport is to be furnished to, and when it must arrive.

MTMTS provides the traffic management advice as to how the commercial transportation service is procured and used. Our scope of responsibility is limited to the continental United States, except for household goods which is a worldwide responsibility.

My personal qualifications lay in the area of domestic freight traffic management; however, I have developed data in the fields of passenger traffic and export and ocean terminal operations for the committee's use. Accordingly, I will attempt to answer or develop the answers for whatever questions the committee may have in these areas.

Since 1967 we have experienced eight rail strikes, one major motor carrier strike, 11 airline strikes, five longshoremen strikes, and four ocean strikes that have required action on our part to insure a minimal impact on DOD traffic. It is recognized that these are not complete figures as some local work stoppages never came to our attention.

Those that did come to our attention did not create a substantial impact. This was due to diversions to other means of transport, cooperation of labor and management to handle defense traffic, and normally only brief work stoppages. The length of the strike is, however, the most critical factor.

The ability of alternate modes to satisfy emergency requirements is limited. An example of motor carriers' ability to supplant rail carriage of ammunition demonstrates this. The capacity of a truck is normally limited to 40,000 pounds of ammunition.

Up to 120,000 pounds can be loaded in a railcar. This means we would need as many as three times the number of trucks as railcars. Between 150 and 200 rail carloads are necessary for a shipload of ammunition. Therefore, some 450 to 600 trucks would be required for a ship. This creates an extreme demand for trucks which even if obtainable would severely clog up the ammunition plants and ammunition ocean terminals which are most efficiently operated with rail service.

On the other hand, rail service cannot satisfy some needs we have for trucks. This is best demonstrated in the supply of perishable foods to the consuming posts, camps, and stations. Motor carriers provide a scheduled, door-to-door delivery of mixed frozen and chilled perishables which is designed to satisfy the individual consumption requirements and refrigerated storage capability of the post involved.

Railroads are not normally able to provide this retail-type service because of facilities problems. While ultimate delivery from rail facility to user probably could be arranged, it is inefficient and more expensive.

The question of internal DOD movement capability naturally arises in this connection. We have in existence a military-owned-vehicle plan which provides for the use of vehicles assigned to units throughout the United States. We believe that only the barest essential cargo could be accommodated by these vehicles and that at the sacrifice of other essential activities.

Our estimate that was included in the report required of the DOD in Public Law 92–17 was that possibly 10 percent of defense rail traffic could be moved under the military-owned-vehicle plan if all other training operations were curtailed.

The second mitigating factor in easing the impact of strikes on DOD is labor-management cooperation. Our experience has been that whenever it was possible both labor and management have attempted to exempt military traffic from strikes. This has been most successful where our traffic could be isolated as in longshoremen strikes where special piers could be set aside or in ocean strikes where full shiploads could be marshaled. In these cases, labor and management have agreed to conduct special operations in order to continue the flow of military supplies.

Motor carrier service has been continuing during strikes in special cases where clearance procedures have been established through local organizations. These procedures have been hampered by reports of violence and consequent reluctance of divers to operate even though cleared by union officials.

During strikes, railroads normally attempt to handle defense traffic utilizing supervisory personnel. However, due to the scarcity of operationally qualified supervisors, operations are possible only for a short period. Here too, unions have agreed to handle defense traffic in limited fashion where it could be isolated, such as switching into ammunition terminals.

During a recent airline strike, DOD found itself with more than normal charter service as labor and management agreed to continue charter operations for the military. Military aircraft have a one-time lift capability of over 100,000 passengers within CONUS if committed solely to passenger movements.

This is considerably more than the daily average of 7,000 military passengers traveling via commercial air. The use of all or part of this military lift, when commercial air operations have stopped, is contingent on other military priorities.

The third limiting factor of impact is duration of the strike. The following is an excerpt from the DOD report pursuant to Public Law 92–17 concerning the May 17 rail strike:

While a short duration strike of one week or less would impact the Defense Department very little, a prolonged strike lasting beyond seven to ten days would begin to seriously affect the Department as the strike duration increased. Primary impact would be evidenced by a shutting down of TNT production plants. This impact would be compounded with shortages of aviation fuel, coal and fuel oil as a rail strike approached 30 to 45 days.

"Major projects and/or programs susceptible to disruption, delay and/or increased cost in a prolonged strike would include weapon and vehicle production and deployment; naval fleet support, defense housing, training, ecological undertakings and construction within the United States and overseas.

The final area of impact which I believe will interest the committee is the interruption in movement of sensitive materials. When materials such as firearms and ammunition of certain types are caught in transit by a strike, they are highly vulnerable to theft.

As the committee is aware such losses have been the subject of interest at all levels of government and are viewed with great concern. We devote considerable effort to arrange following reports of such movements when a strike is forthcoming.

If such shipments are frustrated action is taken to provide protection either through local law enforcement bodies or through military guards. Thus far, we know of no losses of this material due to strikes. However, the possibility of loss is at its highest level when shipments are frustrated at points with unpredictable protective capability.

The Department of Defense favors the Emergency Public Interest Protection Act which was proposed to the Congress by the President and introduced as S. 560 because it treats disputes which arise throughout the entire transportation industry, not just railroad transportation.

This bill, in our opinion, provides the necessary framework for dealing with national emergency disputes for the entire transportation industry, which includes railroads, airlines, longshoremen, and trucks. S. 560 is therefore the most responsive to the requirements of the Department of Defense.

I will attempt to answer questions in these areas the committee desires further information on. Also available for the committee's use is statistical data from the MTMTS Progress Report for the fourth quarter fiscal year 1971, which contains comprehensive information on defense traffic.

The CHAIRMAN. Thank you very much.

I wonder if you could give us an appreciation of the impact of some of these strikes that you have mentioned, the impact in your area of shipments for DOD.

Mr. CHAGNON. Well, in general it was relatively minor. We do have information on a number of carloads that were delayed or frustrated and it totaled about 285 carloads that were stopped or delayed.

Had the strike gone on or expanded we believe the impact would have been much greater. At one point, when the Southern Pacific, which was one of the first railroads struck, later followed by the Union Pacific or vice versa, Union Pacific followed by Southern Pacific followed by Santa Fe, it found us without rail service in half of California, all of Arizona and New Mexico.

In that area the impact was such that it required complete diversion to other modes.

The CHAIRMAN. So, it was inconvenience. You had to go to other modes but it wasn't a stoppage of shipments?

Mr. CHAGNON. Oh, no, sir. No, sir. This is why we termed the overall impact as minor.

The CHAIRMAN. Was it your department that developed the impact of the one day signalmen's national strike?

Mr. CHAGNON. Yes, sir.

The CHAIRMAN. What was the conclusion there?

Mr. CHAGNON. The conclusion there also was that the impact was not substantial due to the short duration of the strike, however. On a selective strike it was the scope on the signalmen's nationwide strike—it was the duration that allowed it to be termed minor.

The CHAIRMAN. In your listing of the transportation strikes since 1967, was there one major motor carrier strike?

Mr. CHAGNON. Yes, sir.

The CHAIRMAN. How broad was that impact?

Mr. CHAGNON. That was a nationwide strike by the Brotherhood of Teamsters in April 1970 and it again was a short-termed strike.

The CHAIRMAN. How short was that? I have forgotten.

Mr. CHAGNON. I don't recall the length of it. It strikes me as being only a day or so. We can check into that and furnish that if you want us to.

The CHAIRMAN. Are you in a position to speak to the regional aspect? Secretary Volpe suggested that he could consider certain regional strikes as possibly meeting the criteria of national emergency which rather surprised me.

Were you here when he was discussing it?

Mr. CHAGNON. Yes.

The CHAIRMAN. Are you in a position to talk about that.

Mr. CHAGNON. I can make a comment on it, sir, from our defense viewpoint. It could be that a railroad which is serving a portion of the country could affect defense activities which in effect would have a national impact.

I don't think it has to be that every railroad would have to be on strike to have that same impact. Some railroads if they were on strike would not affect the Department of Defense at all since we have no activities located on their lines. On the other hand, a single railroad such as Seaboard Coast Line serves our major ammunition terminal on the east coast at Sunny Point, N.C. If that railroad were to be stopped then it would have a greater impact.

Mr. MITTELMAN. I would like to explore not only the question of regional emergency with you but also the question of industries outside the transportation industry.

Isn't it also true that in the past the President has authorized the Attorney General to seek an 80-day injunction in a case of the single plant being closed down, making an essential weapon needed by the Defense Department?

Mr. CHAGNON. I understand that to be true. However, I must yield as this is beyond my area of competence. I am purely involved in transportation. A comment really couldn't be competent in that area.

Mr. MITTELMAN. In other words, you are not representing the Defense Department as such?

Mr. CHAGNON. As a traffic manager. However, I can certainly attempt to find the information that you seek and supply it later.

(The information subsequently supplied follows:)

AMERICAN LOCOMOTIVE COMPANY DISPUTE, 1952

On 12 December 1952, a Temporary Restraining Order was issued by the U.S. Federal District Court, Buffalo, New York, against the United Steelworkers of America (CIO) prohibiting the continuation of a strike which began 29 August 1952, against the American Locomotive Company, Alco Products Division. The Board of Inquiry's report of 11 December stated that the work stoppage was "immediately and seriously delaying the production of equipment and of fissionable materials essential for atomic weapons needed for the national defense." An injunction applying only to American Locomotive's Dunkirk, New York, plant was issued on 29 December 1952, by the U.S. Federal District Court, Buffalo, New York, and upheld on appeal. The injunction was dissolved on 21 February 1953, one day after contract settlement terms were reached and announced by the Federal Mediation and Conciliation Service.

Mr. MITTELMAN. Well, I would appreciate that because it seems to me that one of the questions that the committee will have to consider is in view of the fact that Taft-Hartley injunctions have been sought in the past in a case of a single plant manufacturing essential defense components, whether these remedies should be limited to the cases where transportation is involved.

Also, in terms of regional emergencies, have you made any study of the selective strike that actually occurred this summer in terms of its impact on defense?

Mr. CHAGNON. Oh, yes; we have.

Mr. MITTELMAN. Do you have that available?

Mr. CHAGNON. Yes; as I mentioned there were 285 carloads frustrated by it and I think we have the information on how much extra it cost us to divert.

It seems to me the cost of diversion to alternate modes totaled $115,765.

Mr. MITTELMAN. Well, I am interested in more than just the cost of diversion. Were you in fact able to divert everything?

Mr. CHAGNON. Yes.

Mr. MITTELMAN. If the strike had continued, do you think you would have continued to be able to divert all essential——

Mr. CHAGNON. As the strike grew and its scope broadened, this would have meant a greater burden placed on motor carriers. We would have found the availability of motor carriers to satisfy the displaced rail traffic becoming increasingly less available throughout the country.

So, as it comes to a nationwide railroad strike, it has always been our position that the motor carriers are unable to handle all that overflow. So, it is a question of dimension as it grows.

Mr. MITTELMAN. Has the west coast longshoremen's strike affected the Defense Department at all?

Mr. CHAGNON. There has been an effect on the Department. However, here we have been successful in obtaining an agreement with both labor and management to handle defense shipments so that the regular defense shipment that goes through the west coast is still moving. All defense shipments are moving.

There are, however, some 100 personal property shipments that have been frustrated by the strike. These are the household goods of military personnel that were caught when the strike began.

Mr. MITTELMAN. Some of the news reports that have circulated about the west coast strike concern the backup of grain. Is it just a question of the grain being stored in warehouses and that it ought to be shipped in order to prevent it from rotting?

Mr. CHAGNON. If it were loaded in warehouses, I would think the impact on movement would be little. If it happened to be stored in boxcars that other shippers would require, I would think it would have an impact, yes.

Mr. MITTELMAN. There doesn't appear to be any great backup or tieup of rail facilities in the terminals. I gather this is so?

Mr. CHAGNON. We have had no reports of inability to obtain cars because of that reason.

Mr. MITTELMAN. Thank you.

The CHAIRMAN. On the last page of your statement, Mr. Chagnon, you indicate that there is material available for our use dealing with a defense traffic generally, I guess it is.

Mr. CHAGNON. Yes, sir. All the traffic that we move and a particular document I have will give that to you for the past 2 fiscal years, 1970 and 1971. It will indicate the amount of traffic we move by rail, highway, water, air, et cetera, in terms of tons, shipments, and cost.

The CHAIRMAN. Well, I see it is in form and it would be convenient. Would you submit that to us?

Mr. CHAGNON. Yes, sir.

(The information referred to follows:)

Freight Traffic Relative to the Military Traffic Management and Terminal Service of the Department of Defense

WORKLOAD AND PERFORMANCE				
WORKLOAD		QUARTER ENDING		CUMULATIVE
	FY 1970	30 Jun 71	31 Mar 71	FY 71 thru 30 Jun 71
A. ROUTINGS (*Thousand*)	217.7	48.2	44.4	184.4
1. FREIGHT	195.2	44.0	40.8	167.6
a. DOMESTIC	114.8	26.4	25.4	103.5
b. EXPORT	80.4	17.6	15.4	64.1
2. PASSENGER	22.5	4.2	3.6	16.8
B. TRANSIT OPERATIONS (*Thousands of tons*)				
1. RECORDED	1,781	317	368	1,371
2. UTILIZED	906	174	155	622
C. NEGOTIATED RATES AND CLASSIFICATIONS				
1. ORIGINATED	418	93	69	279
2. IN PROCESS	319	35	44	187
3. COMPLETED	364	100	63	359
a. FILED IN TARIFF	11	-	4	24
b. FILED IN SECTION 22	261	67	50	203
c. REJECTED BY CARRIERS	92	33	9	132
D. NONNEGOTIATED SECTION 22 TENDERS				
RECEIVED	34,894	10,353	9,848	45,979
1. PERSONAL PROPERTY	6,388	2,413	2,856	15,981
2. FREIGHT O/T PERS. PROPERTY	28,506	7,940	6,992	29,998

MAJOR COMMODITY FLOW

COMMODITY GROUP	FISCAL YEAR 1970				COMMODITY GROUP	CUMULATIVE FY 1971 thru 30 June 1971				
	TRANSPORTATION CHARGES		AVERAGE HAUL	AVERAGE WEIGHT PER SHIPMENT		TRANSPORTATION CHARGES		AVERAGE HAUL	AVERAGE WEIGHT PER SHIPMENT	NEGOTIATION ECONOMIES
	AMOUNT (Millions)	AMOUNT PER TON-MILE (Cents)	(Miles per ton)	(In thousands of pounds)		AMOUNT (Millions)	AMOUNT PER TON-MILE (Cents)	(Miles per ton)	(In thousands of pounds)	(Thousands)
1. Personal Property (CONUS)	$259.4	16.24	1,248	2.6	1. Personal Property (CONUS)	$268.7	16.98	1,182	2.8	704.0
2. Ammunition and Explosives	251.7	04.09	1,045	84.0	2. Ammunition and Explosives	156.6	04.15	991	78.9	1,249.0
3. Iron and Steel Articles	36.2	04.89	867	7.9	3. Petroleum Products	32.1	00.70	321	515.5	12.7
4. Petroleum Products	31.2	00.72	314	496.3	4. Iron and Steel Articles	30.3	05.52	868	7.4	54.2
5. Electrical Equipment & Parts	18.1	07.10	1,112	1.8	5. Electrical Equipment & Parts	16.6	07.80	1,168	1.7	182.7
6. Provisions	13.7	02.46	584	32.0	6. Provisions	14.9	02.94	585	26.7	1,138.0
a. Perishable	4.7	04.03	385	22.1	a. Perishable	5.9	05.28	326	19.6	1,138.0
b. Nonperishable	9.0	02.04	678	40.6	b. Nonperishable	9.0	02.29	754	34.9	.0
7. Containers, All Kinds	12.2	03.94	978	23.8	7. Machinery Parts	8.8	05.97	1,028	3.2	17.2
8. Machinery Parts	10.0	05.23	957	3.6	8. Containers, All Kinds	8.4	04.97	935	15.0	268.2
9. Ordnance	9.0	05.08	950	12.6	9. Ordnance	8.3	04.94	976	13.0	240.7
10. Military Vehicles	8.3	04.12	657	92.5	10. Military Vehicles	7.6	04.08	762	101.0	405.0

FREIGHT TRAFFIC – CONTINENTAL UNITED STATES

CATEGORY OF TRAFFIC AND METHOD OF SHIPMENT	DURING FISCAL YEAR 1970				DURING QTR ENDING 30 June 1971				DURING QTR ENDING 31 March 1971				CUMULATIVE FY 1971 thru 30 June 1971			
	NUMBER OF SHIPMENTS (Thousands)	TONS (Thousands)	TON-MILES (Millions)	COST (Millions)	NUMBER OF SHIPMENTS (Thousands)	TONS (Thousands)	TON-MILES (Millions)	COST (Millions)	NUMBER OF SHIPMENTS (Thousands)	TONS (Thousands)	TON-MILES (Millions)	COST (Millions)	NUMBER OF SHIPMENTS (Thousands)	TONS (Thousands)	TON-MILES (Millions)	COST (Millions)
FREIGHT TRAFFIC – TOTAL	2,073.6	27,199.8	15,927.2	$566.1	418.3	6,182.2	3,143.9	$107.6	448.1	5,516.8	3,061.5	$115.7	1,726.2	23,638.7	12,607.1	$444.5
A. VOLUME TRAFFIC	431.7	26,496.5	15,175.7	489.0	83.1	6,040.9	3,003.7	90.8	87.0	5,362.8	2,907.5	98.2	340.2	23,047.2	12,005.2	376.2
1. RAILROAD (CL)	144.2	9,250.4	7,817.5	258.6	21.0	1,456.4	1,124.3	37.5	24.7	1,607.9	1,323.6	44.4	94.3	6,249.0	5,030.5	169.8
2. HIGHWAY (TL, D'way, etc)	277.7	6,280.1	3,554.7	160.6	59.5	1,342.9	760.0	35.3	60.0	1,267.9	714.4	36.9	236.4	5,394.3	2,938.6	135.2
3. WATER (Barge & Ships)	1.9	3,040.1	1,050.6	4.8	0.5	829.5	358.1	1.5	0.4	629.9	235.6	1.1	1.8	3,052.4	1,227.8	5.9
4. CONTRACT AIR	b/	226.0	276.6	46.5	b/	57.1	66.0	11.9	b/	55.4	64.1	11.5	b/	219.8	259.0	46.8
LOGAIR		175.3	198.4	30.8		46.0	50.6	8.6		43.9	49.4	8.4		175.3	197.2	33.5
QUICKTRANS a/		50.6	78.1	15.4		11.1	15.4	3.3		11.5	14.7	3.1		44.5	61.8	13.1
AIR CHARTER		0.1	0.1	0.3		c/	c/	c/		c/	c/	c/		0.1	0.1	0.1
5. PIPELINE	4.1	7,672.4	2,443.3	16.7	1.1	2,345.2	682.6	4.1	0.9	1,795.5	561.7	3.8	4.1	8,103.8	2,513.9	16.7
6. MIXED METHODS	3.8	27.5	32.9	1.7	0.9	9.8	12.7	0.5	1.0	6.2	8.1	0.5	3.7	27.9	35.4	1.7
B. SMALL SHIPMENTS TRAFFIC	1,641.8	703.3	751.5	77.2	335.3	141.3	140.2	16.8	361.1	154.0	154.1	17.5	1,386.0	591.6	601.9	68.3
1. RAILROAD (LCL)	1.8	2.4	2.7	0.4	c/	c/	0.1	c/	0.1	0.3	0.4	c/	0.6	1.0	1.2	0.1
2. REA EXPRESS	381.9	37.2	40.2	5.4	70.5	6.6	6.5	1.0	87.6	8.3	8.2	1.2	312.0	28.9	28.8	4.3
3. FREIGHT FORWARDER	54.0	58.6	140.5	8.2	6.2	5.7	13.2	0.9	7.8	10.8	22.9	1.4	35.4	37.6	84.4	5.3
4. HIGHWAY (LTL)	963.0	586.2	539.7	54.9	199.0	125.0	114.5	13.0	213.2	130.5	117.0	13.2	825.2	507.0	463.4	51.1
5. AIR FREIGHT	179.8	17.3	26.6	7.3	45.5	3.6	5.6	1.7	39.1	3.9	5.4	1.5	160.2	15.7	22.7	6.5
6. AIR EXPRESS	37.6	0.7	0.7	0.6	9.2	0.1	0.2	0.1	9.2	0.1	0.2	0.1	34.4	0.6	0.7	0.6
7. AIR FORWARDER	9.0	0.5	0.7	0.3	1.6	0.1	0.1	0.1	0.9	0.1	0.1	c/	5.9	0.3	0.5	0.3
8. BUS	14.8	0.5	0.3	0.1	3.2	0.1	0.1	c/	3.3	0.1	0.1	c/	12.3	0.4	0.2	0.1

a/ Qtr ending 31 Mar 71 revised to reflect Quick Trans data. Quick Trans data for Qtr ending 30 Jun 71 are estimated.
b/ Not applicable.
c/ Less than 50 short tons; 50,000 ton-miles; 50,000 dollars.

AVERAGE COSTS AND AVERAGE HAUL FOR DOD GBL CONUS FREIGHT TRAFFIC

CATEGORY OF TRAFFIC AND METHOD OF SHIPMENT	DURING FISCAL YEAR 1970				DURING QTR ENDING 30 June 1971				DURING QTR ENDING 31 March 1971				CUMULATIVE FY 1971 thru 30 June 1971			
	AVERAGE HAUL (miles per ton)	AVERAGE COST PER TON	AVERAGE COST PER CWT	AVERAGE COST PER TON-MILE	AVERAGE HAUL (miles per ton)	AVERAGE COST PER TON	AVERAGE COST PER CWT	AVERAGE COST PER TON-MILE	AVERAGE HAUL (miles per ton)	AVERAGE COST PER TON	AVERAGE COST PER CWT	AVERAGE COST PER TON-MILE	AVERAGE HAUL (miles per ton)	AVERAGE COST PER TON	AVERAGE COST PER CWT	AVERAGE COST PER TON-MILE
FREIGHT TRAFFIC - TOTAL	586	$ 20.81	$ 1.04	$.036	509	$ 17.40	$ 0.87	$.034	555	$ 20.97	$ 1.05	$.038	533	$ 18.80	$ 0.94	$.035
A. VOLUME TRAFFIC	573	18.45	0.92	.032	497	15.03	0.75	.030	542	18.31	0.92	.034	521	16.32	0.82	.031
1. RAILROAD (CL)	845	27.96	1.40	.033	772	25.75	1.29	.033	823	27.64	1.38	.034	805	27.17	1.36	.034
2. HIGHWAY (TL, D'way, etc.)	566	25.57	1.28	.045	566	26.30	1.32	.047	563	29.11	1.46	.052	545	25.07	1.25	.046
3. WATER (Barge & Ships)	346	1.59	0.08	.005	432	1.79	0.09	.004	374	1.68	0.08	.005	402	1.94	0.10	.005
4. CONTRACT AIR - a/	1,224	205.93	10.30	.168	1,157	207.81	10.39	.180	1,158	208.29	10.41	.180	1,178	212.87	10.64	.181
LogAir	1,132	175.89	8.79	.155	1,110	186.37	9.32	.169	1,127	191.27	9.56	.170	1,125	191.37	9.57	.170
QuickTrans	1,545	302.33	15.27	.198	1,389	294.82	14.74	.212	1,273	271.06	13.55	.213	1,389	294.82	14.74	.212
Air Charter	b/	b/	b/	b/	b/	b/	b/	b/	b/	b/	b/	b/	b/	b/	b/	b/
5. PIPELINE	318	2.18	0.11	.007	291	1.77	0.09	.006	313	2.11	0.11	.007	310	2.07	0.10	.007
6. MIXED METHODS	1,196	61.97	3.10	.052	1,292	46.96	2.35	.036	1,303	73.51	3.68	.056	1,269	61.17	3.06	.048
B. SMALL SHIPMENTS TRAFFIC	1,069	109.74	5.49	.103	992	119.11	5.96	.120	1,000	113.64	5.68	.114	1,017	115.43	5.77	.114
1. RAILROAD (LCL)	1,117	152.68	7.63	.137	2,245	400.90	20.05	.179	1,386	108.30	5.42	.078	1,260	123.52	6.18	.098
2. REA EXPRESS	1,081	144.20	7.21	.133	980	149.95	7.50	.153	990	145.77	7.29	.147	996	148.72	7.44	.149
3. FREIGHT FORWARDER	2,398	140.46	7.02	.059	2,336	154.96	7.75	.066	2,119	128.72	6.44	.061	2,243	141.22	7.06	.063
4. HIGHWAY (LTL)	921	93.66	4.68	.102	915	103.60	5.18	.113	896	100.82	5.04	.113	914	100.76	5.04	.110
5. AIR FREIGHT	1,538	421.50	21.08	.274	1,563	483.38	24.17	.309	1,398	389.79	19.49	.279	1,443	414.96	20.75	.288
6. AIR EXPRESS	1,095	891.39	44.57	.814	1,209	1,070.82	53.54	.886	1,172	1,068.26	53.41	.912	1,207	1,025.24	51.26	.849
7. AIR FORWARDER	1,499	640.28	32.01	.427	1,548	839.63	41.98	.542	1,256	825.82	41.29	.658	1,503	744.14	37.21	.495

a/ LogAir and QuickTrans costs are not comparable. QuickTrans includes contract terminal services; LogAir does not.
b/ Traffic volume insufficient to reflect norms.

PERSONAL PROPERTY

CATEGORY OF TRAFFIC AND METHOD OF SHIPMENT	DURING FISCAL YEAR 1970				DURING QTR ENDING 30 June 1971				DURING QTR ENDING 31 March 1971				CUMULATIVE FY 1971 thru 30 June 1971			
	NUMBER OF SHIPMENTS (Thousands)	TONS (Thousands)	TON-MILES (Millions)	COST (Millions)	NUMBER OF SHIPMENTS (Thousands)	TONS (Thousands)	TON-MILES (Millions)	COST (Millions)	NUMBER OF SHIPMENTS (Thousands)	TONS (Thousands)	TON-MILES (Millions)	COST (Millions)	NUMBER OF SHIPMENTS (Thousands)	TONS (Thousands)	TON-MILES (Millions)	COST (Millions)
PERSONAL PROPERTY - TOTAL	1,161.2	1,170.1	2,292.4	$379.6	279.8	280.2	707.7	$115.1	255.3	238.8	499.7	$84.9	1,149.6	1,193.2	2,551.9	$433.7
A. CONUS - TOTAL	765.1	986.6	1,231.0	259.4	149.7	206.6	252.6	57.6	166.3	199.9	250.6	54.7	718.9	977.9	1,219.5	268.7
1. UNCRATED (Door-to-Door)	362.6	766.9	1,000.2	230.7	79.1	150.7	196.0	49.7	76.3	144.6	189.3	46.4	372.5	746.0	978.5	236.6
ACCESS. CHARGES				(58.7)				(13.7)				(11.9)				(62.8)
2. CRATED	385.2	113.5	135.5	15.0	65.6	21.8	26.6	3.5	85.5	26.6	34.4	4.1	328.2	113.8	137.0	16.5
a. RAIL	128.6	20.5	22.7	2.7	15.0	1.9	2.3	0.3	22.3	2.7	3.6	0.4	85.9	13.8	16.5	2.0
b. MOTOR	181.4	75.4	77.0	8.6	43.2	17.7	19.3	2.7	45.6	18.9	19.9	2.5	187.4	83.1	83.3	10.5
c. FREIGHT FORWARDER	25.5	12.2	28.9	2.2	3.0	1.7	3.9	0.3	8.2	3.7	8.7	0.7	22.0	12.5	29.7	2.4
d. AIR	43.2	4.7	5.6	1.4	4.0	0.5	0.9	0.2	8.8	1.2	2.0	0.4	29.3	3.9	6.4	1.3
e. WATER	b/	b/	b/	b/	-	-	-	-	-	-	-	-	-	-	-	-
f. MIXED METHODS	6.4	0.7	1.3	0.2	0.3	b/	0.1	b/	0.6	0.1	0.2	b/	3.6	0.5	1.1	0.2
3. HOUSE TRAILERS	17.3	106.2	95.3	13.6	5.0	34.2	30.1	4.3	4.6	28.7	26.9	4.2	18.2	118.1	104.0	15.7
ACCESS. CHARGES				(0.8)				(0.2)				(0.3)				(1.0)
B. INTERNATIONAL - CRATED	64.8	12.5	69.9	9.7	11.2	2.3	12.8	1.8	14.4	2.8	16.1	2.1	59.3	11.8	66.1	9.1
C. THROUGH-BILLED - TOTAL	331.3	171.0	991.5	110.5	118.9	71.3	442.3	55.7	74.6	36.1	233.0	28.1	371.4	203.5	1,266.3	155.9
1. MOTOR-VAN - Govt. a/	-	-	-	-	b/	b/	b/	b/	-	-	-	-	b/	b/	b/	b/
ACCESS. CHARGES				-				b/				-				b/
2. SEA-VAN - Comi	6.2	6.9	24.3	4.8	2.9	4.0	14.9	2.9	1.6	1.8	7.3	1.4	8.6	12.4	48.2	9.0
ACCESS. CHARGES				(0.1)				(0.1)				b/				(0.2)
3. DOOR-TO-DOOR - Comi	62.1	90.0	515.5	63.8	29.2	48.6	272.4	36.4	15.7	23.2	133.6	17.2	90.1	139.7	796.6	102.6
ACCESS. CHARGES				(1.3)				(0.6)				(0.3)				(1.8)
4. DOOR-TO-DOOR - Govt. a/	28.5	41.3	247.7	20.0	4.7	6.3	43.0	3.4	4.3	4.2	30.8	2.5	14.7	18.0	122.0	10.1
ACCESS. CHARGES				(0.5)				(0.1)				(0.1)				(0.3)
5. AIR-VAN	0.5	0.9	2.0	0.9	0.1	0.3	1.8	0.2	-	-	-	-	0.2	0.5	2.9	0.8
ACCESS. CHARGES				b/				b/				-				b/
6. UNACCOMPANIED BAGGAGE	234.0	31.9	202.0	21.0	81.9	12.0	109.6	12.7	52.6	6.4	59.3	6.6	257.2	32.0	293.3	32.8
ACCESS. CHARGES				(2.6)				(0.8)				(0.7)				(3.0)
7. MOTOR-VAN (Alaska-Canada)	-	-	-	-	0.1	0.1	0.5	0.1	0.4	0.5	1.9	0.4	0.6	0.8	3.4	0.6
ACCESS. CHARGES				-				b/				b/				b/

a/ Ocean charges are not available to MTMTS from GBL sources. Figures, therefore, do not reflect total costs and are not comparable to costs via commercial vessel modes of service where total charges are recorded on the bill of lading.

b/ Less than 50 shipments; 50 short tons; 50,000 ton-miles; 50,000 dollars.

AVERAGE COSTS AND AVERAGE HAUL FOR DOD GBL PERSONAL PROPERTY TRAFFIC

CATEGORY OF TRAFFIC AND METHOD OF SHIPMENT	DURING FISCAL YEAR 1970				DURING QTR ENDING 30 June 1971				DURING QTR ENDING 31 March 1971				CUMULATIVE FY 1971 through 30 June 1971			
	AVERAGE HAUL (miles per ton)	AVERAGE COST PER TON	AVERAGE COST PER CWT	AVERAGE COST PER TON-MILE	AVERAGE HAUL (miles per ton)	AVERAGE COST PER TON	AVERAGE COST PER CWT	AVERAGE COST PER TON-MILE	AVERAGE HAUL (miles per ton)	AVERAGE COST PER TON	AVERAGE COST PER CWT	AVERAGE COST PER TON-MILE	AVERAGE HAUL (miles per ton)	AVERAGE COST PER TON	AVERAGE COST PER CWT	AVERAGE COST PER TON-MILE
PERSONAL PROPERTY – TOTAL	1,959	$269.70	$13.49	$.138	2,525	$355.62	$17.78	$.141	2,093	$299.32	$14.97	$.143	2,139	$305.49	$15.27	$.143
A. CONUS – TOTAL	1,248	202.58	10.13	.162	1,223	211.52	10.58	.173	1,254	212.41	10.62	.169	1,247	209.48	10.47	.168
1. UNCRATED (Door-to-Door)	1,304	224.35	11.22	.172	1,301	239.40	11.97	.184	1,310	238.48	11.92	.182	1,312	232.91	11.65	.178
2. CRATED	1,194	132.48	6.62	.111	1,220	162.74	8.14	.133	1,294	155.11	7.76	.120	1,204	144.66	7.23	.120
a. RAIL	1,109	129.94	6.50	.117	1,265	157.25	7.86	.124	1,322	162.64	8.13	.123	1,197	143.25	7.16	.120
b. MOTOR	1,022	113.49	5.67	.111	1,092	152.03	7.60	.139	1,052	131.47	6.57	.125	1,002	126.77	6.34	.127
c. FREIGHT FORWARDER	2,358	178.07	8.90	.076	2,307	206.67	10.33	.090	2,349	200.47	10.02	.085	2,383	193.62	9.68	.081
d. AIR	1,195	299.03	14.95	.250	1,815	386.65	19.33	.213	1,753	362.10	18.11	.207	1,638	342.57	17.13	.209
e. WATER	a/	a/	a/	a/	--	--	--	--	--	--	--	--	--	--	--	--
f. MIXED METHODS	1,917	346.70	17.34	.181	2,283	368.70	18.44	.162	2,087	357.34	17.87	.171	2,196	403.91	20.20	.184
3. HOUSE TRAILERS	897	120.30	6.02	.134	881	119.63	5.98	.136	936	134.23	6.71	.143	881	123.90	6.20	.141
B. INTERNATIONAL – CRATED	5,608	777.93	38.90	.139	5,516	762.15	38.11	.138	5,726	737.32	36.87	.129	5,589	773.49	38.67	.138
C. THROUGH-BILLED – TOTAL	5,799	b/	b/	b/	6,199	b/	b/	b/	6,463	b/	b/	b/	6,223	b/	b/	b/
1. MOTOR-VAN – Govt	--	--	--	--	a/	b/	b/	b/	--	--	--	--	a/	b/	b/	b/
2. SEA-VAN – Coml	3,506	689.77	34.49	.197	3,749	705.44	35.27	.188	4,054	738.59	36.93	.182	3,893	713.78	35.67	.183
3. DOOR-TO-DOOR – Coml	5,727	693.60	34.68	.121	5,601	735.89	36.79	.131	5,766	727.95	36.40	.126	5,700	721.07	36.05	.127
4. DOOR-TO-DOOR – Govt	6,001	b/	b/	b/	6,868	b/	b/	b/	7,373	b/	b/	b/	6,781	b/	b/	b/
5. AIR-VAN	2,238	973.81	48.69	.439	a/	a/	a/	a/	--	--	--	--	a/	a/	a/	a/
6. UNACCOMPANIED BAGGAGE	6,338	576.14	28.81	.091	9,122	992.48	49.62	.109	9,305	929.02	46.45	.100	9,168	930.67	46.53	.102
7. MOTOR-VAN (Alaska-Canada)	--	--	--	--	a/	a/	a/	a/	a/	a/	a/	a/	a/	a/	a/	a/

a/Traffic volume insufficient to reflect norms.

b/Ocean charges are not available to MTMTS from GBL sources. Figures, therefore, do not reflect total costs and are not comparable to costs via commercial vessel modes of service where total charges are recorded on the bill of lading.

PASSENGER TRAFFIC – CONUS (Exclusive of Alaska and Hawaii)

MODE AND CLASS OF TRANSPORTATION	DURING FISCAL YEAR 1970				DURING QTR ENDING 30 June 1971				DURING QTR ENDING 31 March 1971				CUMULATIVE FY 1971 thru 30 June 1971			
	NUMBER OF TR'S (Thousands)	PASSENGERS (Thousands)	PASSENGER MILES (Millions)	COST (Millions)	NUMBER OF TR'S (Thousands)	PASSENGERS (Thousands)	PASSENGER MILES (Millions)	COST (Millions)	NUMBER OF TR'S (Thousands)	PASSENGERS (Thousands)	PASSENGER MILES (Millions)	COST (Millions)	NUMBER OF TR'S (Thousands)	PASSENGERS (Thousands)	PASSENGER MILES (Millions)	COST (Millions)
PASSENGER TRAFFIC (Total)	1,472.5	5,936.3	3,341.1	$192.0	368.2	1,337.6	763.2	$47.8	363.6	1,455.4	773.6	$47.3	1,454.4	5,661.3	3,135.0	$191.0
A. RAILROAD	29.3	142.8	51.0	1.7	5.5	27.1	9.0	0.2	6.1	28.3	7.4	0.2	21.8	102.4	29.7	0.8
1. REGULAR RATES	28.4	128.8	39.2	1.3	5.4	25.2	6.5	0.2	6.0	27.3	6.7	0.2	21.5	97.9	25.3	0.7
a. 1st CLASS AND PULLMAN	7.7	26.9	16.3	0.8	0.8	1.8	1.2	0.1	1.1	2.5	1.3	0.1	4.2	10.6	6.2	0.3
b. COACH	20.7	101.9	22.8	0.4	4.6	23.5	5.3	0.1	4.8	24.8	5.4	0.1	17.3	87.3	19.1	0.4
2. SECTION 22	0.9	14.0	11.8	0.4	0.1	1.9	2.5	0.1	0.1	0.9	0.7	c/	0.4	4.5	4.3	0.2
a. 1st CLASS AND PULLMAN	0.8	12.0	11.3	0.4	0.1	1.6	2.4	0.1	0.1	0.9	0.7	c/	0.3	3.6	4.1	0.2
b. COACH	0.2	1.9	0.5	c/	c/	0.2	c/	c/	-	-	-	-	0.1	0.9	0.2	c/
B. AIRLINES a/	1,085.5	2,645.7	2,780.1	173.7	271.5	613.2	644.4	43.9	264.5	592.5	629.8	43.1	1,055.6	2,464.5	2,611.3	174.3
1. 1st CLASS b/	44.3	88.5	43.4	3.8	8.2	16.7	7.0	0.7	9.3	18.0	9.5	0.9	35.5	74.0	40.7	3.5
2. COMBINATION 1st CLASS/COACH b/	316.9	663.4	730.8	51.8	71.3	138.4	151.2	11.8	71.1	136.4	155.5	12.1	288.7	576.6	635.7	48.9
3. AIR COACH	719.8	1,591.8	1,683.7	104.0	191.2	403.9	416.0	28.6	183.3	386.9	406.2	27.5	727.8	1,562.3	1,643.0	109.2
4. CHARTERED	4.5	302.0	322.2	14.0	0.7	54.2	70.2	2.7	0.8	51.2	58.6	2.6	3.6	251.7	291.9	12.8
C. BUS	357.7	3,147.8	509.8	16.6	91.3	697.4	109.8	3.6	93.0	834.7	136.4	4.0	377.0	3,094.4	494.1	15.9
1. REGULAR	331.5	1,019.6	181.7	6.5	86.1	330.9	56.3	1.8	86.2	277.9	51.5	1.8	353.0	1,231.9	215.0	7.2
2. CHARTERED	25.2	2,086.0	321.9	9.9	4.9	350.8	51.4	1.8	6.5	545.8	83.4	2.2	23.1	1,820.3	273.4	8.5
3. SPECIAL SECTION 22	1.0	42.2	6.3	0.2	0.3	15.6	2.1	0.1	0.2	11.0	1.5	0.1	0.8	42.2	5.6	0.2

a/ Air passenger miles were calculated as statute miles and reduced by 18 percent to determine air mile distance.
b/ Indicates travel for which part of the journey was made in first class accommodations and part in less than first class.
c/ Less than 50 TRs; 50,000 passenger-miles; 50,000 dollars.

PASSENGER TRAFFIC AVERAGE FARES AND AVERAGE JOURNEY

MODE AND CLASS OF TRANSPORTATION	DURING									CUMULATIVE		
	FISCAL YEAR 1970			QTR ENDING 30 June 1971			QTR ENDING 31 March 1971			FY 1971 thru 30 June 1971		
	AVERAGE FARE PER		AVERAGE JOURNEY PER PAX	AVERAGE FARE PER		AVERAGE JOURNEY PER PAX	AVERAGE FARE PER		AVERAGE JOURNEY PER PAX	AVERAGE FARE PER		AVERAGE JOURNEY PER PAX
	PAX	PAX MILE		PAX	PAX MILE		PAX	PAX MILE		PAX	PAX MILE	
PASSENGER TRAFFIC (Total)	$32.35	.0575	563	$35.73	$.0626	571	$32.51	$.0612	531	$33.74	$.0609	554
A. RAILROAD	11.91	.0333	357	9.21	.0279	331	7.72	.0296	261	8.26	.0285	290
1. REGULAR RATES	9.87	.0325	304	6.60	.0256	257	6.90	.0281	245	7.05	.0272	259
a. 1st CLASS AND PULLMAN	30.99	.0510	608	33.89	.0499	679	30.45	.0576	529	29.50	.0505	584
b. COACH	4.30	.0192	224	4.56	.0202	225	4.50	.0208	216	4.31	.0197	219
2. SECTION 22 [a/]	30.70	.0363	846	44.30	.0336	1,319	32.53	.0437	744	34.53	.0360	960
a. 1st CLASS AND PULLMAN	34.44	.0366	941	50.04	.0338	1,482	32.53	.0437	744	42.38	.0365	1,160
b. COACH	7.56	.0289	262	4.68	.0234	200	-	-	-	4.77	.0236	202
B. AIRLINES (Based on Air miles)	65.66	.0625	1,051	71.62	.0682	1,051	72.67	.0684	1,063	70.72	.0667	1,060
1. 1st CLASS	43.06	.0877	491	42.68	.1015	421	49.00	.0929	527	46.65	.0849	550
2. COMBINATION 1st CLASS AND COACH	78.14	.0709	1,102	85.60	.0783	1,093	88.42	.0775	1,140	84.80	.0769	1,103
3. AIR COACH	65.36	.0618	1,058	70.90	.0688	1,030	71.02	.0676	1,050	69.89	.0665	1,052
4. CHARTERED	46.44	.0435	1,067	50.22	.0388	1,294	51.59	.0451	1,143	50.70	.0437	1,160
C. AIRLINES (Based on Surface miles)	65.66	.0512	1,281	71.62	.0559	1,282	72.67	.0561	1,296	70.72	.0547	1,292
1. 1st CLASS	43.06	.0720	598	42.68	.0832	513	49.00	.0762	643	46.65	.0696	670
2. COMBINATION 1st CLASS AND COACH	78.14	.0582	1,344	85.60	.0642	1,333	88.42	.0636	1,391	84.80	.0631	1,240
3. AIR COACH	65.36	.0507	1,290	70.90	.0565	1,256	71.02	.0555	1,280	69.89	.0545	1,282
4. CHARTERED	46.44	.0357	1,301	50.22	.0318	1,579	51.59	.0370	1,394	50.70	.0358	1,414
D. BUS	5.28	.0326	162	5.20	.0330	158	4.85	.0297	163	5.13	.0321	160
1. REGULAR	6.36	.0357	178	5.38	.0316	170	6.34	.0342	185	5.82	.0334	175
2. CHARTERED [a/]	4.74	.0307	154	5.00	.0341	147	4.09	.0267	153	4.66	.0310	150
3. SPECIAL SECTION 22	5.58	.0376	148	5.79	.0424	137	4.89	.0368	133	4.97	.0374	133

a/ Special Section 22 quotations may include accommodation and other accessorial charges and/or minimum rates for group travel which are not common to regular fare passenger service. Consequently, average unit fares can be higher for Section 22 travel than for regular rail and bus service.

CARGO AND PASSENGERS TRANSSHIPPED THROUGH CONUS WATER PORTS

PART I – CARGO

AREAS	FISCAL YEAR 1970		QTR ENDING 30 June 1971		QTR ENDING 31 March 1971		CUMULATIVE FY 1971 thru 30 June 1971	
	M/TONS (Thousands) a/	DOLLARS (Millions)	M/TONS (Thousands) b/	DOLLARS (Millions)	M/TONS (Thousands) c/	DOLLARS (Millions)	M/TONS (Thousands) d/	DOLLARS (Millions)
TOTAL ALL AREAS	17,722.4	$161.3	3,353.0	$34.1	2,919.5	$32.2	13,162.8	$129.4
EASTERN AREA	8,337.3	79.6	1,657.9	19.3	1,445.6	18.3	6,310.3	71.4
ATLANTIC PORTS	6,128.6	60.7	1,339.8	15.2	1,097.6	14.4	4,845.3	55.7
GULF PORTS	2,165.8	18.6	318.1	4.1	348.0	3.9	1,465.0	15.7
GREAT LAKES PORTS	42.9	0.3	-	-	-	-	-	-
WESTERN AREA	9,385.1	81.7	1,695.1	14.8	1,473.9	13.9	6,852.5	58.0
NORTHERN PACIFIC COAST (Wash., Oreg.)	1,965.7	17.2	338.2	2.7	299.5	2.3	1,234.4	8.2
SOUTHERN PACIFIC COAST (Calif.)	7,419.4	64.5	1,356.9	12.1	1,174.4	11.6	5,618.1	49.8

a/ Excludes 117.0 MTONS Thru-billed Cargo)
b/ Excludes 15.7 MTONS Thru-billed Cargo) No port handling cost involved.
c/ Excludes 19.0 MTONS Thru-billed Cargo)
d/ Excludes 73.5 MTONS Thru-billed Cargo)

PART II – PASSENGER

AREAS	FISCAL YEAR 1970		QTR ENDING 30 June 1971		QTR ENDING 31 March 1971		CUMULATIVE FY 1971 thru 30 June 1971	
	PASSENGERS (Thousands)	DOLLARS (Thousands)	PASSENGERS (Thousands)	DOLLARS (Thousands)	PASSENGERS (Thousands)	DOLLARS (Thousands)	PASSENGERS (Thousands)	DOLLARS (Thousands)
TOTAL ALL AREAS a/	3.9	$12.5	0.4	$1.4	0.1	$0.8	2.3	$8.5
EASTERN AREA	2.3	6.7	-	-	0.1	0.8	0.9	3.8
ATLANTIC PORTS	2.2	5.6	-	-	-	-	0.7	2.1
GULF PORTS	0.1	1.1	-	-	0.1	0.8	0.2	1.7
WESTERN AREA	1.6	5.8	0.4	1.4	-	-	1.4	4.7
NORTHERN PACIFIC COAST (Wash., Oreg.)	-	-	-	-	-	-	-	-
SOUTHERN PACIFIC COAST (Calif.)	1.6	5.8	0.4	1.4	-	-	1.4	4.7

a/ Excludes Army Air Passengers and related AIF dollars for processing these passengers.

COMMODITY SUMMARY – CARGO TRANSSHIPPED THROUGH CONUS TERMINALS

COMMODITY	FISCAL YEAR 1970						CUMULATIVE FISCAL YEAR 1971 thru 30 June 1971					
	TOTAL OUTBOUND-INBOUND b/		OUTBOUND		INBOUND		TOTAL OUTBOUND-INBOUND		OUTBOUND		INBOUND	
	M/TONS (Thousands b/)	DOLLARS (Millions)	M/TONS (Thousands b/)	DOLLARS (Millions)	M/TONS (Thousands)	DOLLARS (Millions)	M/TONS (Thousands) c/	DOLLARS (Millions)	M/TONS (Thousands) c/	DOLLARS (Millions)	M/TONS (Thousands)	DOLLARS (Millions)
TOTAL ALL COMMODITIES	17,722.4	$161.3	14,923.8	$141.9	2,798.6	$19.4	13,162.8	$129.4	10,862.0	$110.4	2,300.8	$19.0
AIRCRAFT	244.2	0.3	152.3	0.2	91.9	0.1	141.8	0.2	81.7	0.1	60.1	0.1
EXPLOSIVES	2,256.6	37.3	2,209.4	35.8	47.2	1.5	1,559.5	29.7	1,523.0	28.6	36.5	1.1
FLEET SUPPORT CARGO	10.2	0.1	10.2	0.1	--	---	1.0	d/	1.0	d/	-	-
GENERAL CARGO	4,304.4	61.6	4,024.7	58.1	279.7	3.5	2,315.1	47.6	2,036.1	42.8	279.0	4.8
LUMBER, LOGS, POLES AND PILING	609.6	5.6	609.3	5.6	0.3	d/	288.2	2.9	286.4	2.9	1.8	d/
METAL PRODUCTS	296.4	4.3	272.3	4.1	24.1	0.2	222.3	3.7	203.3	3.4	19.0	0.3
CARGO TRANSPORTERS a/	345.9	2.6	179.0	1.6	166.9	1.0	228.7	2.0	148.6	1.4	80.1	0.6
COMMERCIAL WATER HIGHWAY LIFT	94.3	0.2	74.8	0.1	19.5	0.1	169.9	0.4	169.9	0.4	-	-
PERSONAL PROPERTY	646.5	5.8	191.7	1.7	454.8	4.1	306.2	3.6	92.0	1.1	214.2	2.5
BAGGAGE, UNACCOMPANIED	8.4	0.3	2.5	0.1	5.9	0.2	5.1	0.3	1.0	0.1	4.1	0.2
REEFER CARGO	369.6	5.3	369.4	5.3	0.2	d/	156.5	2.7	155.3	2.7	1.2	d/
GOVERNMENT VEHICLES	2,566.9	17.4	2,077.1	14.3	489.8	3.1	1,806.0	15.2	1,327.6	11.4	478.4	3.8
Wheeled Vehicles Exceeding 10,000 pounds	1,490.9	10.2	1,187.7	8.2	303.2	2.0	1,022.6	8.9	741.5	6.5	281.1	2.4
Tracked Vehicles Exceeding 10,000 pounds	334.1	2.4	208.3	1.6	125.8	0.8	268.4	2.3	164.5	1.6	103.9	0.7
Vehicles 10,000 pounds or less	741.9	4.8	681.1	4.5	60.8	0.3	515.0	4.0	421.6	3.3	93.4	0.7
PRIVATELY-OWNED VEHICLES	1,089.2	7.9	538.2	4.4	551.0	3.5	883.8	8.4	438.8	4.6	445.0	3.8
ROLL-ON/ROLL-OFF TRAILERS	14.5	0.1	4.2	d/	10.3	0.1	7.0	0.1	3.3	0.1	3.7	d/
CONTAINERS, INTERMODAL	4,793.4	11.6	4,140.1	9.6	653.3	2.0	5,050.0	12.2	4,374.7	10.5	675.3	1.7
CEMENT IN BAGS	63.7	0.8	63.7	0.8	-	-	16.4	0.2	16.3	0.2	0.1	d/
MAIL IN SACKS	8.6	0.1	4.9	0.1	3.7	d/	5.3	0.2	3.0	0.1	2.3	0.1

a/ Includes CONEX and Navy returnable shipping containers.
b/ Excludes 117.0 MTONS Thru-billed Cargo) - No port handling cost involved.
c/ Excludes 73.5 MTONS Thru-billed Cargo)
d/ Less than 50,000 dollars.

The CHAIRMAN. Does that include the areas you mentioned to Mr. Mittelman a moment ago that deal with household goods? Is that part of your transportation responsibility?

Mr. CHAGNON. Yes, sir. It includes household goods, passengers, and the amount of tonnage that is transported through the terminals that we operate.

The CHAIRMAN. You did use these two words, the frustration that followed the strike and the diversion that was necessary. That would suggest to me that the emergency was met, that while it was annoying, it was met by diverting to other means.

Mr. CHAGNON. Yes, sir. The strike as it occurred, barring the projection—as you recall, there were some 10 other railroads to be struck at the time of the settlement but hadn't yet. But for the traffic via the railroads that had been struck we were successful in obtaining alternate transportation for that material.

The CHAIRMAN. Well it is not your responsibility to respond but there is a great fuzziness about just what are the elements of the national emergency in the impact on the national health and safety that triggers the application of this proposed legislation.

I gather that would not be your department?

Mr. CHAGNON. I am afraid that would be beyond my competence.

The CHAIRMAN. Well, it is not your responsibility.

Some of the questions that we are submitting to Secretary Volpe by necessity through written communication deal with that. I gather that the past history of strikes in transportation have not ground DOD to a halt?

Mr. CHAGNON. No, sir. We have been rather successful in obtaining alternates. If one port is struck we can divert to another port; if one mode of transportation is struck we can divert to another mode. But this is all within certain bounds.

There are certain things captured to rail, for example. The manufacture of TNT leads to the production or the residue of sulfuric acid and the most efficient way of transporting this is in rail tank cars. If a plant couldn't obtain the transportation of this sulfuric acid out away from the plant, we would find that plant would have to shut down because there would be no place to dispose of the acid.

So, there are some illustrations of captured or vested use but in most cases we are able to avoid this.

The CHAIRMAN. Well, this suggests that even if the strike were limited to selected areas, greater authority for continuation would be required in certain sensitive areas and this would fall under the heading of "partial operations"?

Mr. CHAGNON. Yes, sir. In some cases even as I mentioned in the testimony, supervisory personnel will man trains and move selected items for us and have done that in the past. However, any broad scope of that seems to be impossible because not every supervisor on the railroads is qualified to run a railroad train.

The CHAIRMAN. I agree and that is why this partial operation authority, even where there would be a selective strike, would seem to be an element that probably would be of high importance.

Mr. CHAGNON. Yes, sir.

The CHAIRMAN. Anything else?

Thank you very much.

This committee will be back on this subject on Monday afternoon.

(Whereupon, at 12:30 p.m., the hearing was recessed, to reconvene Monday afternoon, September 20, 1971.)

NATIONAL EMERGENCY DISPUTES, 1971–72

MONDAY, SEPTEMBER 20, 1971

U.S. SENATE,
SUBCOMMITTEE ON LABOR OF THE
COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D.C.

The subcommittee met at 2 p.m., pursuant to recess, in room 4232, New Senate Office Building, Senator Harrison A. Williams, Jr. (chairman of the Subcommittee on Labor), presiding.

Present: Senators Williams, Mondale, and Packwood.

Committee staff present: Robert E. Nagle, general counsel to full committee; Gerald M. Feder, counsel to subcommittee; and Eugene Mittelman, minority counsel.

The CHAIRMAN. My apologies. We have a belated beginning.

We continue, this afternoon, the hearings on six bills which have been referred to the Subcommittee on Labor, dealing with emergency labor disputes.

As the first witness, we are honored to have Senator Brock, of Tennessee, who has introduced one of the bills, S. 1934.

We are pleased to have you with us this afternoon, Senator Brock.

STATEMENT OF HON. WILLIAM E. BROCK, A U.S. SENATOR FROM THE STATE OF TENNESSEE

Senator BROCK. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, I am delighted to be before you this afternoon, and I am grateful for this opportunity to come before you to present my views.

I start out with the firm conviction that the public as well as management and labor are weary, if not despondent, over the recurring national emergencies caused by major strikes.

In addition, Members of the Congress are tired of being forced with increasing frequency into the labor arbitration business, usually in a crisis situation, after all else has failed. Eight times, in as many years, Congress has had to step in with ad hoc legislation to prevent or end crippling rail strikes.

The strain on Congress has been accelerating; four of these eight instances occurred within a 14-month period during 1970 and 1971. These ad hoc laws have settled nothing. They have only bought time, and at a very high price.

This body has neither the competence nor the time to constantly inject itself in collective bargaining. Worse still, congressionally imposed compulsory arbitration is a terribly dangerous assault upon the legislative process and, ultimately, upon our free economic process.

The time for corrective action is long overdue. Not only do we desperately need a constructive approach, but we must make the public interest heard and felt in these strikes. The approach I favor which is enbodied in the bill I bring to the attention of this committee today accomplishes this task.

Building on Taft-Hartley concepts and permitting the confirmed use of existing labor-management facilities, my bill provides machinery to accommodate the problem after all has failed. It also provides for representation of the public interest during these crises with a force equal to that of management and labor. We should no longer tolerate a "public be darned" attitude while the giants of industry and labor struggle to decide our fate as well as their own.

The public's tolerance for strikes clearly is diminishing. The average citizen was foursquare behind labor during the New Deal days of the 1930's. Most of us still are, for the workingman has made this country what it is.

But, is the workingman or woman really represented or even protected today? Both big labor and big business have put on muscle since the days of the Wagner Act. Today major work stoppages such as the General Electric strike of 1969–70, the Teamsters strike of 1970, the General Motors strike of 1970–71, the current west coast longshoreman strike, are viewed by the general public not as unequal contests between bully and weakling, but rather as bare-knuckle slugging matches.

Because of everyone's dependence on the goods and services of our major industries, in effect most average citizens are forced to stay in the ring with these battling giants and, of the three parties, generally gets the worst thrashing.

The right to strike or lockout is an important institution of free collective bargaining, and of our democratic society. But it is not a sacred right. It was not handed down with the Ten Commandments. It was fashioned by free men in a free society, and it can be modified and improved by those free men whenever and wherever it reduces rather than expands their freedom.

We now face such a prospect in so-called national emergency strikes.

The bill I am sponsoring, Senate bill 1934, would preserve and protect the right to strike except in disputes affecting the national health or safety. It would establish a Management-Labor Commission of seven members appointed by the President for staggered terms of 14 years, with the advice and consent of the Senate.

In making appointments, the President would insure that the interests of management, labor, and importantly, the general public, are adequately represented.

The bill directs the Commission to make conciliation, mediation, and arbitration services available to the parties in a dispute, if all such parties agree, when there is a likelihood that a national emergency strike or lockout will occur.

S. 1934 would require the President, if he thinks a national emergency strike or lockout is threatened or is in effect, to direct the Attorney General to petition the Commission to assume jurisdiction of the dispute.

The Commission is authorized to prohibit the strike for 110 days, absent prior agreement. The Chairman of the Commission is directed

to designate two or more members of the Commission as a Board of Inquiry, and the Board is required to report within 80 days with recommendations for settlement.

Disputant parties are given 30 days after the Board report to come to an agreement. Failing such settlement, the Management-Labor Commission is authorized to issue an order prescribing what the terms and conditions of the contract will be.

Along with the Commission, the bill provides for the establishment of a Management-Labor Court composed of a chief judge and four assistant judges appointed by the President for staggered terms of 10 years, upon advice and consent of the Senate.

In making appointments, the President would, as with the Commission, insure that the interests of management, labor, and the general public are adequately represented. The bill authorizes the Management-Labor Court to hear, determine, and render judgment with respect to all questions of law or fact such as unfair labor practices, which arise under any order of the Management-Labor Commission.

Decisions of the court would be final unless they are arbitrary or capricious or are violative of a right conferred by the Constitution, in which case the Supreme Court is given exclusive appellate jurisdiction.

An important, and I think fundamental, feature of this legislation is its use for accommodating the unpleasant and often emotionally charged disputes in the public service area.

Under this bill, the Commission and court can accommodate disputes not meeting the specified national emergency criteria if the parties to the disputes have previously and voluntarily, through collective bargaining, indicated their willingness to submit their differences to Commission jurisdiction.

I believe that many areas of employment not involving interstate commerce or products affecting the national health and safety will voluntarily partake of the services offered by this legislation. In addition to manufacturing and other businesses, this aspect of the legislation looks toward the public service oriented professions of education, health services, local transportation, trash removal, police, and fire protection.

Finally, the bill would repeal the emergency disputes provision of the Labor Management Relations Act, section 10 of the Railway Labor Act, and suspend the proceedings of the National Labor Relations Board, but only in disputes over which the Commission is vested with jurisdiction.

At this point, Mr. Chairman, I would like to make you and other members of the subcommittee aware of the fact that this bill is modeled after the Australian industrial relations system. Although their system has evolved certain problems over the years, we have carefully tried to benefit from this experience and avoid similar problems in this legislttion.

A recent study of Australian collective bargaining entitled "Recent Trends in Collective Bargaining in Australia," by Dianne Yerbury and J. E. Isaac, appearing in the May 1971 issue of the International Labour Review concluded:

> The notion of public responsibility in the settlement of industrial disputes, big and small, is so deeply ingrained in the Australian public mind, that it has engendered a wariness of free negotiations and the use of economic coercion.

I am convinced that American public opinion is not substantially different from Australian public opinion in this regard.

I also request, Mr. Chairman, that Howard K. Smith's recent commentary on the Australian Arbitration Commission be included in the record as a part of my testimony.

I would like to cite just one particular part of that statement. He said:

> Since the wage-price problem is becoming a permanent problem of the times, we ought to study one case where restraint has done pretty well—Australia.
>
> In 1920, the Australians created a National Wage Arbitration Council. It now has a status like our Supreme Court. It employs outriders, specialists who go out and arbitrate disputes before they grow serious.
>
> When a dispute does reach the Council, it can hand down rulings, and fine or even imprison violators.
>
> It is not perfect. But, it has helped Australia to high productivity with relatively little inflation.
>
> In a time of mighty unions and mighty corporations, with civic freedoms that let them wield their might . . . restraint will have to be not an occasional crash program of freeze. It will have to be institutionalized.
>
> Something like Australia's Arbitration Commission looks like the future. We should study it and find out what makes it work.

Again I thank you, Mr. Chairman, for the privilege of explaining to you the major provisions of my bill.

I firmly believe that Federal law on strike settlement urgently needs revision, and I sincerely hope that the committee will include the concept embodied in S. 1934 in any legislation finally approved.

The CHAIRMAN. Thank you very much, Senator Brock.

I will be brief. This Commission that would be created, its procedures would come into play when there would be a likelihood of a national emergency strike, or lockout, is that right?

Senator BROCK. The mandatory section, that would be true.

It also contains a voluntary section which allows labor and management to go themselves into the jurisdiction of the Commission through the free party process by previous agreement. But, in national emergency situations, that would be the case.

The CHAIRMAN. Who determines whether there is a national emergency?

Senator BROCK. The President makes that finding.

The CHAIRMAN. Is his position with respect to this the same as it is now, under Taft-Hartley?

Senator BROCK. In essence, yes. He directs the Attorney General to request the Commission to assume jurisdiction.

There is this difference: The Commission does not necessarily have to do so, but the assumption is fairly clear that they would, I think.

The CHAIRMAN. Of course, this is one of the big questions even today, when is there an emergency affecting the national health and safety.

Now, you mentioned the longshoremen strikes that have had a critical impact, and yet we have one now that has not brought forth proceedings under the existing national emergency provisions.

Senator BROCK. It is a very difficult finding to make. In the instance of the longshoremen particularly, I think you will find that the strike on the west coast is a crisis of major proportions for Hawaii and the west coast. But, it is not a national emergency at this point.

If it spread to the gulf coast and the west coast, I think we would find that there would be such a situation.

The CHAIRMAN. But there is nothing here to change the basic criteria of national emergency affecting the health and safety of the Nation?

Senator BROCK. That is correct.

The CHAIRMAN. We have had quite a bit of dialog here, on whether there are other strikes of serious impact that should bring on procedures that we are discussing under the various bills.

Senator Javits frequently cites the great impact of the tugboat strikes in New York Harbor.

Of course, we have other proposals that you are familiar with. One of these is the President's final offer selection proposal. What is your position on the President's bill?

Senator BROCK. I find myself in a difficult position on that bill. I think the logic of the last-best-offer approach is that it does place a burden upon management and labor to rationally make the best possible effort they can in order one be chosen.

The problem I see with that is it does not really address a fundamental problem in all of these major disputes, and that is that the public interest is not being represented today, and I do not see that that approach really addresses that particular problem.

I think the enormity of our corporate enterprise today, and juxtaposed with the enormity of industrywide labor, the power that is inherent in those two groups, literally leaves the taxpayer, the consumer, the average citizen without defense, and yet, he is very much affected by the impact, or the result of the decisions made.

He has no voice in the process, and this is what I am trying to acquire for him through this device of the Commission.

The thing that interested me about the Australian system in the first place, was that the court that they set up was mandated to consider three points of view—labor, management and the public.

There is no such mandate today in collective bargaining, and I don't see, in all candor, that some of the proposals that have been made to date address that particular problem.

I think the administration's bill would ease the problem as we have it today, but I question whether it really addresses the root of the question, the root problem that I see in all of these disputes. That is the inadequacy of voice for the American people.

And I see no prospect for our economy, other than an increase in the tendency toward giantism, ever and ever larger corporations, and ever and ever increases of concentrations of power, because they must respond in order to protect themselves.

But, I find fault with the fact of the matter that leaves the people out of the process, only at the mercy of it, but without a voice in its resolution.

The CHAIRMAN. This is compulsory arbitration?

Senator BROCK. If the President makes a finding, yes.

In the instance of all others—you mentioned the tugboat strike, the garbage-sanitation workers strike, things like that, it is not.

I think the evolution of this process over a period of years will place most of these kind of bargainings under the jurisdiction of the Commission because it works. This has been the Australian experience. At the outset of the Australian system, something less than 5 percent of management and labor supported it. Both of them were opposed to it.

Today I think something well in excess of 90 percent of all labor and management agreements valuntarily place themselves under the jurisdiction of this particular system, because it has worked. It has worked for both parties, and it has worked for the people.

The CHAIRMAN. We appreciate your testimony.

Senator Mondale?

Senator MONDALE. No questions.

The CHAIRMAN. Senator Packwood?

Senator PACKWOOD. Senator, does your bill include railroads?

Senator BROCK. Yes. My bill would include all industry, industry as defined by the President, that affects the national health and safety.

Senator PACKWOOD. In your thinking, would your bill cover a situation like the west coast dock strike?

Senator BROCK. I don't think it would at this juncture, unless the west coast strike took on such proportions as to really impact upon the national economy.

It would in the long term, because I believe we would follow the pattern that is involved in the Australian system of both labor and management wanting to be under a system which eliminated a great portion of strikes and allowed for better settlement procedures.

Senator PACKWOOD. The reason I ask is that you used the definition "substantial part thereof," and six times, as I recall, in our history we have invoked the Taft-Hartley Act for an east coast, or an east coast and gulf coast strike, where the west coast was not involved.

Senator BROCK. Yes.

Senator PACKWOOD. Because the Harry Bridges' union has a different contract date.

And assuming you are saying that the same emergency procedures apply roughly, in your thinking, to the Taft-Hartley Act, how could we justify the Taft-Hartley Act or this bill applying to an east coast dock strike, but not a west coast dock strike?

Senator BROCK. There is no conceivable justification for that. If you can find that one has sufficient impact, as I say, or a substantial portion thereof, then you could make that determination. But it would be a presidential determination.

To be perfectly candid, if, as appears may be in prospect, the gulf coast longshoremen go out on strike, and we were to resolve the west coast strike, I would be very much at the President's doorstep demanding a settlment of that one, because all our farmers would be out of work very quickly.

Senator PACKWOOD. I have been on the doorstep a month, unsuccessfully, so far.

Under your bill, there is no power to initiate these proceedings except by the President? The Commission itself can't do it? They have to wait until the President asks and then they can review it? They cannot initiate?

Senator BROCK. That is correct. In terms of the authorization itself. Obviously they make indirect initiatives.

Senator PACKWOOD. Let me ask you another question: The case is made that we should differentiate transportation from other industries, because we can take a 3-month auto strike, but we can't take a 3-week trucking and railway strike.

Do you think that is valid?

Senator BROCK. I do not. I do not for the simple reasons that people suffer and it really does not matter to them whether it is a railroad or an automobile plant that is creating suffering.

The impact on the average American citizen of a major strike in this country affecting the automobile industry is as dramatic in one way as a transportation strike can be in other ways. Perhaps it does not affect the delivery of foodstuffs, but it can affect their jobs, even in corollary industries. The plate glass manufacturer down in Nashville, Tenn., those men are just as much out of work as they would be if the railroads were not shipping.

The fact of the matter is that bigness in itself has created unique problems in this society of ours, that we have refused to deal with.

Senator PACKWOOD. Isn't it true that the transportation industry affects everybody, assuming it was a nationwide rail or truck strike, everybody is affected immediately. And that the auto industry or the steel industry does not really affect everybody immediately?

Senator BROCK. Perhaps in terms of the immediacy of the problems, but the fact of the matter is ultimately it has as great an impact, and it does just as much damage to the people.

You know, I don't know that I would gage my response on the basis of how quick an action has an impact, but on how damaging the impact is, and we have done a great disservice to the people of this country by allowing these things to go on and on and on, destroying all of the life savings of individuals, loss of their homes, bankruptcy in many cases. It is just an intolerable condition that I don't think we can refuse to address any longer.

Senator PACKWOOD. What you are trying to weigh on the one hand, is the removal of the rights of collective bargaining from both the employer and the employee. You are weighing that against the national interest, and you are saying that in any major strike, steel, glass, coal, because I assume all of these could be national emergencies, there is no right of collective bargaining? If it is a national strike, I should say there is no right to collective bargaining, at least to the point of a strike?

Senator BROCK. I would disagree, because I think there is a greater motivation for responsible collective bargaining if this power resides in the government to stop something that does damage to people who have no voice in the bargaining process, and that is what is wrong with the bargaining process today.

The great bulk of the American people are impacted, but they have no voice.

Now, something has got to be done to correct that situation, and something has got to be done to protect the public interest against the abuse and power of giants.

I see no impingement upon collective bargaining. I think it is an incentive for greater effort, greater responsibility on the part of both sides to settle the process.

Senator PACKWOOD. Do you envision your bill applying also to Federal, State, and local employees?

Senator BROCK. Of course, of course.

Senator PACKWOOD. I have no other questions.

The CHAIRMAN. Thank you very much, Senator Brock.

Senator BROCK. Thank you.

The CHAIRMAN. Mr. Lyle Fisher, vice president of the 3M Corp.

Senator MONDALE. Mr. Chairman, I take great pride in introducing our next witness. Mr. Fisher is an old friend of mine. He represents one of the truly enlightened and progressive companies in Minnesota. He serves as Vice President for Public Affairs and Personnel Relations, 3M Co., Minnesota Mining & Manufacturing.

He is not only a great Minnesotan, but a great American. Lyle has a productive and rich background in civic work, governmental, educational, and religious affairs in Minnesota. He has a rich background as well in industrial relations. He came to 3M as Director of Industrial Relations and he has been one of Minnesota's active civic leaders.

I am very pleased to introduce him and to have him appear before the Labor Subcommittee.

The CHAIRMAN. Thank you. That is a good sendoff, Mr. Fisher. I appreciate it.

Mr. FISHER. After that I am anxious to hear what I have to say.

The CHAIRMAN. We welcome you.

STATEMENT OF LYLE H. FISHER, VICE PRESIDENT, 3M CO., REPRESENTING THE NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. FISHER. Well, as Senator Mondale indicated, I am Lyle Fisher, vice president of public affairs and personnel relations of the 3M Co.

I certainly appreciate this opportunity to appear before you today to present the position of the National Association of Manufacturers on whose industrial relations committee I serve.

I will summarize to some extent the full text of our testimony and would offer the full text for the committee's edification, if that is permissible.

Senator MONDALE. Mr. Chairman, I move that the whole statement be included.

The CHAIRMAN. It certainly will be included.

Mr. FISHER. Practically all members of the National Association of Manufacturers are subject to the Labor-Management Relations Act of 1947, as amended, and many would come under the purview of the emergency disputes provisions of title II of the 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 stem 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 we have submitted to this subcommittee for the record. It will be a broad review of industry's position on the entire subject of emer-

gency disputes and its relations with 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 accelerated the inflation our Nation has been experiencing these past several years.

The strikes which collective bargaining ever more frequently spawns of late and the inflationary settlements which so often follow such strikes or the 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 Worl 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.

S. 832, 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.

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.

Over the years the NLRB 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.

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.

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.

Now, 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 themselves to 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 above.

And second, it would seem more appropriate that a congressional joint study committee be established to study all aspects of this problem, including voluminous evidence developed to date.

Turning my attention to existing legislative procedures for dealing with emergency strikes, there are three categories of employers where strike experiences have caused concern among the general public: (1) The Federal, State, and local governments, as employers; (2) industry in general, where emergency strike situations are covered by title II of the Taft-Hartley Act; and (3) employers covered by the Railway Labor Act—railroads and airlines.

Let's look briefly at the Taft-Hartley Act, title II.

The emergency strike provisions of title II of the Taft-Hartley Act, 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.

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.

Without going into great detail, 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 interposition, and represents a workable melding of the country's basic labor-management needs with the preservation of a free economy.

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Over 20 years' experience under title II has shown that, on balance, Congress decided wisely in 1947. The statistics on this matter appear in our written statement.

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.

Therefore, a major recommendation is that the emergency disputes 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 effect if excessively invoked, or where its Boards of Inquiry presume to 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, at his discretion, create a board to investigate and report respecting such a dispute." 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 (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, and so forth, 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 has tilted the balance of power in favor of the unions by requiring the railroads to help finance strikes.

It seems readily apparent that S. 832, 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 Railroad 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, as well as 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 circumstances and 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. 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.

Now, 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. History dictates that bargainers 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. 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.

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 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.

Another step Congress should avoid in emergency strikes is 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.

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.

Now, 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 S. 832, 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 of 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.

Let's look at the areas of potential aid to the collective bargaining process. Such areas include education of employees and the public in labor relations economics.

It would be appropriate for employers and government 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, et cetera.

The expertise and skill of Federal Mediation and Conciliation Service 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.

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.

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.

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 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.

In a few instances labor leaders and management themselves have decided to forego the use of strikes or lockouts 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 is distinctly different from compulsory arbitration.

Now, in conclusion, 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 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 consequences—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 mentioned previously, 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.

The CHAIRMAN. Thank you very much, Mr. Fisher.

As far as the legislation before us, is it the position of the NAM, as you expressed here, that they are opposed to any of these specific bills dealing with emergency strikes?

Mr. FISHER. Yes.

The CHAIRMAN. And yours is a more fundamental concern. I wish there was more time to discuss some of this with you. We have been called to vote, so I will just have to briefly express one or two concerns I have with two of the positions you have taken.

You talk about the imbalance of power—imbalance weighted heavily in terms of union power as opposed to the other side of the equation—under the current law. But you also lament the fact that so many settlements that are arrived at by big union leadership are not ratified at the local membership level. There appears to be somewhat of an inconsistency there.

Mr. FISHER. Well, I don't really believe so because I think that even the power that you have experienced within the union framework has been translated to the rank and file to the point where they, too, fear this union power, and as a result they are rebelling in many respects insofar as rejection of contracts and this sort of thing. I don't think there is an inconsistency.

I think that the union power exists, and I don't know that the rejection is necessarily always on the part of the employees themselves. I think that they, too, feel that the union can go back and get more by rejecting agreement. So they want to manifest an even greater power in the union by having them try again.

And then when you have this situation occur, you have really difficult bargaining.

The CHAIRMAN. That leads us then to another complex and difficult situation where you make your agreements through collective bargaining more and more locally; then you get into this awful tangle of competition.

The St. Paul local has to get as much or more than the Minneapolis local in one of the building trades. This localizing has been wrought with all kinds of problems and solutions less than the most desirable, I would think.

Mr. FISHER. This has been particularly true, I think, in the construction industry. We don't find this to be true in our industrial experience, as for instance in the 3M area where we do get contracts in each location separately. We haven't found that competition bothering us to any great extent except through the effort being made today on a coalition bargaining basis to try to put us under one umbrella and one contract for all employees throughout the country, and this really, I think, causes again a national emergency.

But in the construction industry, where you have this complete fracture, as we call it of units throughout a small community, it does create that kind of competition.

The CHAIRMAN. Again, I would like to stay here and discuss it further with you, but there is a call to vote, so I will have to leave.

Thank you ever so much, Mr. Fisher.

Mr. FISHER. Thank you.

(The prepared statement of Mr. Fisher follows:)

TESTIMONY OF
LYLE H. FISHER
ON BEHALF OF THE
NATIONAL ASSOCIATION OF MANUFACTURERS
WITH RESPECT TO
LEGISLATIVE PROPOSALS INTRODUCED IN THE
92d CONGRESS TO SETTLE EMERGENCY LABOR DISPUTES
BEFORE THE
SUBCOMMITTEE ON LABOR
OF THE
SENATE COMMITTEE ON LABOR AND
PUBLIC WELFARE
SEPTEMBER 20, 1971

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 wisardry 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*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.

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*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.

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 processes 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.* 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. 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 crisis 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.

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* Although the phrase "union power" has become almost a cliche, it is employed because no substitute language is expressive of this phenomenon.

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.

S. 832, 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;
- Fail to provide proper protection of the public interest.

B. Concentrated Nature of Trade Unions: 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 settements 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 industrywide 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 dis-

appears. 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. S. 832, as noted elsewhere, is just as 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 year's 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 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 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 their 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 S. 832, 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 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 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 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.

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 re-

jected 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 S. 832, 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 intervetion 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 pre-negotiations 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 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 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 consequences -- 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.

The CHAIRMAN. We will take a short recess.

(Recess.)

The CHAIRMAN. The committee will come to order.

Before we start, I want to include in the record a statement from Senator Inouye, dealing with this problem before the subcommittee. He discusses what he considers the inadequacy of all of the legislation dealing only with railroads and airlines, which does not include other transportation.

He suggests that we consider these other forms too. His statement will be included in the record at this point.

(The statement referred to follows:)

STATEMENT OF HON. DANIEL K. INOUYE, A U.S. SENATOR FROM THE STATE OF HAWAII

Mr. Chairman, I wish to indicate my strong interest in these Hearings on new legislative solutions to help settle Emergency Labor Disputes. We, in Hawaii, have particular reason to be interested in such legislation.

Because of our experience with the current West Coast Shipping strike, and because of our unique vulnerability to such strikes due to our almost total dependence on a single form of surface transportation, there is a strong necessity to make certain that any legislation reported by this Committee include such transportation under its provisions.

The West Coast Longshoremen's Strike, now in its 12th week, has had a heavy impact on the welfare of the people of my state. I have, therefore, been distressed that it has received such scant attention from the Eastern Establishment press and media despite its heavy cost to the economies of Haiwaii, Alaska, and West Coast areas. If the City of New York, or Washington, D.C., were to be similarly isolated and cut off from the normal sources of supplies we would have seen a far greater media interest and hopefully a far greater governmental response to the disaster.

To date this Administration has virtually ignored the existence of this strike. The Director of the Mediation and Conciliation Service, J. Curtis Counts, made a trip to the West Coast in early August and talked with labor and management representatives. He again went to the West Coast in the middle of last week and at last report was involving his office in these protracted negotiations. Hopefully, we will have an early resolution.

Even if that should happen, however, it does not obviate the need for legislation to prevent the people of my state from facing a similar insecure future a year or two years hence due to forces over which they have no control and upon which they have little influence. It is apparent that the present Taft-Hartley Act does not adequately protect such innocent third parties, and indeed all residents of my state, from great economic hardship, bankruptcy, and unemployment when such disputes occur.

It is difficult to measure the economic impact of such a strike. It is estimated that it took six years for the economy of Hawaii to recover from the protracted 1949 strike.

Today, Hawaii's State government estimates that it is losing some $720,000 per month in tax revenues alone, for a loss of approximately

$2 million to date. Increased unemployment and a reduced work week for many more is estimated to have cost our people some $18 million as of September 15th. Price increases have boosted the cost of food by some 8 percent due to higher shipping costs to bring in products from the East Coast or via air freight. This increase has added an estimated $12.5 million burden to the food budgets of our state at a time when workers are experiencing reduced incomes. These three items alone cost our people some $32.5 million.

When a man loses his job, or when a man loses a business which he has spent a life-time building, it is not good enough to go to him and say, "We can't do anything about it." He is deserving of consideration and he is deserving of more consideration than the present law provides. This is particularly true where the dispute is jurisdictional and one of the issues in the present dispute is a jurisdictional one. But his needs for additional protection of his rights is also very real when the unresolved issue is between labor and management.

I too pay tribute to the generally free labor-management system we enjoy in our nation. I too am concerned over the prospects that government may become the constant arbiter in negotiations between these two parties. But I am also aware that valuable as the freedoms in our present system are, they will not survive unless we can find means for mitigating the present heavy burdens innocent parties are being asked to bear.

Much of the Emergency Dispute legislation under consideration by this Committee at this time relates only to railroads and airlines. I find such limitation a serious flaw and urge you in strongest terms to include surface water transportation under the provisions of any new legislation.

It may be that we will need special legislation for surface transportation as it effects the non-contiguous areas of our nation. I am certainly prepared to give my support to any such consideration for we do have unique problems. Such transportation strikes may effect a fairly small proportion of the American people but it effects that proportion in a most acute fashion and is, therefore, deserving of your very special consideration.

The CHAIRMAN. Now, Senator Rohlfing. Thank you very much for your patience. We are looking forward to your testimony.

SATEMENT OF HON. FREDERICK W. ROHLFING, SENATOR, SIXTH LEGISLATURE OF THE STATE OF HAWAII

Senator ROHLFING. Mr. Chairman, members of the subcommittee, my name is Frederick W. Rohlfing. I am a member of the Senate of the Sixth Legislature of the State of Hawaii.

I am deeply grateful for the opportunity afforded me by the chairman to appear on very short notice and in such distinguished company. I would first like to read into the record substantial portions of a letter dated September 13, 1971, which states the views of the conference of which I am also chairman, and is signed by eight of its officers while concurrently introducing additional data relating to the effect of the west coast dock strike on the economy of our islands. Thereafter, I have some brief additional comments. The letter reads, and I quote:

DEAR SENATOR WILLIAMS: On behalf of the elected Republican officials of the State of Hawaii, their constituents and fellow citizens, we hereby request favorable consideration of S. 560 (introduced by Senators Griffin and Dole), and such provisions of other bills before your Committee that deal effectively with interruptions in essential transportation services.

Although we assume that you and your Committee have been apprised of the crippling effects of the West Coast longshore strike now stretching into its 75th day, we wish to emphasize the concern of our people for immediate legislative action.

Contrasting sharply with other mainland states which have multiple transportation modes, the 800,000 people of Hawaii are almost exclusively dependent on regular service of a minimum of 16 to 20 modern ships. Air cargo service is valuable but in no way fulfills basic requirements as do the rail and highway alternatives for mainland states. Such air service is expensive and has been stretched to the limit, thus, the people of Hawaii are vitally affected by interruption of their sea life-line.

Before this strike started, we were already undergoing a substantial cutback in construction (our fourth largest industry) and in tourism due to softness in the U.S. economy. The State was forecasting a $23 million deficit in fiscal '72 even without a strike. One should not need to detail the effects of the present shutdown. They should be obvious.

Let it be made clear: An economic crisis exists in Hawaii! We are concerned about people's jobs—about how they pay for their kids' school bills, doctor bills, and their already high housing and food costs. Some can get unemployment insurance, some welfare, or food stamps for survival. But for how long?

We are aware of the fact that although Taft-Hartley injunctions have been successful 76 percent of the time the record is not so good in the longshore industry. This makes corrective legislation even more urgent as this directly affects our lifeline.

Enactment of S. 560 or S. 594 would go a long way in this regard. Under S. 560 the President is provided with three options if the 80 day cooling-off period has not produced agreement. These are, as you know, (1) to extend the cooling-off period 30 days, (2) to appoint an impartial three-member board to determine whether a partial strike may continue while specifying areas for continued partial operation for up to 180 days, (3) to appoint a panel empowered to select the "final offer" submitted by the parties which is the "most reasonable" pursuant to certain criteria contained in the act.

Although any one of these procedures could assist in a given situation, we are particularly intrigued with option No. 2 as we believe it might solve the unique problems of non-contiguous and/or offshore U.S. states, territories, and possessions, by permitting continued partial operations without substantially affecting the direct economic contest between management and labor.

Senator Javits' bill (S. 594) has the particular advantage of broadening Taft-Hartley emergency provisions to include regional labor disputes or those which imperil the health or safety of "a substantial part of (the Nation's) population or territory." This, of course, would be most advantageous for Hawaii.

Regardless of the present form of the various legislative vehicles before your Committee, we strongly urge that serious consideration at least be given to the enactment of legislation which recognizes and deals with the unique problems of the Hawaiian Islands and other non-contiguous offshore U.S. areas such as Alaska, Puerto Rico, Guam, American Samoa, the Canal Zone and the Trust Territory of the Pacific. We believe S. 560 addresses the problem on a national basis adequately—but if there are problems in that broad application that are insoluble, please consider our special problems and needs.

We also recognize there may be some portions of S. 560 that are offensive to certain special interest gorups. We wish to emphasize, however, that the bill is not designed to aid special interest groups. Indeed, its stated objective is:

To provide more effective means of protecting the public interest in national emergency disputes involving the transportation industry.

An entire state's economy is certainly a matter of public, not private, interest. We earnestly ask that you not let one or two areas of doubt or pressure from special interest deter you from reaching a consensus on an appropriate measure which will prevent economic disaster similar to that which we are now facing.

What your Committee does or doesn't do now affects every man, woman and child in Hawaii—whether or not the strike stops tomorrow. Each day that passes without action that restores normal ocean shipping services to our Islands will increase the adverse effects on all of Hawaii's citizens in geometric proportion.

If you and your colleagues fail to act to correct the inadequacies of our laws or provide substitutes for our unique circumstances, these events can occur again and again solely because of the selfish desires of strong-willed men in either labor or management.

That letter was signed by eight officers of the Conference of Elected Republicans of Hawaii and transmitted to the chairman separately from this statement.

I have spent considerable additional time studying the problem and the proposed legislation since that letter was written. I would like to add some brief additional observations, if I may.

I do not presume to discuss the Railway Labor Act aspects not because of disinterest but because of priorities.

We subscribe to the overall underlying principle of the proposals before the committee—that vital transportation services should be maintained while labor disputes are fairly settled and the governmental intervention required to protect the public interest be kept to a minimum. We think there is a need for machinery to assure conclusive settlements of transportation labor disputes in an equitable manner thus obviating the need to resort to special crisis legislation.

Personally, I believe we are long past the time when we should have realized that the people of the State of Hawaii simply cannot tolerate a longshore or maritime interruption of any substantial nature. To us shipping is a public utility—that is already highly regulated by national authority as to routes, rates, limitations as to foreign competition, and other unique aspects.

Our State has led in providing a framework for collective bargaining for Government workers and we have realistically recognized their right to strike, after involved procedures are followed involving mediation, factfinding and voluntary arbitration of differences. But we have also recognized that certain workers can be ordered back to work in "the event of imminent or present danger to the health and safety of the public." As a member of the State senate committee which wrote this legislation, I strongly supported it.

Moreover, in our State we have State legislation which provides procedures for State longshore operations and charter of vessels.

Despite this State authority we as a people are not able to protect ourselves from interruptions in service, even with our own ships, if longshoremen refuse to load and off-load them at ports outside our State's jurisdiction. (It should be noted that union longshoremen are not now on strike in the islands, hence those laid off, due to the slackening of traffic are still eligible for unemployment compensation.) This is another way of saying that we have no way of protecting ourselves from events occurring on the west coast.

We are, therefore, vitally concerned with the legislative definition and executive interpretation of what constitutes a "national emergency" in the longshore maritime industry under existing statutes and bills before Congress. Fortunately there is precedent for the declaration of a national emergency when shipping to our State is curtailed. In 1962, President John F. Kennedy promptly acted under Taft-Hartley some 22 days after the Seafarer's International Union commenced a strike, following then Gov. William F. Quinn's declaration of an emergency. The SIU 1962 strike involved total shutdown as contrasted with the slow but sure bloodletting process we have been

undergoing since July 1, of this year. Any doubt that our situation today qualifies as a "national emergency" should be removed by amendatory legislation, if "regional emergencies" are not specifically covered.

The mayor of the city and county of Honolulu, wherein over 80 percent of our population lives, declared an emergency on August 23, 1971. As the word "emergency" is fraught with semantic overtones—some say he asked prematurely. Suffice it to say that 1 month after the mayor's statement and almost 3 months down the track, we are in a very precarious economic situation.

We were pleased that Secretary Hodgson chose to allude to the interruption of shipping to Hawaii as an illustration of the potential uses of option 2 (partial operation) under S. 560 in his appearance before this subcommittee on June 15, 1971. We would hope the committee will recognize this in its report, if the bill, or any bill, is reported out, or that the coverage provisions of S. 594 be assured in whatever bill is devised.

We have an additional caution regarding coverage provisions. As you may know two principal problems in the present west coast situation do not directly involve management. These are the jurisdictional problems of which union is to stuff containers and intense power struggle within the ILWU itself. Any legislation adopted with an aim of strengthening the hand of those representing the public interest should cover these types of contingencies as well as old-fashioned labor-management hassles.

We cannot emphasize too strongly our feeling that our lifeline is more important both in principal and practice than abstract observations offered as reasons for inaction, such as the proposed legislation "is repugnant to free enterprise" or others ascribing a holy sanctity to "collective bargaining." I hasten to assure you that I do not oppose either or both concepts. The opposite is the case. But enither free enterprise, nor collective bargaining can continue within our State when our sea lifeline is cut.

As evidence of this I refer to two brief letters: one from small business, one from large business—from Philip S. Williams, district manager, Oroweat Baking Co., Honolulu, Hawaii:

> Oroweat Baking co. has completely shut down their Hawaii operation due to the West Coast Shipping Strike. This includes the four major islands in Hawaii. We had ten wholesale bakery routes. We have furloughed all Oroweat personnel until we receive bakery goods from the West Coast by ship. A total of twelve personnel are concerned. We have operated in Hawaii for ten and one half years and this is the first time we have been completely shut down.

From William F. Quinn, president, Dole Company:

> Our company has lost more than one million dollars because of the current dock strike and losses are still mounting. The strike has resulted in a significant reduction in sales and a substantial increase in warehouse and distribution expense. Sales are reduced primarily because we cannot supply the West Coast and midwest with the normal amount of product to move the volume of cases we usually would with customary promotional activity.
>
> Warehousing expense has increased because of the amount of product being held at high cost in Hawaii rather than moving forward to the trade.
>
> Distribution costs have risen dramatically with our effort to keep our shelf position in the western part of the United States with products coming in through gulf and east coast ports and moved west by very expensive overland transportation.

Thank you for the opportunity to appear here today. I know you will give Hawaii's needs your deliberate consideration.

Senator ROHLFING. Mr. Chairman, there is some material attached to the copies which I would ask to be included in the record. It constitutes a summary of the situation in Hawaii, as of September 13, and includes certain Xerox copies of newspaper articles. I would hope that these could be also included in the official record.

(The information referred to follows:)

Senator Fred W. Rohlfing
Chairman

Councilman Francis Ching
Vice-Chairman

LIAISON OFFICERS:
Francis Ching
Councilman—Kauai
Mrs. Mary George
Councilman—Oahu
Joseph Bulgo
Councilman—Maui
Richard G. Edwards
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CONFERENCE OF ELECTED REPUBLICANS
STATE OF HAWAII

September 13, 1971

SUMMARY: EFFECTS OF WEST COAST DOCK STRIKE ON HAWAII.
FOR: SENATOR FRED ROHLFING, SENATE REPUBLICAN POLICY LEADER.

I. General Picture

A. Bank of Hawaii Monthly Review, August, 1971.

In Hawaii, the slowdown in overall business activity during the first half of the year has been aggravated by the ILWU's interruption of shipping between the West Coast and the State on July 1. The building industry, trucking and warehousing, and wholesale and retail trade are being affected progressively. Inventories of selected items are reaching critical levels, some small businesses are in critical condition, and unemployment is on the verge of becoming significant.

On the Mainland, economic conditions remain sluggish and mixed in the wake of cutbacks in military activity and transportation strikes, while the artificially stimulated housing industry is at a record level.

B. On August 3rd, the Chairman of the Governor's Emergency Business and Industrial Committee writing in an "Interim Report on the Economic Effects of the Current Waterfront tie-up," stated that if the strike continues, the economy of Hawaii will begin to suffer. The situation will become even worse, if there is a dock strike in Hawaii," the report stated.

II. Media Reports

1. "Dock Strike's Huge Impact: Every Business Will be Hurt Soon" San Francisco Examiner and Chronicle, July 25, 1971.

2. "Dock Strike Clobbers Isles" (Press Papers, no date)

3. "Teamster, ILWU Fight Holds Up Settlement," Honolulu Advertiser, no date.

4. "Strike Spells Dooms for Many Isle Businessmen: Immediate End of Walkout Their Only Salvation" (Pacific Business News, September 6, 1971)

5. "Hawaii's Small Businesses Note Drop in Employment" (Honolulu Advertiser, September 11, 1971)

6. "Fiscal Disaster for Some, Jitters for All" (Pacific Business News, September 13, 1971)

III. UNEMPLOYMENT

A. In an article entitled "Fiscal Disaster for some; jitters for all" in the September 13, 1971 Pacific Business News, publisher George Mason estimates a total rate of unemployment around 22,500 - or about 3,850 more than on July 10th. Admits figure is his estimate because Department of Labor won't come up with even roughest estimate.

B. Total unemployment by mid-September could be 1,500 higher than approximately 3,741 anticipated by sample employers in study conducted by Department of Labor and Industrial Relations and the Department of Planning and Economic Development.

IV. MAJOR INDUSTRIES

A. Pineapple - On August 4, the Pineapple Growers Association of Hawaii reported strike "rapidly increasing the costs and losses of Hawaii's Pineapple producers."

"Markets and sales being lost on Mainland, particularly on West Coast and mid-west. Loss of these positions in these markets will be felt for a long time in addition to immediate loss of sales.

"...as income dwindles due to loss of Mainland sales, company borrowings at high rates being forced upwards to finance the summer pack which is only about three quarters in."

Normally, about 80 percent of Hawaii's mainland deliveries enter through West Coast ports for the important western, midwest and central markets. But due to the strike, no pineapple has moved throug West Coast ports since July 1. In all, the strike has forced three of Hawaii's pineapple canneries into temporary storage as summer pack is backed up in the Islands.

B. Sugar - Emergency storage of sugar started last week on Maui and commenced this week on Kauai and at Kawaihae on the island of Hawaii. At present shipping levels, the Hawaii Sugar Planters Association estimates that nearly 29,000 tons of sugar will be stored under roof at emergency locations by the end of September, while another 1,000 tons will be stored outside, protected by plastic coverings. With institution of emergency storage measures at three of the five industry bulk shipping terminals, storage costs as a result of the West coast dock strike dispute, begin to increase to an estimate cost of $150,000.

C. Construction - Contractors and developers are not starting new projects and the segment of the industry most severely affected will be the residential area which is the most badly needed in view of Hawaii's critical housing shortage.

Percentages of layoff unemployment at 20 percent at this time are expected to jump severly during the next few weeks.

According to Hillendahl report: "Information received indicates that by August 14 there will be a layoff of about 10% or 2,000 people in the construction industry based on a total employment of 20,000.

D. Hawaii Trucking Association. In August 16th news release titled "Carriers Call for Strike Ending," it is reported total state-wide industry layoffs of 23% of their 4,000 employees.

E. Visitor Industry - Testimony from Hawaii Hotel Association indicates strike has caused ruptured flow of commercial items, including Hawaii products, causing layoffs, reduced work schedules and other forms of payroll cost cutting. The other concern relates to commodities used in hotel operations. Substitutions, absorption of special and air freight costs are the order of the day. Story in newspapers indicates strike also hurting entertainment and restaurant businesses.

F. The Chamber of Commerce of Hawaii also stresses the serious effects of the strike in a separate packet of correspondence and releases. The other packet in your package includes copies of testimony to the Williams committee.

V. SMALL BUSINESSES

A. A sampling of members of the Business League for Sound Government early in September shows a heavy impact of strike on businesses with under 50 employees.

Thirty three respondents with a normal workforce of 351 showed they had laid off 39 people by the end of August and are expected to lay off another 43 by the end of September. The 82 actual and projected lay amounted layoffs amounted to 23.4% of the normal employment of those 33 companies.

B. Striked delivered K-O punch to Orowheat Baking Company which had to lay off all 14 employees.

C. Moses Gifts first strike victim in Hilo. Will not re-open.

D. Hawaii Newspaper Agency, publisher of Hawaii's two major dailies has requested employees to start taking vacations now so as to prevent big vacation buildup next year. There has been a 10% reduction of staff at Maui Publishing according to Roy Kruse of Hawaii Newspaper Guild. Kim Jacobsen of Hawaii Business News also reports advertsing down.

[From the San Francisco Sunday Examiner and Chronicle, July 25, 1971]

Dock Strike's Huge Impact

EVERY BUSINESS WILL BE HURT SOON

(By H. W. Kusserow)

Millions of payroll dollars lost through the current West Coast dock strike are a drop in the bucket compared to what the general economy stands to lose.

Practically every business, whether directly involved with shipping or receiving goods transported by ships, will feel some financial hardship if the strike doesn't end soon.

And there's little reason to believe it will. No evidence is visible to indicate that the International Longshoremen's and Warehousemen's Union and the Pacific Maritime Association—the shipowner representatives—are attempting to reach a settlement soon.

The basic loss is, of course, in export and import cargoes that amount, in San Francisco and Oakland, to some 10 million tons annually.

Experts estimate that each ton of cargo generates $50 into various sectors of the economy. The annual cargo thus becomes worth $500 million, a total that can hardly fail to affect most of the six million persons in Northern California when it's deducted from the total buying power.

In Northern California, some 6000 longshoremen are on strike. Their payroll, less the wages they are receiving for working military cargo and passenger ships, is about $700,000 a week.

Most directly affected are the ship crews. Approximately 30 vessels or about one-third of the ships manned by West Coast crews, are now tied up, putting some 1350 seafaring people on the beach.

Payroll loss of approximately 1,000 unlicensed personnel is in the neighborhood of $200,000 a week. No estimate is available for licensed officers.

Morris Weisberger, secretary-treasurer of the Sailors Union of the Pacific, said the tieup is having a drastic effect on the pensions and welfare plans of the unlicensed men because the contributions are based on the number of man days worked.

"It's a slow case of paralysis setting in on us," he said.

Within 30 days, Weisberger expects more than 50 percent—45 to 50 West Coast ships—to be tied up.

"I'd like to see them sit down and do what they can to get it settled.

"I don't know if it's the union or the companies. A plague on both of them," he added.

Twenty-four West Coast ports are virtually closed—working only tankers, a smattering of passenger ships and military carriers.

The Port of San Francisco, already in a shaky financial position, is losing about $10,000 a day in dockage and wharfage charges. It has laid off 21 temporary employees.

Oakland, although it handles more cargo than The City, is losing some $7,000 a day. What revenue it is picking up is from military shipments and from lesses who must pay a minimum.

Steamship companies set their daily loss for tied up ships between $5,000 and $10,000 per ship, depending on its size.

In most cases they have accelerated the vacation schedule of their employees. The major companies have not laid off workers, but they may be forced to if the strike lasts two or three more weeks.

Some smaller companies and steamship agencies have laid off some of their newest employees and imposed 25 percent pay cuts on some of the older hands, including top executives.

Extremely hard hit are the smaller freight forwarders and customs house brokers, whose documentation work has all but disappeared. Messengers are among the victims.

"There's so little work," said one freight forwarder, "that the president of our company has been running documents for certification."

The larger firms, like Harper-Robinson, are transferring personnel from one division to another—as from ship forwarding to air forwarding.

Air freight has boomed. All major airlines are receiving cargoes normally sent by ship, particularly to Hawaii.

United, as an example has sent 12 extra air freighters to Hawaii the past several weeks, each carrying 70,000 pounds. Of this, 60 percent was perishables, including large shipments of fresh meats and vegetables for island supermarkets.

Exporters and importers are hurting. Some are able to get their products out and in through Vancouver, B.C., or Ensenada, Mexico, but at extremely high cost and delay.

Some brokers in Mexico, it's reported, are gouging shippers. There have also been difficulties reported with customs officials.

In Vancouver, the port is congested. One importer said it's "almost impossible to find your cargo, and once you do you have the additional problem of finding trucks to haul your goods."

Exporter James S. Baker said his firm "just can't take orders because we can't be sure we can get the stuff out."

He added: "All the unions had better stop and take a look at the power they have over our economy. Pretty soon public pressure is going to force tight controls.

"We're really in a helluva shape today. The unions have too much power, just as the corporation had 50 years ago."

Among those suffering the most are the foreign automobile distributors and dealers.

"If it lasts two to three months, we'll lose some of our dealers. If it goes six months, they'll all be gone," declared Kjell Qvale, president of British Motor Cars.

His firm distributes cars to about 100 dealers on the West Coast, and many don't have the financial resources to hold out. Their retail sales run some $60 million annually.

Qvale has one shipment that got into Vancouver, "but it's going to take us a month to get the cars and it will be horrendously expensive."

The Volkswagen people are in better shape.

"At this point, we're not really affected," said a spokesman for the Reynold C. Johnson Co., major Northern California VW distributor.

"Because we have a fleet of 69 ships, we were able to get a large number of cars before the strike," he said.

OPEN LETTER TO CONGRESSMEN

DOCK STRIKE CLOBBERS ISLES

Your constituents are wondering:

Do we count for anything in Washington?

The West Coast Dock Strike is now 49 days old and it's not considered to be a "National Emergency."

This, of course, means that the Federal Government can find no reason to step in with a Taft-Hartley injunction or with any other power within its scope to ease the problems the strike is causing.

What it really means is that Hawaii's peculiar problems were not considered when the definitions for a "National Emergency" were established.

Hawaii, as you are aware, is not like any other State—with the partial exception of Alaska.

We are cut off from the rest of the nation by 2,200 miles of ocean. Eight hundred thousand of us depend on shipping for many items.

Food, for instance, and medicine and other items that are generally considered to be necessary to our well being.

And we are not—by any stretch of the imagination—self-sufficient.

Now, 800,000 of us are slowly being strangled by an unscrupulous union—and the Federal Government seems unable to do more than sit around and mumble.

Unscrupulous union? Let's back that up.

1. From the outset, the union served notice that it would not even bother to start negotiations until the end of August and would let the situation deteriorate to give its negotiators extra clout at the bargaining tables.

2. The union said that it would not hold Hawaii for ransom and then blatantly refused to allow strike-bound ships to ship emergency supplies to Hawaii from Canadian ports.

In both cases, the ILWU cynically cultivated Hawaii's vulnerable position to further its own questionable goals.

We are entirely dependent on the union's non-existent good graces.

What can you, our Congressmen, do?

First, you can let the Administration know that Hawaii is facing a serious emergency.

If our situation does not qualify as a "National Emergency," then, at least, the definitions should be restudied with some consideration given to Hawaii's (and Alaska's) extraordinary conditions.

Second, you can urge your Washington colleagues to support Senate Bill 560, the proposed amendment to Taft-Hartley which would require partial operation of vital transportation industries during labor disputes.

And third, you could explore potential alternates that might provide us with some temporary relief from our present problems.

One might be the use of military transportation for essential items; another could be an air or sea-lift program through private agencies; still another could be the use of foreign ports and shipping.

But whatever, our problems need solving on the national level. Hawaii has to become a real State—with real representation.

We need help—and you have to get it for us.

All 800,000 of us.

(Community Press readers are encouraged to write their own letters to Senators Hiram Fong and Daniel Inouye and Congressmen Spark Matsunaga and Patsy Mink urging them to use all of their powers to bring an end to the dockstrike. Those who cannot find the time to write a personal letter may clip this open letter and mail to the congressional leaders in Washington, D.C.)

Teamster, ILWU Fight Holds Up Settlement

(By Charles Turner, Advertiser Labor Writer)

Hawaii is caught in the middle of a jurisdictional fight between the ILWU and the giant Teamsters Union in the month-old shipping strike.

It's not higher wages . . . or pensions . . . or even a guaranteed work week which is holding up settlement of the crippling labor dispute.

The issue is whether the ILWU or the Teamsters should have the right to load and unload container cargo at the docks.

This was made clear yesterday by ILWU President Harry Bridges, who said in his column in the bi-monthly union newspaper:

"The union's number one demand in the strike of its longshore division is that of control over stuffing or stripping containers."

Bridges said ship owners have rejected the ILWU's demand that it be given jurisdiction over the containers on grounds the Teamsters demand the stuffing work and have a right to do it.

Bridges said until this issue is resolved, "no satisfactory agreement" can be reached with the employers.

He said the Teamsters' position is that the best way out of the dilemma is for the ILWU to become part of the Teamsters Union.

There are more than two million members in the Teamsters; the ILWU has about 65,000.

Bridges said he proposed three alternatives to settle the strike:

Fight it out "as long as it takes" to force shipowners to submit to the union demands.

Affiliate with the Teamsters.

Affiliate or form an alliance with the International Longshoremen's Association (AFL–CIO).

Bridges said joint action with the ILA, whose contract with East-Gulf Coast shipowners expires Sept. 30, was the best way to bring pressure on management.

However, the ILWU president said his union's 16-member executive committee rejected any affiliation with the Teamsters or the ILA.

Bridges said the only concession by the committee was an agreement to seek an "alliance" with the ILA which would support the current West Coast dock strike.

The Pacific Maritime Association, which has been caught in the middle—like Hawaii—by the labor dispute, had an agreement with the ILWU for the handling of container cargo.

But the pact expired on June 30—the same day the contracts with some 120 shipowners and longshore firms expired.

The battle between the ILWU and the Teamsters for control of containerized cargo has been going on for years.

The ILA, which has no such problems (it asserted control over cargo within 50 miles of ports under its contracts), pointed out in 1968 that the ILWU was headed for trouble.

"It was inevitable that the effects of containerization would be felt on West Coast piers sooner or later," ILA President Thomas W. (Teddy) Gleason said, then he added:

"The ILA rejected the West Coast concept of 'free wheeling' years ago."

Gleason was one of the main speakers at the ILWU's international convention held in Honolulu in April. He proposed at that time the ILWU join forces with the ILA because of the impending contract deadlines facing the two unions.

The ILWU's delegates kicked around the proposal but took no action on it during the convention.

Bridges, who probably will retire when the next convention is held in San Francisco in 1973, is believed to favor having the ILWU's longshoremen merge with the ILA.

Louis Goldblatt, ILWU secretary-treasurer and Bridges' heir apparent, wants to hold the union together as long as possible.

[From the Pacific Business News, Monday, Sept. 6, 1971]

STRIKE SPELLS DOOM FOR MANY ISLE BUSINESSMEN; IMMEDIATE END OF WALKOUT THEIR ONLY SALVATION

(By Ronald H. Bafetti)

The shipping strike is alive and well, but many of Hawaii's small businessmen aren't.

That's the consensus of opinion among the callers who responded to PBN's plea for comment by businessmen on what particular type of havoc the strike was wreaking upon them.

"Our bread and butter is unloading containers for consignees," Mike Rossell of Honolulu Emergency Labor Pool, said. "There are hardly any containers to unload right now and business has dropped off about forty per cent."

Rossell said that all of his concern about the effects of the strike was not for his own enterprise but for the businesses owned by his customers.

"A lot of the people who hire help from me specialize in importing certain types of items in bulk quantities," Rossell said. "If they're wiped out by a long strike I'm bound to go down the tube with them."

Early last week, Rossell telephoned the Governor's office to see if there might be some form of relief for small businessmen in the form of loans made from unemployment insurance funds collected from employers.

Rossell reasoned that this money could be doled out to small businesses on a strict pay-back basis to keep operators afloat during the strike.

Governor Burns replied ". . . such a use of these funds which are collected for a specific purpose, would be illegal. However, your point is well taken that, whereas employees have a "cushion" against unemployment, employers and small businessmen have none."

* * * * * * *

Ralph Matsuda, owner of Funds 'n Games, has $7,500 worth of equipment stranded on West Coast docks and he's not happy about that situation.

"After six months of brainstorming and legwork to raise the $16,000 I needed to start my new venture here, I get hamstrung by the strike," Matsuda said. "Without the equipment, I'm not in business. In fact things might be over for me before they start."

Matsuda said that he and his wife are spending most of their time trying to figure out ways to 'just survive' the shipping walkout.

M. W. Rasmussen, president of M. W. Rasmussen Co., Inc., is one one of the many Honolulu businessmen being hurt by the strike because his operation comes solely from his ability to deliver the goods he sells.

He supplies building specialties such as metal doors, trash and linen chutes, etc.

"I've been losing between $15,000 and $20,000 of business a month since the strike started," Rasmussen said. "I've got thousands of dollars worth of merchandise tied up on the coast and it's not doing me a bit of good."

"If I can't deliver, I can't bill and if I can't bill I won't be able to survive for very long," he added.

Rasmussen made his last delivery in late June and hasn't billed a customer in the last 70 days.

"I've even sent a wire to the President asking him to do something for us here in Hawaii," he said. "If we don't get some relief soon it will be all over for a lot of us."

Rasmussen said that he has cut back his own salary and will probably turn to personal loans as a way of keeping himself afloat financially for the remainder of the strike.

"Even if the strike were to end today it would take me six to eight weeks just to get the business moving again," he said. "If it goes much longer, things won't be on an even keel for me until the end of the year, and it could take longer than that."

Longs Drug Stores' new Maui facility was supposed to have opened on September 1.

* * * * * * *

[From the Honolulu Advertiser, Sept. 11, 1971]

Hawaii's Small Businesses Note Drop in Employment

The West Coast dock strike has caused a drop of more than 11 per cent in employment among Hawaii's small businesses polled by the independent Business League for Sound Government.

The league yesterday released the results of its poll, which showed that of 37 businesses which responded, the smaller ones are the hardest hit.

The small businesses (under 50 employes) said they have laid off 39 employes to date and expect to lay off 43 more this month. This will mean a drop of 23.3 per cent by the end of September.

Larger businesses are less severely hurt by the strike, with normal employment down only eight-tenths of one per cent as of September 9. This is expected to increase to 5.9 percent by the end of the month.

The league said that 2 small businesses have had sales reductions of more than 20 per cent. Only one of the larger businesses reported a similar drop in sales.

Among the small businesses, four said they would have to shut down their operations within a month if the strike continues. Another four said they would be out of business in two months. The total number who said they would be out of business in from one to four months or more was 17.

Gordon Frazier, State Labor Department statistician, said yesterday that job layoffs caused by the strike have not been as extensive as originally thought.

In the past week, Frazier reported, some 1,300 persons applied for their first unemployment compensation checks. This figure, he said, compares with weekly highs of 1,035 in May, 1,058 in June, 1,158 in July and 1,087 in August.

Strike's End Not Near—Executive

Sam N. Mercer, vice president of Pacific Far East Lines, said here yesterday that those close to the West Coast dock strike see small chance for an early settlement.

The veteran steamship company sales executive said he based that belief on conversations with fellow management officials in San Francisco.

"Contrary to the news reports, I don't think any of those close to the scene expect the ILWU and the ship owners to reach agreement on a new contract any time soon," he said.

"For one thing they haven't settled the jurisdictional question between the ILWU an dthe Teamsters as to which union should stuff containers around the docks.

"So they haven't even got to the issues of economics of the steamship companies' operations."

Meanwhile, however, the ILWU is cooperating in making it possible for passenger ships like PFEL's Monterey and Mariposa to continue their schedules, Mercer said.

"We get good stevedoring help for sailings like this one of the Monterey from San Francisco and Los Angeles," he said. Mercer flew in late Thursday to board the SS Monterey for an interisland cruise.

"They give us gangs for loading ships' stores, provisions and passenger baggage," he said. "Our passengers don't have to worry about carrying their luggage on or off at any port."

[From the Pacific Business News, Sept. 13, 1971]

FISCAL DISASTER FOR SOME, JITTERS FOR ALL

(By George Mason, Publisher)

Everybody's trying to guess the effects of the longshore strike on Hawaii's business firms and workers. But no one seems to have any solid information.

Governor Burns said last week in a radio interview that there is no crisis "except for those who are going broke."

But no one can guess at how many are going broke.

Even the unemployment picture is foggy. August unemployment will be guessed at around September 20. In the meantime we obtained these figures late last week on the trend of unemployment compensation filings and the number of people being paid benefits:

Week ending—	Total number filing	Payments made to—
July 3	1,051	8,840
July 10	996	8,814
July 17	1,153	9,341
July 24	1,158	9,241
July 31	1,073	10,791
Aug. 7	1,087	10,736
Aug. 14	983	10,147
Aug. 21	845	9,965
Aug. 28	1,006	10,676
Sept. 4	1,314	10,537

The number of people receiving unemployment compensation payments normally represent 45 to 50 percent of the total unemployed. For example, unemployment in the State for the week ending July 10 was 18,650 and the 8,814 receiving payments was 47.3 percent of the total.

Extending this ratio to the September 4 data would indicate total unemployment in the neighborhood of 22,500—or about 3,850 more than on July 10.

That's *our* estimate because the State Dept. of Labor will not even make the roughest of guesses on the unemployment situation.

A look at the weekly filings indicates that they were in the normal range through the last week in August. The week ending September 4 shows the only jump out of the normal range.

If unemployment did indeed increase by less than 4,000 from the onset of the strike through the first few days in September, then the impact has been almost exclusively on small firms and it has not been as great as predicted.

Yet there are other factors for which there are no statistics. Such as early vacations, reduced hours, people who have not yet gotten up the nerve to file for compensation—plus of course, the many people who are not eligible for unemployment compensation.

One State official made an interesting observation to us last week. "The number of applicants for civil service jobs must be 10 times what it was a few months ago."

A manager of a small firm reported to us that he had been forced to lay off four of his people. "What really struck me," he said, "is that three of them said they would be too ashamed to go down and ask for unemployment compensation and would sit it out for a while in hopes that they'd be able to come back to work."

One effect of the strike on large and small firms alike is a rough receivables position. Apparently a lot of people are hanging on to what cash they have.

Perhaps the most serious impact has been psychological.

Uncertainty seems to be affecting everyone. Those who have not experienced long shipping tieups are trying to gauge how long it will take to get back to normal. Many business decisions that could be carried forward in spite of the strike are being postponed simply because the psychological climate isn't right.

Reduced sales volume of 15 to 20 percent is noted by a lot of firms, but that frequently is not enough to cause large-scale layoffs or other drastic measures. By tightening expenses other than payroll, most firms can withstand short-term drops in sales volume.

Distributors of merchandise no longer available are most concerned about regaining their shelf-space status once the flow of goods returns to normal.

The influx of merchandise this month from Canada, Japan, Australia, New Zealand and the East Coast will witness the appearance of strange new brands in retail stores. How long will it take to woo customers back to their brand name shopping habits? Or will a certain share of the market be lost forever?

Auto dealers are likely to lose the benefits of heavy introductory advertising for 1972 models in national print and broadcast media. Heavy ad campaigns by manufacturers draw a lot of people into local auto showrooms. But without 1972 models to show (unless they are already being routed via the East Coast) the auto dealers will lose a big edge.

Overall, the strike is a disaster for a few but a case of jitters for the many.

As anyone who watches the national economy can tell you, it's the jitters that contribute most to economic slowdowns.

CONSTRUCTION MATERIALS HAWAII POST OFFICE BOX 1721 / HONOLULU, HAWAII 96806 / TELEPHONE 847-7654

September 13, 1971

The Honorable Harrison Williams, Jr.
Chairman, Labor and Welfare Committee
United States Senate
Washington, D. C.

Sir:

Subject: Senate Bill 560

I have been asked by Senator Rohlfing's office to comment briefly on the effect of the West Coast dock strike on my company and on the construction industry in the State of Hawaii.

1. Movement of lumber and building materials into the State and out into the the hands of the construction industry has been very heavy during July and August. The in-flow of container cargo, however, fell off in August and only a few containers have come in from the East Coast since. As a result, inventories of building materials have moved down to zero in many cases in spite of attempts to use air shipments or foreign imports. Lumber inventories are not in such poor supply because of the continuance of limited barge service but realistically the industry needs both building materials and lumber to continue and it is my opinion that things will go down hill fast in September.

2. Contractors and developers are not starting new projects and the segment of the industry most severely affected will be the residential area.

3. In anticipation of a 90 to 120 day start-up period for the industry after the strike settlement is announced, our company has taken steps to lay off approximately 20% of our normal manning of 480. This percentage will increase each week as the situation worsens. These lay-offs do not reflect completely in the unemployment statistics to date because employees are given accrued vacation time first before being eligible for unemployment insurance. It is my opinion that there will be a substantial increase in unemployment in October, November and December.

Very truly yours,

Earl Gould
President

HAWAII HOTEL ASSOCIATION
SUITE 907
2270 KALAKAUA AVENUE
HONOLULU, HAWAII 96815
TELEPHONE 923-0407

September 13, 1971

Honorable Harrison A. Williams, Jr.
Chairman, Senate Committee
Labor and Public Welfare Committee
Suite 4230, Senate Office Building
Washington, D. C.

Dear Senator Williams:

The Hawaii Hotel Association represents approximately 29,000 rooms in the state of Hawaii. Our 120 Active association members normally employ some 15,000 people on a statewide basis. In addition, there are another 15,000 employees who normally work in a supportive capacity to our hotel operations. These ancilliary businesses are primarily restaurants, shops, entertainment and show rooms.

The current waterfront work stoppage on the West Coast has drastically curtailed the normal commercial relationship between Hawaii and the mainland United States. The strike has had a negative impact on two elements of our industry's operations.

One, the ruptured flow of commercial items, including Hawaii products, has caused layoffs, reduced work schedules and other forms of payroll cost cutting. The net result of an uncertain economic future for an individual or family is conservative spending. Our restaurants, showrooms and shops have been affected by the reduced spending pattern of our Hawaii citizens.

The second area of our concern relates to the commodities used in our operations. Substitutions, absorption of special and air freight costs are the order of the day for the present. But this patchwork system cannot long prevail. Prices at the consumer level are frozen; the strike has pushed the total cost of several commodities sharply higher. No business operation, including hotels and restaurants, can survive such a situation for any extended period of time.

It is vitally important that the supply lines to Hawaii be restored to normal as soon as possible. The public welfare of the citizens of Hawaii is at stake and the key Senate committee you chair can be of material assistance. The committee is strongly urged to solicit the use of the Taft-Hartley law by President Nixon. Such an action would relieve the short term situation.

The long term solution to our nation's problems with the transportation industry requires new methods of resolution. Senate Bill No. 560 embodies new concepts that would allow for equitable solutions to extended conflicts between management and labor in the transportation industry. S.B. 560 would not violate the basic freedom of decision inherent in the collective bargaining process however. The committee is strongly urged to act favorably on S. B. No. 560.

Thank you.

Sincerely,

Robert N. Rinker

Robert N. Rinker
Executive Vice President

RNR:er

c: Mr. Albert L. McDermott, Washington Representative
American Hotel & Motel Association

Mr. C. J. Cavanagh, President
Chamber of Commerce of Hawaii

Hospital Association of Hawaii

200 NORTH VINEYARD BOULEVARD • SUITE 507 • HONOLULU, HAWAII 96817 • TELEPHONE 533-2795

OLLIE BURKETT
Executive Director

September 13, 1971

Senator Fred Rohlfing
State Capitol Building
Honolulu, Hawaii

Dear Fred:

Although the dock strike has caused some shortages in medical supplies, they are not yet critical. In fact, the Medical and Public Health Committee of the Governor's Emergency Resources Management Agency has sent questionnaires to our major hospitals, nursing homes, and clinics asking them to list the materials they believe will be most necessary to bring into Hawaii should critical shortages develop.

Among the items in short supply are:

Intravenous (I.V.) solutions for hospital use.
Sterilized salt and sugar solutions for patients who have fluid imbalances or are unable to eat regularly.

Other items growing scarce are:

Bandages, swabs, surgical dressings and disposable surgical gloves.
Crutches.
Glass bottles and plastic containers for prescriptions.
Disposable paper products, i.e.: Drapes for patients, coverings for examination tables, towels, and bed pads for chronically ill patients.
Disposable needles and syringes.
Medical gases such as nitrous oxide, argon and helium.

A representative of McGaw Laboratories, which supplies about 90% of the intravenous fluids used in Hawaii hospitals, said, "We have enough for about 90 days, but after that, we could be in a desperate situation. The hospitals have not stockpiled I.V. fluids because of their bulk. Hospitals generally lack storage space, and in normal times we often deliver to them once or twice a week."

Senator Fred Rohlfing
re: Medical Supplies during Dock Strike

Additional intravenous supplies could be flown in, but such a measure would prove extremely costly, and it would be difficult to obtain the supply needed to support state-wide use of these materials.

The McGaw spokesman has also commented that stocks of surgical swabs and disposable gloves (now used almost exclusively by most hospitals) are low, and that the company would try to hold out with minimal air shipments, but that continuation of the strike after September could work a great hardship on our hospitals.

A supplier of plastic containers has reported his inventory low, and has stated that he can no longer supply all standard sizes.

We know that other vital items that could become critical because of their bulk and weight are X-ray film and the chemicals necessary to process them.

The entire range of health care in the State of Hawaii is in potential jeopardy, and the Hospital Association of Hawaii, representing as it does all of our hospitals and nursing homes, greatly appreciates your efforts in attempting to maintain a realistic level of these critical items for use by the citizens of our State.

Very truly yours,

Ollie Burkett
Executive Director

OB:s

HAWAII TRUCKING ASSOCIATION

P. O. Box 3106
Honolulu, Hawaii 96802
Telephone: 847-5929

FOR RELEASE AUGUST 16, 1971

CARRIERS CALL FOR STRIKE ENDING

Hawaii's common carrier trucking firms today called for a halt to the disastrous unemployment situation resulting from the west coast dock strike. In a letter addressed to Hawaii's Congressional delegation, the Directors of the Hawaii Trucking Association requested federal intervention in the strike which is developing alarmingly high rates of unemployment in Hawaii.

Following a survey of its 180-member firm, the trucking association announced that some segments of the industry already have 40% of their employees laid off as a result of the strike. The total statewide industry reports lay-offs of 23% of their 4,400 employees. If the strike continues throughout September, the member firms anticipate the common carriers will have over 41% of their employees on the state's unemployment rolls.

chamber of commerce of hawaii

established 1850

September 13, 1971

The Honorable Harrison A. Williams, Jr., Chairman
and Members, Senate Labor and Public Welfare Committee
Senate Office Building, Room 352
Washington, D. C. 20510

Gentlemen:

The Chamber of Commerce of Hawaii supports the immediate enactment of S. 560.

We recognize and support the principles of free collective bargaining on labor-management disputes. Yet we find in strikes of essential transportation industries separate and unique problems. Their impact on the nation's economy is particularly critical at this moment. Prices in transportation are already regulated. There is such a large degree of government control in this area that truly free collective bargaining is impossible. In much of the nation there is no alternative way to move most of the essential materials when railroads are idled. Shipping tie-ups are equally disruptive for both domestic and foreign commerce in Hawaii; they sever our very lifeline.

In 1949 the people of Hawaii suffered a crippling six-month dock strike. When President Truman was asked to end that strike he stated that he lacked the legal power.

Today, 22 years and many strikes later, America is still without legislation to curb crucial transportation strikes.

Residents in Hawaii in particular, but the whole country as well, have become victims of these antiquated methods used to resolve labor-management disputes in essential transportation industries. The efficiency, productivity and competitive position of our countryhave suffered. Many union contracts in transportation are to be negotiated during the next few months.

The only legislation of which we are aware that has been provided the administration is the Taft-Hartley and Railway Labor Acts with the 80-day cooling off period. If no agreement has been reached during that period no general authority remains to end the renewed strike. The two sides might then be further apart than before. For that reason the administration has expressed reluctance to resort to the 80-day injunction.

dillingham building / honolulu, hawaii 96813

Proposed legislation is now available to meet these objections. The "final offer" option of S. 560 appears to exert an opposite influence. It would encourage each of the disputants to submit the most reasonable offer in hopes that his would be the one accepted as a binding agreement, should no solution be reached in collective bargaining. This "final offer" plan seems to be the best way yet devised to bring the parties together to settle their own disputes and also to assure a settlement, should they fail.

With this legislation under serious consideration, President Nixon could immediately invoke the Taft-Hartley 80-day cooling off period in the West Coast shipping tie-up anticipating use of the "final offer" option should agreement not be reached during the 80 days. Thus he could get the West Coast ships moving again and be prepared to intercede should East and Gulf coast longshoremen choose to strike when their contract runs out at the end of this month.

On the West Coast, ships in 27 ports have now been tied up for 2½ months. Most of Hawaii's cargo comes from these ports. Use of Gulf and East Coast ports and air shipmenthave provided very limited cargo at added trucking, shipping and air freight costs, In spite of efforts to prepare for this strike through expensive stockpiling in Hawaii small businesses are failing, construction is closing down and shelves are being depleted. Several thousand people have lost their jobs already. With each day the number will increase. When the strike is settled it will take weeks and months to replenish needed materials. Many businesses may never recover. Permanent damage will result. Many markets will be lost to outside competition. Hawaii needs protection against these recurring strikes. Our country needs protection from the detrimental effect on our economy.

The Chamber of Commerce of Hawaii appeals for reporting of this legislation out of committee and its submission to the Congress for early passage. Congress cannot be expected to enact special legislation to deal with each transportation strike that occurs. This bill will get them off the hook by providing the tools to settle these disputes.

Respectfully submitted,

C. J. Cavanagh
President

CJC:jl

Senator ROHLFING. I thank you for the opportunity to appear here today, and I know that you will give Hawaii's needs your very close consideration.

The CHAIRMAN. We certainly will. The material you mentioned will be included in the record.

I wonder if you could clarify for me how the impact of this particular west coast longshoremen's strike differs in its impact on Hawaii than the strike during President Kennedy's term. He did invoke the national emergency provisions of Taft-Hartley. Was there a great difference of impact?

Senator ROHLFING. Well, sir, as I understand the 1962 situation, and I was in the State legislature at that time, in the house of representatives, it developed as a progressive thing. As the ships came into the various ports, the SIU people went out. The ILWU began very shortly thereafter to refuse to cross the picket lines which the SIU had established in these various ports. It was soon very apparent that there was a total shutdown on the west coast and the islands in that particular instance.

Governor Quinn went back to San Francisco in an attempt to get eight ships to handle the cargo to Hawaii and was refused permission by the union and managemet, but I don't recall the details of the refusal to provide the shipping requested. He then went back to Hawaii and said, "If this is the situation as it stands, this is an emergency." He then declared one, sent a telegram to the President and the President acted.

In this situation we have quite a different setup of circumstances because the east coast and gulf shipping has been coming in and will come up until September 30. The whole west coast is closed down. We have been able to get in substantial amounts of food, and there is no starvation thing facing us in that regard, but we are being, as I noted, bled to death, so to speak, because we are not getting the essentials of our economy, and in particular such things as construction supplies and so forth.

And when this pipeline dries up, then as each supplier is not able to furnish the supplies to the various contractors, then that job shuts down, the trucking industry has large unemployment and so forth. So we have a series of economic conditions occurring as a day-in and day-out thing, progressively getting worse rather than where we can dramatically say all shipping has stopped and nothing is moving.

So I think it might be compared to maybe a walkout, a wildcat walkout as against a slowdown. You may lose just as much of your production and your free flow of commerce by reason of a slowdown as with a total lockout or total strike. It just takes a little longer for the circumstances to rise to the surface to the same degree.

I think we are suffering more now than we did then—1962—to tell you the truth.

The CHAIRMAN. Then there were no ships?

Senator ROHLFING. At that time, that is right; yes, sir, Mr. Chairman.

The CHAIRMAN. Now ships are coming in?

Senator ROHLFING. Right now the numbers are decreasing. Recently the east coast people, shipping companies and forwarders, were not accepting goods which were consigned to Hawaii because they were anticipating that there would be no ships after the 30th of September.

So, supplies, even from the east coast, have dried up.

The CHAIRMAN. I see.

In a way you are anticipating the eventuality of an east coast strike, as you consider the potential impact?

Senator ROHLFING. Well, it is bad enough now. Actually, one of the things we are a little concerned about is that if the east coast and gulf stevedores do not go out, if we don't now qualify as an emergency under the existing Taft-Hartley Act, or the choice is made not to proceed in that direction, then we are going to have this prolongation even longer.

We are a little sensitive coming from as far out as we do. It sometimes takes something on the east coast to bring the impact home, and I hope this isn't true, because we are in a very bad situation now on the west coast, and in Hawaii particularly.

The CHAIRMAN. There is present law which is triggered by the finding of a national emergency.

Now, that has not been found in this situation. The administration bill still uses this same trigger for starting the proceedings provided for under that bill. You would be in the same boat, wouldn't you?

Senator ROHLFING. Yes. I tried to recognize that in my testimony, Mr. Chairman. I alluded to the fact that we were concerned about the definition of national emergency, that if that definition were not applicable to our situation as it exists today, then we would urge the committee to consider Senator Javits' proposals in S. 594 to the extent that it might apply to at least the rather unusual situation of offshore or noncontiguous States, territories, and possessions.

And this really relates to your prior questioning, too. The semantics of emergency, what is an emergency, has defied people at many levels, I am certain, from the President on down. We have our own conflict, as I noted in Hawaii, where the mayor declared an emergency on August 23, and the Governor did not declare an emergency at that time.

It is very semantic as to whether you are talking about just medical supplies and food, or whether you are really talking about the economic welfare and the ultimate effect that that has on people's lives, and not only the money, but how they live, and what happens to our community over a long period.

Because it is quite clear that even if this strike ended tomorrow that it would take 6 to 8 months or more for our economy to get back to normal. We have to get stuff cycled down the pipeline again. The people that are laid off are not going to come back to their jobs immediately.

The CHAIRMAN. Well, how about the essentials for health and safety today with the strike that exists on the west coast—medical supplies, foodstuffs? Where do you stand on that?

Senator ROHLFING. We are doing relatively well in the latter regard. Regarding footstuffs, there is beginning to be a shortage in rice and salt. The stocks on the shelves of the grocery stores have decreased. However, they are not at an alarming stage yet.

In the material that I introduced, I have a statement from the Hospital Association of Hawaii with respect to medical supplies which notes that certain items are in short supply, including intravenous

solutions for hospital use, sterilized salt and sugar solutions for patients who have fluid imbalances and are unable to eat regularly, and there are a number of items growing scarce, bandages, crutches, glass bottles, disposable paper products, disposable needles and syringes, mill gasses, and so on.

Now, I am personally not as alarmed that we won't be able to handle some of those things through air shipment as I am the overall effects that I have alluded to previously. We don't think the Navy will let us starve. Let us put it that way.

The CHAIRMAN. Say that again?

Senator ROHLFING. We don't think the Navy will let us starve one way or the other, but we are very concerned about our real lifeblood in terms of our State's economy and its future.

The CHAIRMAN. Anything further, gentlemen?

Thank you very much.

Senator ROHLFING. Thank you very much, sir.

The CHAIRMAN. Our next scheduled meeting on this subject matter is the 28th, September 28.

(Whereupon, at 4:10 p.m., the hearing was recessed, to reconvene on Tuesday, September 28, 1971.)

NATIONAL EMERGENCY DISPUTES, 1971–72

TUESDAY, SEPTEMBER 28, 1971

U.S. SENATE,
SUBCOMMITTEE ON LABOR OF THE
COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D.C.

The subcommittee met at 11:59 a.m., pursuant to call, in room 4232, New Senate Office Building, Senator Harrison A. Williams, Jr. (chairman of the subcommittee, presiding.

Present: Senators Williams, chairman of the committee and subcommittee, and Bob Packwood.

Committee staff present: Robert E. Nagle, general counsel to full committee; Gerald M. Feder, counsel to subcommittee; and Eugene Mittelman, minority counsel.

Senator PACKWOOD (presiding pro tempore). Mr. Palmby, shall we proceed?

Mr. PALMBY. Well, Senator Packwood, I have with me this morning to my left, Deputy General Counsel Claude Coffman, and to my right, Assistant Administrator for Community Service Don Rubel. Senator Packwood, I do have a statement. May I proceed?

Senator PACKWOOD. Yes, you may proceed or you may place it in the record. It will be incorporated in the record.

STATEMENT OF CLARENCE PALMBY, ASSISTANT SECRETARY OF AGRICULTURE, ACCOMPANIED BY CLAUDE COFFMAN, DEPUTY GENERAL COUNSEL, AND DON RUBEL, ASSISTANT ADMINISTRATOR FOR COMMUNITY SERVICE

Mr. PALMBY. It is rather short and if I may, I would like to read it.

The U.S. Department of Agriculture strongly supports the proposed Emergency Public Interest Protection Act of 1971 as a reasonable effort to deal with disputes between labor and management which arise in the transportation industries.

America's farmers depend for their very livelihood on our national transportation system as indeed do all of our industries and consumers. However, our national transportation system is now being critically impaired because we lack a workable mechanism for quickly and equitably settling labor-management disputes. We fully realize that work stoppages are only one part of the transportation crises facing this Nation. But we must find a better way to deal with labor disputes if we are to have the transportation sysem that a strong and growing U.S. economy requires.

Most of our people live far away from the farms that produce most of the food and fiber they need. Because we have had good transportation and marketing systems, our farmers are able to produce where soil, climate, and economic conditions are most favorable. The food is then shipped rapidly and efficiently to the great metropolitan centers where it is needed. If our transportation system is stopped for any length of time, this represents an intolerable threat to the public. It is also an intolerable threat to farmers who may be unable to market their crops.

There is another vital reason for our concern about transportation tieups—and this is the effect of transportation stoppages on this Nation's balance of payments through our agricultural exports. President Nixon recently told a joint session of this Congress that economic progress in the world has dramatically altered the relationships between the United States and other great trading nations, and that "we are now being challenged to protect the value of the dollar and to learn once again to be competitive."

Farmers have long known they must compete and have known how to compete as indicated by the fact that we are the world's largest exporter of farm products. Agricultural exports reached a new high of $7.8 billion last year. And farm exports contributed $6.8 billion to the Nation's commercial trade balance last year. Without the favorable ratio of farm exports to imports, our balance of payments would have reached the crisis stage long ago.

But farmers are aware that their competitive position is in jeopardy—through no fault of their own—if they cannot depend on our transportation industries to move their farm products. In world markets, our crops have to compete directly with commodities from other countries, and if buyers cannot depend upon getting a dependable quality and quantity of U.S. products, they will buy what they need from others.

The present west coast dock strike offers a prime—if tragic—example of what can happen. While our farmers sit by, helpless to act, they see much of their foreign market going right down the drain. For the months of July and August, an estimated $215 million worth of farm products, which would have moved through west coast ports, was affected. About $40 million of that amount was in fruits and vegetables—including perishable products that cannot wait for a strike to end—and 60 percent of that business is lost and will be difficult, if not impossible, to regain.

Wheat that would normally be moving to our leading single country customer, Japan, is piling up in elevators and even spoiling on the ground, because it cannot be shipped. The Japanese, who have been trying to diversify their farm product purchasing because of the threat of transportation stoppages from this country, are making other arrangements to buy wheat from Australia and Canada.

Our agricultural attaché in Tokyo reports the known loss of U.S. agricultural export business with Japan because of the strike totaled $7.7 million for one 2-week period in July.

The west coast dock strike cannot be viewed as an isolated instance. We've had rail strikes and threatened rail strikes averted only by last-minute congressional intervention. And right now we face the threat of a strike of gulf coast ports—which would be even more of a catas-

trophe for agriculture. As important as west coast ports are to U.S. farmers, the gulf coast ports are even more vital. Last year about half of our agricultural exports were shipped from gulf coast ports.

So as we debate this issue today, the combine sicklebars are busily clipping through the fields of Corn Belt and Plains States, harvesting the biggest crops of grain and soybeans in this Nation's history, Millions of bushels of these commodities are normally destined for export through the gulf ports. Farmers are counting on these export sales to keep them in business. Elevators and rail and barge lines have carefully planned how to move these tremendous crops to terminal elevators to await the ships which even now may be at sea. In Europe and the Orient, U.S. businessmen are negotiating sales contracts that will bring badly needed cash flowing into the United States.

The mere threat of the strike has already hurt. Elevators are reluctant to buy the farmer's newly harvested crops because they don't know when they can ship the commodities, or what kind of market losses and price drops may occur even if they can eventually ship. Foreign buyers are looking for other sources of supply—in case of the strike.

The 115-day strike at gulf coast ports 2 years ago offers a good example of how a transportation strike can hurt—not just the farmers but the entire economy of the Nation. When the strike began, our farm exports had been trending up for several years. At the end of 1969, however, our farm export totals were $570 million short of the previous year.

A U.S. Department of Labor task group studying the effects of this strike noted: "* * * most U.S. exports face competition from nearly identical commodities." Even soybeans face competition from other oilseeds and their products. Inability to make delivery will mean loss of a particular sale, but need not mean permanent loss of the market. However, loss of a particular sale will often make it more difficult to repenetrate the market.

For example, millers adjust their grist to the specific type of wheat they are using; once they have shifted from, say, U.S. wheat to Australian or Argentinian wheat, shifting back involves both costs and inconveniences. Shifting back to soybeans from some other oilseed will involve comparable problems.

Partial estimates of business lost by U.S. farmers during that strike: Soybeans—10 million bushels of beans and 300,000 short tons of soybean meal, valued at $50 million, lost to fish meal, rapeseed, peanuts, and palm oil. Competitors benefiting were Peru, Argentina, India, Africa, Malaysia, and China.

Feed grains: 900,000 metric tons, valued at $58 million; France benefitted by 300,000 tons of corn.

Wheat: 30 million bushels, valued at $50 million, lost to Australia and Argentina.

Meat and meat products: 20 million pounds, representing about $5 million, replaced in part by Argentina.

Rice: 3 million hundredweight, worth $29 million, replaced primarily by Thailand.

Cotton: 3,000 bales, worth $39 million, with Sudan, UAR, Brazil, Peru, and Colombia benefiting.

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At this critical time as we try to get our economic house in order, we cannot afford these continuous threats to our transportation system. Dependability is a vital factor in building and holding export markets.

As a Nation we must begin to think seriously about the economic cost of not being able to settle our transportation disputes without loss to farmers, to our entire economy, and to our Nation's competitive position in world markets.

I urge the fullest support of this proposed legislation—now—in the belief that it will help us accomplish the important goals set out recently by President Nixon.

Mr. Chairman, I'm very happy to respond to any questions to the extent that we are able to do so.

Senator PACKWOOD. You mentioned, Mr. Palmby, the west coast dock strike and I'm obviously quite concerned with it. To date we have been unable to get the administration to invoke the Taft-Hartley Act because their position is that it doesn't affect the national economic picture sufficiently to justify invoking the act.

Under the administration's bill, you would still have to have a national health and safety standard before procedures that the administration has in the bill can be used. Do you think under the bill, as written, that procedures could be used in a situation such as the present west coast dock strike?

Mr. PALMBY. Senator Packwood, as you so well know, the authority for the administration of this act is vested with the Secretary of Labor and so any view that I share with you must be that of someone from another Agency who is so vitally interested in this matter, and I am told that the administration supports this bill because it's thought that there would be more, a broader, latitude to make a judgment.

Senator PACKWOOD. Let me ask you this. Do you think it's necessary that in whatever bills the committee may recommend there be some provision to deal with strikes of less than national character?

Mr. PALMBY. This is my opinion, yes, because as you so well know, in the northwestern United States, it's very difficult to make a case where your wheat growers are suffering terribly because of wheat piling on the ground and loss of markets and deterioration of the commodity. I suspect it's impossible to say that's a national disaster, but to that area of the Nation and to those people and to—as far as our dollar and cents are concerned, and as far as farm income is concerned, it's a disaster of the first water, in my opinion.

Senator PACKWOOD. What you have is a situation not where everybody in the Nation is suffering 20 percent; some of the people are suffering 90 percent, and most of the rest suffering nothing, and therefore, the situation is not a national emergency.

Mr. PALMBY. We have another alternative. For instance, in the State of California where I'm told 10 alfalfa dehydrating plants which normally produce a large portion for the Japanese market, and while this is a small commodity, our foreign export is about $20 million a year—those plants have closed and that the return on that commodity is the return equal to the price of hay, rather than this high-quality feed ingredient which in dollars and cents means a slippage from about $50 a ton to $30 a ton. It dramatizes what happens in a local area.

Senator PACKWOOD. I couldn't agree with you more. I have no further questions, Mr. Chairman.

The CHAIRMAN. Well, my questions have been covered. I had the same questions of Mr. Palmby. I wonder if the impact, as you see it from the Department of Agriculture, is being made clear to the President so that he may consider it in his evaluation of whether the present law should be applied to this particular dock strike?

Mr. PALMBY. Well, Mr. Chairman, I can't speak for the President here. I'll say this on behalf of the Secretary of Agriculture in the Department, that we have done the very best job we know how to do to to supply what the information is and to supply testimony as to what is happening commodity by commodity and that's the best way we think to approach this, and it's why I did go into a bit of detail as to what happened in the gulf and east coast strike. We'll continue to do the best job we can to document what happens and the sad part of it is, it's almost impossible to really come up with a figure the extent to which farm income is damaged, and the extent to which commodity prices are lowered because of the lack of a movement.

The CHAIRMAN. Thank you very much.

Mr. PALMBY. Thank you.

The CHAIRMAN. Thank you. Now, Mr. Stephen Ailes, president and chief executive officer of the Association of American Railroads, and Mr. J. P. Hiltz, chairman of the National Railway Labor Conference.

Gentlemen, you have been aboard all morning waiting to be heard——

Senator PACKWOOD. Gentlemen, I might excuse myself, now, before you start. I am very sorry to have to leave at this point, but I have read both of your statements and find them excellent and share a great deal in common with what you've said.

The CHAIRMAN. Well, now, how shall we proceed, gentlemen?

Mr. AILES. Mr. Chairman, I have about a 10 or 11 page statement here. I'd be glad to submit it for the record and simply go through it and just mention two or three of what I consider the highlights or I'd be glad to read it.

The CHAIRMAN. Which do you prefer? Both of you have full statements?

Mr. HILTZ. Yes, sir.

Mr. AILES. I'll not read my entire statement. I'll just take some highlights. Of course, I'll ask that the entire statement be included in the record.

The CHAIRMAN. All right. If you want to proceed that way, that will be fine, but make sure we hit the major points of the formal proceeding. Your prepared statement will be entered into the record at the conclusion of your testimony.

STATEMENT OF STEPHEN AILES, PRESIDENT AND CHIEF EXECUTIVE OFFICER OF THE ASSOCIATION OF AMERICAN RAILROADS; ACCOMPANIED BY J. P. HILTZ, CHAIRMAN OF THE NATIONAL RAILWAY LABOR CONFERENCE

Mr. AILES. All right, sir. Well, my statement identifies me. I am, as you said, president of the AAR and have been so since about January 1. Mr. Hiltz here is chairman of the National Railway Labor Conference and as such, is the chief negotiator for the railroad industry in all of these labor matters.

Our two organizations, each one represents all the major railroads in the United States, and we, of course, work very closely together on all these things.

Mr. Hiltz is an experienced labor negotiator. His own background includes having been a railroad president, but he's had a great deal of experience in this field over many, many years and is in a position to talk intelligently with respect to the various proposals that are before Congress and what the effect of them would be insofar as these labor disputes are concerned.

As I said, my experience is considerably more limited and what I would like to do is to just give a few personal observations about the labor situation in the railroad industry as I see it, based on 8 or 9 months experience with the AAR, and to talk a little more specifically about the strike that we have just recently been through, and what I think are the lessons to be learned from it.

To set the stage, these hearings grow directly out of the history of labor relations in the railroad industry, and the rather difficult situation that has existed in recent years. In the last 4 years there have been seven instances in which a strike or a threatened strike called for congressional action in a labor dispute and these are spelled out or listed in an appendix, the first appendix to my statement. In each of these instances at the 11th hour Congress has had to intervene and has done so, of course, reluctantly, the overriding purpose being to prevent a crippling railroad strike and the effect it would have on the Nation as a whole.

Now, the fact that we've been up here before Congress as one of the parties in one of these disputes seven times in the last four years might be taken to mean that Jack Hiltz here was very hard to get along with at the bargaining table or that the railroads have been very hard-headed or set in concrete with respect to the wage situation, but the plain fact is that the settlements that have come out of the last round of negotiations involve increases that run 42 percent over a 42-month period; a really astounding amount of money. The inflationary impact of those settlements is clear when you realize that the wage bill in the railroad industry is around $5 billion. A 40-percent increase means a $2 billion increase in labor costs. This is an industry that in 1970 earned $227 million after taxes.

That means that there is just no way that the industry can absorb any such increase—there are no productivity gains with which to absorb it, there is no profit margin by which any such increase in the labor bill is going to be absorbed. We figure on a quick calculation that it takes about an 18-percent rate increase to hold the railroads even with respect to the wage increase that has already been agreed to.

I think this is a dramatic demonstration of cost-push inflation that everybody talks about these days at work and I mention this to make what I think is really an extremely important point in all this, and that is, that whatever Congress does here, it should not weaken the position of the railways at the bargaining table. It's demonstrably weak already.

These increases that we have been compelled to agree to are clear evidence of it. Furhtermore, those increases are based on a finding of an emergency board which, again, I think, is relevant here, because it demonstrates that these independent agencies, regardless of the fears

of labor, do not simply take care of the railroads situation. We found the increases that were recommended really quite high in this situation, and were compelled to go along with them because we really had no other choice.

Now, the recent history leads me irrevocably or inevitably to three conclusions, which I spelled out on page 3 of this statement. I think the history demonstrates first 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, and looking over the testimony of the labor representatives over before the House, I note that all of them say the same thing: The country is just not prepared to accept a national railroad shutdown.

The second conclusion is that ad hoc action by Congress at the 11th hour is also an unsatisfactory and unacceptable method of settling a labor dispute. It's unsatisfactory to the Congress as many, many members of Congress have stated. It's unsatisfactory to the parties and normally, it isn't effective to do anything more than simply to extend the dispute in the hope that somehow or other it will resolve itself.

Those two propositions lead to a third, and that is that some method must be found which provides an inducement to the parties to bargain collectively, a greater inducement than presently exists, and one which will bring about a final disposition of the matter when collective bargaining fails.

Now, Mr. Chairman, you have a bill that uses the selective strike as the solution to this problem, and there is a similar bill on the House side. We have spent a great deal of time studying that bill, Congressman Harvey has a bill on the House side that has about 70 cosponsors. It uses the selective strike as the necessary first step, the first weapon in an arsenal of weapons. It is our belief that the elective strike really is not a cure for these situations. The experience we have just been through is relevant in connection with that.

I'd like to talk to that just for a minute. You will recall that strikes are growing out of wage demands of the union and demands by the carriers for changes in work rules, and were called by the UTU against three railroads and actually commence 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, Missabe & 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 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. On the day of settlement, 10 roads were down, and in another 10 days a total of 18 would have been out of operation. Not counting the two switching and terminals 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 strikes 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. The impact by States was very severe and nearly 30 States were affected. We have attached a table to our prepared statement which shows the percentage of the railroad ton miles that were eliminated in these States, and in some instances, it runs as high as 92 percent for instance in Arizona, or 82 in New Mexico, 62 percent in Nevada, 55 in Virginia, and so on.

We have another appendix which gives you some notion of how the ton mileage is affected as those railroads were added. The effects, as the strike proceeded, were spreading, cumulative, and devastating. The fact is that the railroad network is a network that operates as one and there is a pretty complete breakdown of the national railroad system when you take these major pieces of it out.

The producers of raw materials, manfacturers, distributors, and consumers of almost everything that is grown, made and sold in the areas covered by the strike were deprived of indispensable service. Twenty-four percent of our coal mines were down and the horrible part of that was that 94 percent of our export coal was closed down at the mine as a result of the strike. Factories were shut down, a good many people were put out of work. There were some areas of the country that suffered severely. Southern California's produce business, timber in the Northwest, grain in the Midwest, as examples and in the South the poultry growers were unable to get the supplies they needed.

Some very dramatic statements have been with respect to what was going on. Perhaps, the most significant was that Paul McCracken, Chairman of the Council of Economic Advisers, told us when Jack Hiltz and I were called to the White House on the 28th of July along with Charles Luna who was the head of the union. McCracken said that if the strike had gone through August, it would have taken $50 billion out of the gross national product for this year.

I should add that, besides the external impact that we talk about with respect to the shippers and receivers who are denied rail service, the fact is that there was a substantial internal impact within the industry. If a railroad is shut down and can't receive cars from its connections, you get a backup of cars of very substantial dimensions on the railroads that connect with it, and service on the railroads which still operate is cut down a great deal.

Well, as I said, we were called to the White House and were impressed by the concern that the President's top advisors had and the President himself expressed with respect to the strike. He asked for redoubled efforts to settle the strike and the strike was settled 3 or 4 days later on August 2.

Now, Mr. Luna expressed the view after the strike was over that this event demonstrates that the selective strike works. We in the railroad industry were encouraged by the manner in which the railroad industry held together and stood up under the vicissitudes of this experience and felt sure that the settlement that ultimately came out was a better arrangement than any that had been offered to us previously in

that particular dispute, but when Mr. Luna talks about the selective strike working, and has to reply that it didn't work so well as far as the southern California produce grower, or the Nebraska grain dealer was concerned or the thousands of people that were out of work. We had about 250,000 people out of work and they estimated if the strike had gone on another week it would have been a million, and I feel, sir, myself that the way things were going that that strike would have been back here to Congress by August 4, or 5, or 6 as the effects of it began to build up and grow.

So, that in effect, while a settlement was arrived at as a result of the strike and we think a better settlement than we had had a shot at up to that point, the fact is that it was a near thing; that the strike very nearly got back to Congress and very nearly imposed upon Congress the necessity of ad hoc action, again.

And I feel quite sure that the country would not have been prepared to put up with that kind of an experience in the seven instances in the last 4 years when Congress had to take action.

All this leads me to the conclusion that there has to be some means or method besides simply providing for selective strikes to cope with the railroad labor situation in this country. And some way of handling these matters other than that technique.

I feel very strongly myself that it's a mistake to think that the only railroad transportation crisis that is important is one which jeopardizes the national health and welfare or really creates a national disaster. We saw some regional problems that were terribly acute this time and I have a great deal of difficulty with distinguishing between the situation where the whole country is in trouble or just half of it. In discussing this one day with one of the railroad presidents, he made an apt comment, I think, which I put in my statement here. He said that insisting upon waiting for nationwide disaster is like saying an invasion is not an invasion until the invader reaches the Mississippi.

Problems can get to be sufficiently severe so that they should have been avoided before we have a national crisis and I myself feel that there just has to be some method or means by which these regional crises and these regional disasters are themselves avoided.

I quoted Arthur Goldberg who testified on the 13th of September before the Joint Economic Committee of the Congress in another connection. He was talking about the stabilization program and I thought he had an interesting statement when he said, "Cliches about the freedom of collective bargaining must yield to the hard realities of the consequences which have flowed from an overly nonintervention policy."

Well, we believe that an arsenal of weapons approach is the best way to do this. Some uncertainty as to which remedy that is going to be invoked, will cause both sides to bargain more effectively. Yet we are not at all in concert about what are the best weapons in that arsenal.

The bill that we prepared along with the airline industry is simply our best estimate of how to handle this situation, it was hammered out in discussions between our two industries by lawyers who have worked in this field a great deal. We think that any collection of weapons that will do the job is fine.

There are two that are frequently mentioned that we are not very enthusiastic about. One is partial operation because that is really punitive as far as the railroads are concerned.

In a partial operation the railroad has a great proportion of its costs and gets a very low percentage of its revenues. The nature of the railroad operation is like that.

It is possible to inflict quite severe economic loss on a railroad by compelling it to engage in a very small amount of business. It's like opening the store for one customer.

Seizure, which frequently is mentioned seems to us to be not really an attack on the basic problem. Rather, it is sort of a technicality to hold things in status quo. How seizure works, depends on what other provisions are added for the purpose of trying to force the parties together, and we think that there are better ways of handling the situation than that. Seizure itself just doesn't cope with the basic problem.

Well, there is only one other thing that should always be mentioned when we talk about this subject, and that is the fact that the present law calls for us to supply the money for a fund which pays our strikers while they are out on strike and requires us to pay compensation to any railroad worker who doesn't want to cross a picket line. We estimate in this last strike that we have just been through the railroad industry will pick up a bill for around $12 million in direct payments to people who were out on strike on the various systems. We are the only industry in the country that is singled out for this unique requirement.

We think no matter what's done, that in order to make the situation just a little fairer between the parties, that anomaly should be eliminated and that provision should be removed from the law and our bill would do it, and so indeed would the administration's proposal.

Mr. Chairman, that's what's in my statement with some embroidery, and if I may, I'd like to defer to Mr. Hiltz at this point, unless there's something you want to ask me.

The CHAIRMAN. Yes, you favor the options available through the arsenal approach?

Mr. AILES. Yes, sir.

The CHAIRMAN. It would seem to me that the arsenal of weapons are all those that are easily palatable to the industry. I would think that perhaps an option or two less palatable might further the objective. Isn't the objective to try to get the best effort out of both sides to come to an agreement?

Mr. AILES. Absolutely, absolutely, that's right. It doesn't work if the only options are those which are palatable to the industry. I'd just like to point out that there is some misunderstanding about how palatable some of these alternatives are to industry. As I just pointed out here, this 42 percent figure didn't directly come out of emergency board order, it's simply an extension in time but not a change in the rate of increase, which an emergency board did recommend, and yet it is a rather substantial increase.

Much of American industry was very much opposed to compulsory arbitration and has been for many years. We happen to think that if we are not going to have national railroad strikes we don't have a great many alternatives as to how to settle disputes. Maybe indeed the only way to settle some disputes is through compulsory arbitra-

tion. But no, we cannot take the position that all of the options, all of the weapons in the arsenal, have to be slanted against labor. We don't think ours are, but we're perfectly prepared at any time to talk about any others because the main purpose of this whole idea is to make both parties think they can do better around the table than when the judge gets the case.

The CHAIRMAN. That's helpful.

Mr. AILES. All right, sir.

The CHAIRMAN. Mr. Hiltz.

Mr. HILTZ. Mr. Chairman, as I said before, I'll take certain parts of my statement but I hope the entire statement will be included in the record.

The CHAIRMAN. It will be.

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 Railway Labor Act, and I very much appreciate the oportunity 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 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 Government 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 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.

S. 2060 provides four weapons in the arsenal: First, it provides that the Government may do nothing. Since S. 2006 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 a strike by the employees or a lockout or promulgation by management is possible. 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 in the future.

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.

Finally, S. 2060 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, S. 560, 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 S. 2060 we have improved its application over that provided for in S. 560.

Our arsenal of weapons is really an arsenal of procedures. It does not make an agreement for the parties 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 S. 2060 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 insure 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 for settlement to be utilized to settle the dispute.

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.

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.

S. 2060 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 S. 2060 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 portion of my statement deals with the other proposals for setting emergency labor disputes which are before your committee. I'll not deal with those in detail. They are quite clearly stated in the statement.

I would, however, like to read the conclusion of this section which deals with the methods used in those other proposals for the settlement of the dispute.

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. Some of these ideas preserve or improve the balance of bargaining power between labor and management; others do not. From these ideas I am confident that the committee can fashion an arsenal of procedures that will bring fair and equitable settlements of our bargaining disputes at the table and without adverse effect upon the public interest.

We hope that the committee will fashion an arsenal that contains procedures for avoiding an impasse 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 place more reliance upon such self-help tactics.

What needs to be done is to minimize governmental involvement in our collective bargaining. But selective strikes and partial operations increase Federal intervention dramatically. These weapons involve the Government in running the show by determining the scope, extent, and duration of the strikes. It is unreasonable to believe as a practical matter the Government can successfully play God—so to speak—in this kind of situation.

What can be accomplished by the type of Federal involvement in our labor relations which selective strikes provide? It is certainly a novel procedure. 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 without full consideration of the fact that it will provide labor, but not management, with an effective substitute. The selective strike is loaded in favor of labor. It tips the scale heavily in favor of labor and seriously affects the bargaining power and position of the parties. It is my understanding that the committee and those who have appeared before it share a common purpose; namely, to devise a scheme to protect the public without damaging the collective bargaining process and without weakening one side or strengthening the other. This proposal is at variance with that purpose in that it definitely strengthens labor at the expense of management. And it does so with the Federal Government acting as policeman and referee. To further contribute to the imbalance of power in favor of labor in this fashion is definitely not in the public interest.

The 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. The most important issues in railroad labor relations are processed on a national basis, and such handling is considered desirable and preferable both by labor and by management. Yet this type of handling—multiemployer bargaining—cannot survive a whipsaw strike.

The Court of Appeals of the District of Columbia, in the *Delaware and Hudson* case, carefully tried to fix guidelines by which a less than nationwide strike, that is, a selective strike, could take place without whipsaw effects, but declared those which do take this form to be illegal. While it is theoretically possible to sterilize a strike against some employers to remove the whipsaw damage to the group, the possibility is theoretical—not practical.

If labor's ability to engage in legal selective strikes is further enhanced, as it would be by some of the proposed legislation before you, management's position at the bargaining table will be weakened to the point where the collective bargaining process would become an exercise in management capitulation to labor's demands. The whipsaw impact cannot be eliminated from the selective strike scheme. A whipsaw objective is implicit in the selection of the target itself. Labor will pick a weak railroad or a railroad with special problems, or a railroad with unique characteristics and force it to yield to its demands and thus establish a pattern for the rest of the industry. It is the old principle of "united we stand, divided we fall." What union would not relish the possibilities of forcing a settlement with all railroads by holding one or two hostage? It takes little imagination to realize that the selective strike is an almost invincible weapon in the hands of labor.

One distinction needs clarification with regard to partial operation and selective strikes. It has to do with 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 has alternative routes over two or more railroads from each city. Los Angeles, for instance, 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 line. In some cases this may be possible. But in the majority of cases it will not. Most 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 shipments cannot get between those routes and the spur of the customers. Many Union Pacific customers in Los Angeles did not receive comfort when it was recently struck by the United Transportation Union from the fact that the Southern Pacific and Santa Fe continued to serve Los Angeles—until they in turn were struck. In short, a shipper can be completely isolated in a terminal area even though a selective strike leaves routes open to and from that terminal area. Neither selective strikes nor partial operations will save the shipping public from injury although a cursory look at a railroad map may suggest otherwise.

The selective strike may be a substitute for the nationwide strike but it is not the answer. What is needed are substitutes for the impasses which lead to the crises. Our suggested arsenal, as established in S. 2060, provides this solution to the problem.

Mr. Chairman, the balance of my statement deals with other changes in the Railway Labor Act which we propose in S. 2060. They are not particularly pertinent to the emergency strike situation and therefore, I will not go into them at this time, but will conclude my statement.

The CHAIRMAN. All right. Thank you very much, Mr. Hiltz. Your whole statement, of course, will be included.

Now, your bill does not include the selective strike or partial operation options; does it?

Mr. HILTZ. No, sir.

The CHAIRMAN. But it does have arbitration, no-action, compulsory arbitration and——

Mr. HILTZ. And the Emergency Board procedures.

The CHAIRMAN (continuing). And the Emergency Board. The effectiveness of compulsory arbitration was discussed here last week by Mr. Lyle Fisher, speaking for the National Association of Manufacturers. He didn't deal with the fairness of this as one of the approaches to settlement, but he did talk about its effectiveness and on several grounds he ruled this out as an effective part of the arsenal.

He said 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 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. Would you comment on that?

Mr. HILTZ. Yes. In the first place, Mr. Chairman, our arsenal includes four weapons.

The CHAIRMAN. Yes, I appreciate that.

Mr. HILTZ. Which will overcome this alleged reluctance to bargain and wait for the final outcome. The weapons selected could very well be the do-nothing weapon or something else which would be anathema to the industry. So I think so far as overcoming any alleged reluctance to bargaining, this is inherent in the arsenal of weapons approach.

Now, the National Association of Manufacturers have traditionally been against compulsory arbitration as a weapon and I think their name really indicates why they are at variance with the transportation industry.

They manufacture something tangible. We manufacture only service, which can't be stockpiled and we can't produce it in overabundance after a strike to make up for the losses during the strike. We are in a different posture entirely than a manufacturing industry and we just cannot stand and neither can the public stand this series of strikes and strike threats that we have been going through for the past 4 years.

While we have not always benefited, and as a matter of fact, very seldom benefited from compulsory arbitration, I refer you to the last big compulsory arbitration which was the Morse Board where we really were clobbered by that Board insofar as their findings were concerned. The recommendations of that Board were just about twice as much as we ever expected an arbitration board to award, but we still prefer the limiting factor inherent in arbitration.

If you provide the unions with an invincible strike weapon there is just no limit but the sky to what the unions can demand and very probably get, but with compulsory arbitration we think that the public interest may operate as a limiting factor and we think that it will be if we get proper types of arbitration.

The CHAIRMAN. Well, now, I don't know what you mean exactly by that, but that's another point Mr. Fisher made that compulsory arbitration puts the power of determining costs and conditions on the shoulders of third parties who usually have little or no familiarity with the industry.

Mr. HILTZ. But they are made familiar through the hearings, they are made familiar with the problems of the industry and the positions of the parties during the hearings. This is the duty of the parties, to make the Arbitration Board familiar with the situation and to give it sufficient data and sufficient background so that an intelligent, fair, and impartial decision can be made.

The CHAIRMAN. You understand under the railroad work rules it would take quite a bit of time?

Mr. HILTZ. I don't think our courts, our judges, are familiar with every case that comes before them, but the advocates before the court familiarize the judge with the positions of the parties and the details of the case so that he can make an intelligent and fair finding.

I think the same thing pertains to compulsory arbitration. We'll have qualified neutrals sitting as an arbitration board, I expect. This requirement should be inherent in the legislation that is passed.

Mr. AILES. Mr. Chairman, may I make a comment on this?

The CHAIRMAN. Certainly.

Mr. AILES. The discussion about compulsory arbitration by the NAM witness and indeed by the labor people or by Mr. Fisher for the NAM and by the labor people in the House usually is in the context of compulsory arbitration versus the strike as a method of settling disputes. We are talking about a problem here where the strike is ruled out.

I mean, that these bills come into play on the assumption that the national railroad strike simply is an unacceptable way of settling a dispute.

Now, if you start with that proposition, your options are relatively limited and you come pretty fast to compulsory bargaining. Now, the National Association of Manufacturers is not in that situation that most of the people, even the steel companies and the automobile companies are able to take a strike; a strike is acceptable as far as the Nation is concerned in those industries, and they simply prefer that method of fighting out their situation.

That method isn't available to us on a national basis for the reasons that everybody points out; the country simply cannot accept a railroad strike of any duration and if you say, if you can't do that what method are you going to use, it's a lot harder to rule out compulsory arbitration than it is in the situation where the choice is a strike, and I think if Mr. Fisher faced up to the problem of—that we face, or really, that Congress faces with respect to the railroad industry where what you've got to do is to find a substitute for a strike, you can't rule out compulsory arbitration on the theory that the strike is a better way to handle the problem.

The CHAIRMAN. I want to turn to——

Mr. AILES. If I just can add one thing. When Congress intervenes in these cases and settles them, that's a form of compulsory arbitra-

tion, too. In effect, if Congress actually as they have in a couple of times in the past, enacted in the law what should be the terms of the dispute, that's not greatly different from compulsory arbitration. In fact, the judge in the Delaware and Hudson case referred to that as I have as a form of compulsory arbitration.

The CHAIRMAN. That's exactly what Mr. Fisher was saying when he said compulsory arbitration puts the power of determining working conditions on the shoulders of third parties who usually have little or no familiarity with the industry.

Mr. AILES. Certainly, we would be violently opposed to that if there were the traditional ways of shelving these disputes available to us, but that isn't so. I mean, "us" meaning railroad labor. For the simple reason that national strike is just unacceptable as a way of resolving these disputes. It's in that context this problem has to be analyzed, it seems to me.

The CHAIRMAN. This is not basic to your discusions, but I recall, I think it was along about August 1, maybe July 31, the word went out that everything had been nailed down and settlement had been reached and then, we learned a day or two following that that wasn't true. I think it was Secretary Hodgson that came over the airwaves with a suggestion that the dispute had been solved and settled and it wasn't true. What did happen back there?

Mr. HILTZ. Well——

The CHAIRMAN. Maybe it was July 15.

Mr. HILTZ (continuing). Maybe just some reporters.

The CHAIRMAN. It was a week-end announcement, as I recall. When was that—July?

Mr. HILTZ. Well, August the 2d was on a Monday, as I recall.

The CHAIRMAN. Well, I'm reminded that it was in the middle of July.

Mr. HILTZ. Oh, that was prior to the final settlement—well, that was just some reporter's interpretation of developments at that particular time. They are hanging around constantly during the negotiations and some chance remark that somebody made coming out of the conferenec room or something similar probably led some reporter to report in that fashion.

The CHAIRMAN. I would like to turn to Mr. Mittelman.

Mr. MITTELMAN. Mr. Hiltz, on the subject of selective strikes, if the airlines have now been subject to selective strikes and you yourself have lived through one of them at this point, and I know that one of the things the airlines did was to evolve a system of strike insurance so that the struck carriers will be helped over the rough times that they strike, and will review them. Have you explored any such a system of strike insurance in the railroad industry?

Mr. HILTZ. We have a system of mutual assistance, so to speak. We refer to it as strike insurance. Actually, it doesn't work in the way, that you go out and engage an insurance carrier to insure you against this liability. The carriers are self-insured and they work through an insurance company which distributes the benefits which are contributed directly by the carriers. We do have a system of that kind, yes.

Mr. MITTELMAN. Was that system in effect during the recent selective strike?

Mr. HILTZ. Yes.

Mr. MITTELMAN. And did it serve to ameliorate the effects of the strike?

Mr. HILTZ. It served to ameliorate them but not to completely nullify them. The strike insurance is designed to cover only fixed and recurring charges which occur during the time that the carrier is on strike, but it doesn't compensate for loss of traffic and loss of maintenance and deterioration of property and so forth during the strike situation.

But that's not really the answer. I mean, this might ameliorate the financial effects, but it doesn't ameliorate the effects upon the shipping public or the nation as a whole.

Mr. MITTELMAN. Well, my problem is that if you look at the recent selective strike, it wasn't conducted under the ground rules, for example, that would be laid down under S.832. It was conducted under the ground rules laid down by the court, particularly in the area of what carriers can do in response to a selective strike, and I think it would be difficult to make a convincing case that the carriers were brought to their knees by the recent selective strike, particularly if you look at the settlement, which seems to have evolved pretty close to what the emergency board recommended and what carriers demanded.

Mr. AILES. We are certainly not here saying the carriers were brought to their knees by the recent strike. We are saying the reverse. I tried to make the point we thought the industry stood very well against it. They were able to do that in a large part because all of the carriers, the nonstruck carriers, too, participated in a mutually satisfactory settlement.

We think that the settlement that came out of it was better than anything Mr. Hiltz had been offered in that dispute beforehand, but we think that the Nation was subjected to a major dislocation and the considerable amount of progress in the process of settling that dispute.

Mr. MITTELMAN. On the question of railroad unemployment insurance, are you familiar with the legislative history of how the current provisions came into the law originally?

Mr. HILTZ. I think I'm generally familiar, yes.

Mr. MITTELMAN. Could you enlighten me as to that? I tell you, I have heard various labor representatives claim that those provisions were originally agreed to by the carriers.

Mr. HILTZ. Excuse me?

Mr. MITTELMAN. That those provisions were originally agreed to by the carriers.

Mr. HILTZ. Well, it depends on how you say that things are agreed to. You can agree to things in various degrees, but I don't think that the carriers agreed to these provisions.

Congress, at that time, it's my understanding, was sold a bill of goods by the unions that these provisions would eliminate wildcat strikes in the industry; this unemployment insurance is only paid when the strike is a legal strike, so there they reasoned and presented their case to Congress that if applied to only legal strikes there would be no illegal strikes, wildcat strikes, and so forth, because the strikers would not be able to collect unemployment insurance and they would try to comply with their union's provisions for legal strikes.

Mr. MITTELMAN. Well, I haven't had a chance to look at the actual history of it. I just wonder if you are aware of whether the carriers at that point in time went on record in favor of it?

Mr. HILTZ. I can say unequivocably, they did not go on record in favor of paying strikers unemployment insurance.

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

Mr. NAGLE. Mr. Hiltz, you have listed in your statement compulsory arbitration, final offer selection, and the emergency board recommendations as being procedures suited to different types of situations. I wondered if you could give us some idea of what type of situation you believe each of these procedures would be suited to.

Mr. HILTZ. Well, as I have said in my statement and as provided in the bill, in our proposed bill, there is no threshold. In other words, any railroad dispute over a major issue, which leads to an impasse, would be subject to these procedures.

Now, it might be that there would be some small switching railroad that might come under this provision. They might come up against an impasse in their collective bargaining. I'm sure that the three secretaries would select the do-nothing option and let the road and the union work it out. It's not going to materially effect the public interest, so——

Mr. NAGLE. I understand the do-nothing option, but what about the others?

Mr. HILTZ. You are just asking me to distinguish between compulsory arbitration and final offer selection. The UTU dispute which we have just been through would not be particularly subject to the final offer selection. This was a very complicated dispute, it involved very complicated rules, issues and so forth, and I think it would have to take a full disclosure before a neutral of the positions of the parties and why they have taken these positions before a judgment could be made.

Just to put in a final offer selection and then to have the neutral have to pick between the two positions of the parties, could produce a very unsatisfactory result for all concerned, so, to make it short, I don't think that all types of disputes would be able to be resolved by the final offer of selection, and therefore, we have included compulsory arbitration to take up the slack in those instances.

Mr. NAGLE. Thank you, Mr. Hiltz.

The CHAIRMAN. Are you saying that the more complex the dispute the less likely the last offer option?

Mr. HILTZ. In general, I would say this would be the case, Mr. Chairman, but it's hard to generalize on that. I can think of some uncomplicated ones that might not go to the final offer of selection.

The CHAIRMAN. But this, as one of the full arsenal of weapons, is what you gentlemen both recommend?

Mr. AILES. That is what we have tried to do. As I say in my statement, we were not dogmatic about this. We realize that there may be other methods of avoiding an impasse without resorting to the final self-help measures and we're receptive to consider any of that type of relief.

The CHAIRMAN. Fair enough.

Mr. AILES. Thank you, Mr. Chairman.

Mr. HILTZ. Thank you, Mr. Chairman.

(The prepared statements of Mr. Ailes and Mr. Hiltz follow:)

STATEMENT OF STEPHEN AILES
PRESIDENT OF THE ASSOCIATION OF AMERICAN RAILROADS
BEFORE THE SUBCOMMITTEE ON LABOR OF THE
SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE
ON S. 560, S. 594, S. 832, AND OTHER BILLS
TO AMEND THE RAILWAY LABOR ACT

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 benefit 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 seven 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 instances, 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 S. 832 and is apparently the required first step in the list of remedies in H.R. 9088, a bill introduced in the House of Representatives by Congressman Harvey of Michigan that has been sponsored by some seventy members of the House. It apparently is one of the weapons in the Administration bill, S. 560.

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 strikes 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 S. 832 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. Seizure. 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 S. 2060 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 S. 2060 would improve the situation for all concerned. 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. 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 and by S. 2060.

At this point I would like to defer to Jack Hiltz who will deal with S. 2060 in more detail and with the effect it would have on bargaining in this industry.

Thank you.

September 28, 1971

FIRST APPENDIX

TABULATION OF MAJOR RAILROAD
LABOR DISPUTES IN WHICH
CONGRESSIONAL ACTION WAS TAKEN

		Dates of Work Stoppages	
1971	Signalmen	May 17-19	P. L. 92-17
1970	BRAC, UTU BMWE, H&RE	Dec. 10-11	P. L. 91-541
1970	Shopcrafts		P. L. 91-203 (extension of time)
1970	Shopcrafts		P. L. 91-226 (extension of time)
1967	Shopcrafts	July 16-17	P. L. 90-54
1967	Shopcrafts		P. L. 90-13 (extension of time)
1967	Shopcrafts		P. L. 90-10 (extension of time)

SECOND APPENDIX

PERCENT OF RAIL MILES, BY STATES

State	Southern Sys. and UP	N&W and SP	AT&SF, B&LE DM&IR and EJ&E	B&O, C&O CMStP&P CRI&P and MKT	EL, L&N and StL-SF	Total
	1	2	3	4	5	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.

July 29, 1971

THIRD APPENDIX

CARLOAD TRAFFIC

Year 1970

Railroad	Carloads originated	Carloads received from connections	Total carloads handled	Ratio to total U.S. carload shipments
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
Cin., New Orl. & Tex. Pac.	61 344	442 544	503 888	1.9
Georgia, Sou. & Florida	44 536	114 130	158 666	.6
Southern	905 749	1 051 056	1 956 805	7.2
Sub-total	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
Sub-total	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
Sub-total	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, Milw., St.P. & Pac.	664 319	363 963	1 028 282	3.8
Chicago, Rock Is. & Pac.	601 186	477 972	1 079 158	4.0
Missouri-Kansas-Texas	135 596	184 926	320 522	1.2
Sub-total	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
Sub-total	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% of the Nation's rail traffic.

Source: Freight Commodity Statistics, ICC

July 29, 1971

September 28, 1971

STATEMENT OF JOHN P. HILTZ, JR.
CHAIRMAN OF THE NATIONAL RAILWAY LABOR CONFERENCE
BEFORE THE SUBCOMMITTEE ON LABOR OF THE SENATE
COMMITTEE ON LABOR AND PUBLIC WELFARE ON S. 2060
AND OTHER BILLS TO AMEND THE RAILWAY LABOR ACT

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 relationships 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 S. 2060 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.

S. 2060 provides four weapons:

First, it provides that the government may do nothing. Since S. 2060 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 a strike by the employees or a lockout or promulgation by management is possible. 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, presumably 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 non-binding 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, S. 2060 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 (S. 560) 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 S. 2060 we have improved its application over that provided for in S. 560.

Although he did not recommend it, I believe Congressman Eckhardt observed during earlier hearings by the House that the plan of S. 560 (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 S. 2060 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 S. 2060 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 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 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 S. 2060 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. S. 2060 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 S. 2060 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 S. 560 - 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. Inasmuch as two other bills before this Committee (S.J. Res. 25 and S.J. Res. 27) have a similar, if not identical, purpose we support those measures as well.

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.

There is much to be said in favor of S. 594 introduced by Senator Javits. It provides for finality among other possibilities for settlement of unresolved disputes and adopts a "threshold" standard markedly better than that of the Administration's bill (S. 560). S. 594 expressly recognizes the need for handling disputes which are regional as well as national in scope. As Senator Javits noted in introducing his proposal, it provides broader protection and more flexibility in order to protect the country than does the Administration's bill.

However, the railroad industry questions the need for any "threshold" standard in view of the availability of the "do nothing" option under S. 594 as well as S. 2060. Although the results might be the same the protection would be greater.

In addition, S. 594 sanctions seizure as an appropriate weapon in the arsenal. We believe that this option should be specifically excluded from any arsenal because seizure does not actually resolve any labor dispute but rather unduly prolongs it and risks the possibility that the positions of the parties will be hardened. In addition, it would saddle the Government with the cumbersome responsibility for running the railroads.

Insofar as S. 832 is concerned, the railroads are opposed to this bill. This bill originated in the House (H.R. 3595) and is known as the Staggers-Eckhardt bill. It was originally introduced in the last session of Congress by Congressman Eckhardt. 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.

S. 832 would not prohibit national strikes. Rather, it expressly confirms the right of the unions to engage in such strikes. Surely, if this option were exercised by the unions, the objective of keeping railroad labor disputes away from Congress would not be accomplished. It is ironic that the bill prohibits only the carriers from engaging in self-hep 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 S. 832 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 S. 832 would be a disaster to the railroad industry, to the public, and, ultimately, to railroad employees themselves.

Although not introduced in the Senate, another bill that deserves consideration because of the wide ranging support it has attracted in the House is H.R. 9088.

The preferred weapon - indeed the mandatory weapon of first choice - in the "arsenal" of H.R. 9088 is the selective strike. I have already explained our opposition to this weapon and will do so again later on in this statement. 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 certainly 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. However, 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 S. 2060.

S. 1934 also recognizes the need for finality in settling labor disputes that affect an entire industry or a substantial part thereof. We, of course, strongly endorse this view. However, we have several reservations concerning this bill. First of all, the remedy proposed by this bill is one that might well take the ultimate decision on settlement away from the parties in every instance in which the "Management-Labor Commission" was required to act. Conversely, the arsenal of weapons approach proposed in S. 2060 is designed to force the parties into making the final settlement themselves. Only

in those instances where this pressure upon the parties fails would the decision be turned over to a third party - and even then that is not the inevitable result.

The railroad industry also takes exception to the threshold standard which must be met before the procedures established by S. 1934 would be available. Although we recognize that the author of this bill anticipates that disputes not meeting these national standards might be voluntarily submitted by the parties, we do not see any real basis that such will be the net result. Rather, we believe that a better approach would be to eliminate the threshold standard entirely but provide an option in the arsenal which would permit no further governmental action to be taken.

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. Some of these ideas preserve or improve the balance of bargaining power between labor and management; others do not. From these ideas I am confident that the Committee can fashion an arsenal of procedures that will bring fair and equitable settlements of our bargaining disputes at the table and without adverse effect upon the public interest.

We hope that the Committee will fashion an arsenal that contains procedures for avoiding an impasse 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 place more reliance upon 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.

What needs to be done is to minimize governmental involvement in our collective bargaining. But selective strikes and partial operations increase federal intervention dramatically. These weapons involve 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 play God -- so to speak -- in this kind of situation.

What can be accomplished by the type of federal involvement in our labor relations which selective strikes provide? It is certainly a novel procedure. 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 without full consideration of the fact that it will provide labor, but not management, with an effective substitute. The selective strike is loaded in favor of labor. It

tips the scale heavily in favor of labor and seriously affects the bargaining power and position of the parties. It is my understanding that the Committee and those who have appeared before it share a common purpose; namely, to devise a scheme to protect the public without damaging the collective bargaining process and without weakening one side or strengthening the other. This proposal is at variance with that purpose in that it definitely strengthens labor at the expense of management. And it does so with the Federal Government acting as policeman and referee. To further contribute to the imbalance of power in favor of labor in this fashion is definitely not in the public interest.

The 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. The most important issues in railroad labor relations are progressed on a national basis and such handling is considered desirable and preferable by both labor and management. Yet this type of handling - multi-employer bargaining - cannot survive a whipsaw strike. The Court of Appeals of the District of Columbia, in the Delaware and Hudson case, carefully tried to fix guidelines by which a less than nationwide strike, i.e., a selective strike, could take place without whipsaw effects, but declared those which do take this form to be illegal. While it is theoretically possible to sterilize a strike against some employers to remove the whipsaw damage to the group, the possibility is theoretical - not practical.

If labor's ability to engage in legal selective strikes is further enhanced, as it would be by some of the proposed legislation before you, management's position at the bargaining table will be weakened to the point where the collective bargaining process would become an exercise in management capitulation to labor's demands. The whipsaw impact cannot be eliminated from the selective strike scheme. A whipsaw objective is implicit in the selection of the target itself. Labor will pick a weak railroad or a railroad with special problems or a railroad with unique characteristics and force it to yield to its demands and thus establish a pattern for the rest of the industry. It is the old principle of "united we stand, divided we fall." What union would not relish the possibilities of forcing a settlement with all railroads by holding one or two hostage? It takes little imagination to realize that the selective strike is an almost invincible weapon in the hands of labor.

One distinction needs clarification with regard to partial operation and selective strikes. It has to do with 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 has alternative routes over two or more railroads from each city. Los Angeles, for instance, 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 line. In some cases this may be possible. But in the majority of cases it will not. Most 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 shipments cannot get between those routes and the spur of the customers. Many Union Pacific customers in Los Angeles did not receive comfort when it was recently struck by the United Transportation Union from the fact that the Southern Pacific and Santa Fe continued to serve Los Angeles (until they in turn were struck). In short, a shipper can be completely isolated in a terminal area even though a selective strike leaves routes open to and from that terminal area. Neither selective strikes nor partial operations will save the shipping public from injury although a cursory look at a railroad map may suggest otherwise.

The selective strike may be a substitute for the nationwide strike but it is not the answer. What is needed are substitutes for the impasses which lead to the crises. Our suggested arsenal, as established in S. 2060, provides this solution to the problem.

Above all, in considering the arsenal of procedures approach we must be practical from the standpoint of - will it work without destroying either of the parties to the dispute or irreparably damaging the public interest. 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 S. 2060 has the best set of procedures for settlement yet put into a legislative package. We hope you will give it 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 S. 2060

In addition to the proposed changes relating to the "major disputes" provisions of the Railway Labor Act, S. 2060 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 S. 2060 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 S. 2060. 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-Griffin 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 (S. 560) and the industry's bill (S. 2060) 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

S. 2060 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 purpose. 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 S. 2060.

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 request. 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 S. 2060 is quite modest. S. 2060 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 March, 1970, 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 unions 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 S. 2060, only S. 560, 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, S. 2060 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 S. 2060 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.

The CHAIRMAN. The hearing will now adjourn.
(Whereupon, at 1:15 p.m., the hearing was adjourned.)

NATIONAL EMERGENCY DISPUTES, 1971–72

THURSDAY, OCTOBER 7, 1971

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

The subcommittee met, pursuant to notice, at 10 a.m., in room 4232, New Senate Office Building, Senator Harrison A. Williams, Jr., (chairman of the subcommittee) presiding.

Present: Senators Williams, Randolph, Javits, Dominick, and Packwood.

Committee staff present: Robert E. Nagle, general counsel to full committee; Gerald M. Feder, counsel to subcommittee; and Eugene Mittelman, minority counsel.

The CHAIRMAN. We convene the Subcommittee on Labor to continue our consideration of emergency labor disputes legislation.

Since our last hearing two new bills have been introduced in the Senate and, of course, referred to this committee. These are S. 2583 introduced by Senator Miller and S. 2655 introduced by Senator Stafford. These add to bills previously introduced by myself, by Senators Javits, Dominick, Brock, Gravel, and Griffin.

We are glad to have before us the great variety of approaches provided by these eight bills and I know it will certainly help us in considering all aspects of a very complex problem.

At this point I will call upon Senator Dominick who has a statement to make concerning the pending legislation.

STATEMENT OF HON. PETER H. DOMINICK, A U.S. SENATOR FROM THE STATE OF COLORADO

Senator DOMINICK. Mr. Chairman, I appreciate the courtesy of extending to me the opportunity to present my views concerning emergency strike legislation.

I view your committee's continuation of hearings on emergency strike legislation as a good faith first step toward the ultimate enactment of such necessary legislation. I hope and expect this first legislative step to be both fruitful and timely.

As members of this subcommittee well know, my dismay over the lack of effective emergency strike machinery substantially precedes the latest last ditch congressional effort this May to resolve the dispute between the Brotherhood of Railway Signalmen and the National Railway Labor Conference. In June, I introduced S. 2060, the "Emergency Transportation Labor Act of 1971." It provides the President with a choice of one of the following four options for dealing with a

railroad or airline strike: A neutral board to make nonbinding settlements recommendations; final and binding arbitration; a final offer selection mechanism (similar to S. 560, the administration's bill); or do nothing and leave the parties to self help. As I stated when I introduced S. 2060, I am not irrevocably wed to any of the provisions of my bill. I introduced it with the intention of providing another alternative for the subcommittee to study and consider along with the other proposals.

The sheer weight of the legislation introduced this session to remedy emergency strikes indicates interest compelling enough to warrant full Senate consideration of the topic. To enable some legislation to reach the floor this session I urge my colleagues on the Labor Subcommittee to disregard the fate of any one bill and act in the true spirit of compromise to nudge this legislation out of its partisan imposed doldrums. Surely there are sufficient alternatives available to construct meaningful yet equitable emergency strike machinery suitable of bipartisan support. Othewise, Congress will continue to serve as the emergency labor arbitrator of last resort. I need not remind my colleagues of the substantial deficiencies involved in such congressional intervention as our efforts of May provide us with recent enough reminders.

Yet, our past efforts of intervention in labor disputes over the last 8 years indicates that we are perhaps too bullheaded to accept the obvious conclusion that Congress should get out of the strike settling business and put it in the hands of competent, impartial parties and more effective machinery.

President Nixon, in his message to the Congress of February 27, 1970, defined the dilemna which emergency strike legislation faces of maximizing public protection from damaging work stoppages and minimizing Federal interference in collective bargaining. In reviewing the historical application of the Railway Labor Act and the Taft-Hartley Act the President determined that in many instances labor disputes resulted in excessive governmental interference and inadequate public protection. Thus, the subcommittee's task is one of rectifying inequities and inefficiencies in present law by creating a bill which balances maximum public protection with minimum Federal interference.

The effect that emergency strike legislation will have on collective bargaining and the principal parties thereto—management and labor—is direct, obvious, and substantial. I am confident that both labor and management will provide spokesmen well able to represent their interests against extensive governmental intervention in the collective bargaining process. However, the diversity of interest of the American public cannot effectively unify resources and spokesmen around this single issue as labor and management can do, so I feel compelled to lobby the subcommittee on the public's behalf.

The subcommittee is aware of the more direct and obvious interest which the public has in maintaining a strike free economy. However, the interrelated nature of the complex American economy makes it difficult to determine the total impact of a strike or work stoppage. This May's 2-day strike by 13,000 Brotherhood of Railway Signalmen presents a vivid example of what one-tenth of 1 percent of the 83.5 million member labor force can do to the American economy.

Basic industries such as food processing, coal mining, automobile manufacturing, and steel producing were forced to slow down production and layoff workers; 400,000 trainless commuters created massive traffic jams in our major cities; mail piled up on railroad platforms, and in my State of Colorado, the first good spring grain crop in many years was severly damaged by extended exposure to rain, hail, insects, and rodents. The Washington Post projected that the strike would cause 8.4 percent unemployment after a 2-week period and 22.1 percent after 8 weeks.

On Sept. 18, 1967 Senator Wayne Morse inserted in the Congressional Record an evaluation of the effects of the 1967 railroad strike after it was just 12 hours old:

86 percent of the rail miles were shut down. Only 6 major railroads could operate. Defense Shipments: 10 ammunition vessels were scheduled to load; however most of the 1,500 railcars required to load these ships were tied up and could not yet get to the ports. Hundreds of missiles in movement were stopped. Dozens of tanks and armored personnel carriers between depots and ports for movement to Vietnam were stopped. Several polaris missiles and other classified shipments were tied up.

Passengers.—Nearly 400,000 commuters were stranded in New York, Chicago, Philadelphia, Boston, and San Francisco alone. All long-haul passengers were stopped.

Mail.—First-class mail could move only on a priority basis by the end of the day. An embargo was in effect on all 2nd, 3rd and 4th class mail over 150 miles.

Perishables.—10,000 cars of refrigerated shipments—fruits, vegetables, eggs, etc.—stopped. 200 cars—livestock on the hoof stopped.

The December 21, 1970 edition of the U.S. News and World Report contained some interesting figures indicating the potential direct effect of a nationwide railroad strike on our economy:

U.S. railroads move—41 percent of the nation's intercity freight: 70 percent of the coal used by utilities and heavy industry; 71 percent of household—appliance shipments; 76 percent of new autos and auto parts; 78 percent of the lumber and wood used in U.S.; 50 percent of furniture shipments; 65 percent of chemicals, including most of those used to purify water supplies; 68 percent of iron, steel and other primary metal; 46 percent of meat and dairy products.

In addition railroads each week carry an average of 4,041,000 commuter passengers and 1,494,000 other intercity passengers.

The average cost of rail-freight in 1969 was 1.35 cents per ton-mile compared with 7 cents per ton mile by trucks and 21.09 cents by air carrier.

The shock waves of a total railroad strike would be felt in every American industry, no matter how small. The total amount of waste and damage that the American public—the uninvolved third party beneficiary of collective bargaining agreements—would suffer from such a strike would be inestimable. It is exactly for that reason that I feel compelled to act as a self-designated spokesman for the general American public. Their interests are not represented at the bargaining table nor are they sufficiently represented in these hearings and yet they stand to suffer the most cumulative damage from a strike or work stoppage.

To balance equitably the public protection side of emergency strike legislation, the Taft-Hartley definition of a "national emergency" must be expanded to cover regional emergencies. The language of Senator Javits bill, S. 594, would engage the emergency strike machinery for regional labor disputes or those which imperil the health or safety of the Nation or a "substantial part of its population or territory." A liberal interpretation of such language would substantially improve

the protection of the public without unduly restricting either labor or management. It would have implemented much before last night, machinery to resolve the very damaging west coast longshoremen's strike which is now in its 99th day. Last night's temporary back-to-work order signaled the start of effective Taft-Hartley proceedings but only after virtually all the Nation's ports were closed down. The International Longshoremen's and Warehousemen's Union strike has crippled the whole west coast and effectively isolated Alaska and Hawaii for more than 3 months. It is not difficult to envision the effects of a port of New York longshoremen's strike or a regional railroad strike in the Midwest during harvest season. Regional strikes and work stoppages are "national emergencies" to the regions affected just as much as regional disasters are "national disasters."

My bill, S. 2060, would allow the Secretaries of Labor, Commerce, and Transportation to intervene after the National Mediation Board had failed to resolve a dispute in the railroad or airline industry without a determination that the dispute threatens substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation services. Thus the Secretaries would be able to intervene for a wide range of public reasons. This broad public interest threat would substantially encourage voluntary resolutions and even if exercised, one remedy would be to take no further action. It would not be destructive of collective bargaining, but rather it would encourage it.

The primary objective of emergency strike legislation must be to protect the health and safety of our Nation from damaging strikes and work stoppages. Hopefully, my testimony served to emphasize that fact. It must be remembered that emergency strike legislation substantially affects not just management and organized labor, but all 204 million Americans.

The CHAIRMAN. Thank you, Senator Dominick. Our first witness today is Senator Jack Miller of Iowa. I appreciate your help in our deliberations.

STATEMENT OF HON. JACK R. MILLER, A U.S. SENATOR FROM THE STATE OF IOWA

Senator MILLER. Thank you, Mr. Chairman, I appreciate the opportunity to appear before your subcommittee as you continue your inquiry into ways of handling emergency transportation disputes.

You have a number of bills before you, all of which are designed to provide a mechanism for the settlement of labor disputes in the transportation industry which threaten the national health or safety. I am pleased that the subcommittee is holding these hearings, and I hope that you and the full Labor and Public Welfare Committee will report a bill to the Senate, because there seems to be general agreement that present law is inadequate.

All of us in the Congress, I believe, feel a sense of frustration when we have to deal with emergency situations caused by labor disputes, such as those in the railroad industry, on an ad hoc basis. Surely we can develop a more workable system of settling these disputes which would be equitable to all parties involved, and above all to the general public.

Although I am not here this morning to endorse any one of the more general bills which are before you, you can gather from the above comments that I strongly believe some changes are needed. My purpose in appearing before you is to specifically bring to your attention the bill I introduced on September 27, designated S. 2583.

In my opinion, not only existing law but any new mechanism the Congress may enact should be capable of dealing with emergency disputes which affect a major region of the Nation as well as the Nation as a whole. My bill would do that by authorizing the President to use the procedures and powers under the Taft-Hartley law to stop a strike or lockout causing a regional emergency. This authority should also be contained in any of the other bills before you on which you might take action.

As you know, under Taft-Hartley the President is given the authority to seek, and the courts to issue, an injunction where a strike or lockout affects all or a substantial part of an industry engaged in interstate or foreign commerce if the strike or lockout will imperil the national health and safety.

Thus is there is a national emergency, the 80-day strike injunction may be issued. Because of the hardship a strike can cause to a major region of this country, such as the west coast, the Northwest, the Midwest, or the Southeast, for example, I propose that Taft-Hartley should be broadened to cover such emergencies.

The members of this subcommittee can cite as well as I examples where a strike or lockout has caused substantial hardship to a major region of the Nation. I would mention just two such instances: the tieup due to a wildcat strike in the motor transportation industry in Chicago and the Midwest last year and the present west coast dock strike.

I recognize that any projections regarding the economic loss from these disputes are merely estimates, but they are still useful in pointing up the seriousness of regional emergencies and the need for action.

In researching the effect of the strike in the Chicago region last year, we were able to come up with these figures:

(1) According to the St. Louis Globe-Democrat on April 17, 1970, in the St. Louis area, the local 600 strike is reported to be costing about $1,200,000 a day in wages and probably many times that much in sales.

(2) The Wall Street Journal on April 30, 1970, reported that according to the Greater Cleveland Growth Association, 1,400 companies have been affected by the walkouts, 47,600 workers have been laid off, payroll loss to date is $12.5 million and growing at a rate of $1.5 million a day. The production loss to date is over $45 million and growing at a rate of between $4 and $5 million a day.

(3) In its May 23, 1970, issue, Business Week stated that the Chicago Association of Commerce and Industry estimated that the local trucking dispute had cost the area's economy about $630 million, and this was early in the dispute.

(4) On June 7, 1970, the Washington Post reported that business losses in the Chicago area were nearing the billion dollar mark, with the brunt of the economic losses so far taken by wholesalers, businesses with marginal inventories and small manufacturers.

In addition to these estimates, there were countless examples of businesses outside Chicago, both large and small, which either had to

close down or lay off workers because they were not able to obtain supplies, materials, or equipment necessary to operate or to ship their finished products.

Of equal or even greater impact to the State that I represent, and particularly its farmers, is the west coast dock strike, which has now spread to the east and gulf ports.

Assistant Secretary of Agriculture Clarence Palmby recently testified before your subcommittee with regard to the impact of the west coast work stoppage on the Nation's farmers. In summary he stated that $215 million worth of farm products would have moved through west coast ports in July and August alone if the strike had not been underway. About $40 million of this amount represented perishable fresh fruits and vegetables which cannot wait for the strike to end. He estimated that 90 percent of that business is lost and will be difficult, if not impossible, to regain.

It is quite clear that our farmers are losing some of their export markets because of the strike, particularly the important Japanese market. Japan is the world's largest cash-wheat market and usually buys 50 percent of their wheat from the United States. Most of this moves through the Pacific coast ports, although some shipments have been moving through gulf ports.

The importance of the Japanese market to American farmers is easily understood when it is considered that 4.2-million-metric tons of corn, 3-million-metric tons of soybeans, 2.8-million-metric tons of wheat, and 2.5-million-metric tons of sorghums, among other commodities, were exported to Japan in 1970. In that year Japan accounted for a record $1.2 billion of U.S. agricultural exports.

According to a prominent Japanese who deals in Japanese-American trade, the impact of U.S. dock strikes is getting far more serious in Japan each year, simply because her requirements for imported agricultural products have been increasing at a fast pace and the percentage supplied by the United States is very large.

Consequently Japan has been trying to diversify her purchases of agricultural commodities. Because of the west coast dock strike and the threatened stoppages at other U.S. ports, Japan has made arrangements to buy or actually has purchased wheat from Australia and Canada, corn from Thailand, Argentina and South Africa, and milo from Argentina, Australia and South Africa. Most of these requirements would normally have been supplied by U.S. producers.

As I said when I introduced my bill, I am getting mighty tired of seeing roadblocks put in the way of farmers producing a crop and moving it to market when it is ready. Anyone who has any familiarity at all with the present feed grain situation knows that, with estimated corn production at 5.2-billion bushels, 28 percent more than last year, and with corn prices under $1 per bushel, maintaining and expanding our export markets for feed grains is absolutely crucial.

Agricultural exports reached a record high of $7.8 billion last year and contributed more than $6 billion to our commercial trade balance. The favorable balance of farm exports to imports has been one of the few bright spots in our balance of trade picture in the last few years, and without it the balance of payments crisis would have been reached long ago.

Secretary Palmby also cited the 1969 dock strike at gulf ports which was at least partially responsible for a $570-million decline in 1969

farm-export totals from the previous year. Partial estimates of business lost by U.S. farmers during that strike amounted to some $230 million.

But our Nation's farmers are not the only ones hurt by work stoppages. Our research has turned up these additional facts regarding the impact of the current west coast dock strike which has been going on since July 1:

(1) On July 24, 1971, Business Week reported that the strike is particularly painful for Seattle and Los Angeles which are already hard hit by the aerospace slowdown. In Seattle, shipping had been booming and it reported that a month-long strike could cost 10,000 jobs.

(2) In its August 16, 1971, issue Traffic World quoted California's Office of Emergency Services as estimating daily loses to the State's economy at $17.5 million, with more than 11,000 longshoremen on strike and 30,000 other employees idled because of the walkout.

(3) Business Week on September 4, 1971, reported that a large fresh fruit cooperative estimates that the California-Arizona citrus industry had lost $3 million worth of business because customers are turning elsewhere for supplies. The forest products industry in the Pacific Northwest claimed some $40 million has been lost in lumber and chip shipments. In Hawaii both the sugar and pineapple industries were severely depressed. Food prices increased approximately 8 percent before the wage-price freeze, and nearly 9,000 persons were unemployed because of the strike.

I submit that action to cover regional emergencies is overdue. Based on comments reported by the news media, it is clear that administration officials did not feel they could successfully invoke Taft-Hartley in the case of the west coast dock strike prior to the stoppages on the east and gulf ports, although certainly the west coast dock strike constituted a regional emergency.

And my personal inquiry to the Department of Justice last year produced the decision that the Chicago region tieup was not a national emergency. The price the people of major regions of our country have had to pay as a result of these strikes has been too high.

I hope, Mr. Chairman, that you will favorably consider my bill not only as an amendment to the Taft-Hartley Act, but also as a part of any other legislation on this subject that the committee may see fit to refer to the Senate.

The CHAIRMAN. There has been considerable discussion at these hearings about the impact on a region. The present law, of course, depends upon a national emergency affecting the health and safety, and there has been, as I say, a lot of discussion about regional emergencies.

Your bill would use the same approach as Taft-Hartley when a major region was faced with emergency.

Senator MILLER. Right.

The CHAIRMAN. Of course, there is no fine definition of major region, and of course, that is no fine definition of what constitutes an emergency.

Does your bill use the test of affecting the health and safety of the region?

Senator MILLER. Yes, it would be on all fours with Taft-Hartley, in that respect.

I might say, Mr. Chairman, that I am very much aware that it would be practically impossible to define with precision what we mean by a major region. I think that it is well to leave that open for flexible interpretation, although I am sure that legislative history would make quite clear that we are talking about major regions, such as the west coast, and problems such as the west coast strike, the Chicago and Midwest areas, such as in the case of the transportation tieup I have already referred to, or a Southeast or an eastern seaboard region. I do not believe that we need to be deterred from trying to do something about it because we have not defined with precision what is a major region of the country.

The CHAIRMAN. Well, it has been described here that a major region had an emergency when there was a tugboat strike.

Now, most of our emergency situations have been found and Taft-Hartley has been applied when the national health and safety was affected.

Your statement deals primarily with economics, with the dollar losses that follow a stoppage. Yours is more of an economic emergency as you have described it.

Senator MILLER. Well, I have alluded to these two instances to merely show you the seriousness from an economic standpoint and I think, Mr. Chairman, that we would be putting a blindfold over our eyes if we did not realize that this serious economic impact to a region does affect the health and safety of the people in the region.

Believe me if the farmers of a region are not able to move their grain, this is going to have a serious impact on the people as far as production of foodstuffs is concerned because your farmers are not going to be able to survive.

You mention the tugboat situation in New York, and I am familiar with that because one time when I was attending Columbia Law School, as you did, I know there was a tugboat strike on, and if there is anything that can paralyze the New York-New Jersey area, it is a tugboat strike.

If the committee in its wisdom thinks that this should constitute an example of a regional emergency, all it has to do is to so state in its committee report. It is a matter of legislative history. I would leave that up to the committee to do that. But I am sure that the legislative history as contained in the committee report can supply sufficient guidelines for implementation of a bill such as mine.

The CHAIRMAN. The present administration seems slow to use Taft-Hartley and reluctant to see the national emergency in a strike that occurs only in a region as with the west coast dock strike.

Senator MILLER. That is correct, and the same way with the Chicago area. I telephoned the proper people in the Department of Justice last year because this was impacting on all of the States around the Chicago area, and I was advised that they could not make a finding that this constituted a national emergency, recognizing at the same time that it was certainly a regional emergency. You simply have to have the authority to cover regional emergencies.

Mr. Chairman, regional emergencies can have an impact on the overall well-being of the United States sooner or later. The immediate impact on the people of a region can be terribly severe, and sooner or

later the Congress of the United States is going to have to pick up the tab of the social consequences, not to mention the economic consequences which are severe. And as I have said in my testimony, they have already been too high.

The CHAIRMAN. You are a very able advocate; you have given us a lot to think about it.

Senator Packwood?

Senator PACKWOOD. Having gone through the rail and dock strike in the Northwest at the same time, I can well appreciate your comments about a regional emergency as a disaster.

Should this committee do nothing else but change the Taft-Hartley definition from national to regional, that would be a substantial change.

Senator MILLER. Well, I appreciate that comment. I feel the same way about it. I would hope that the committee could see fit to provide a better mechanism than what we have already, but if there is nothing else done by the committee except to extend this authority to regional emergencies, it will have performed a great service to people of this country.

The CHAIRMAN. We are discussing here—and this had gotten by me—the injunction obtained last night also ran against the Chicago grain elevators strike. I did not appreciate that.

Now this, the grain elevator strike in Chicago, has been running a month; do you know Senator Miller?

Senator MILLER. I do not know, but I do know that an injunction under Taft-Hartley covering the west coast ports and the gulf coast ports, which has not yet been done, I would say, would help to relieve a tremendous amount of hardship.

From a national picture, there is also a tremendous amount of grain moved out of the Chicago port. So I can understand why they would cover it.

I might say, Mr. Chairman, I do not understand why they have not seen fit to extend the injunction to the gulf coast ports.

The CHAIRMAN. It seems to me that the present law can be found as authority to deal with a situation in a region if the President wants to use the present law that way.

Senator MILLER. Well, I think that there must be a finding of a national emergency. Now, the question then is, how do you implement the authority under Taft-Hartley to relieve the national emergency.

You are not going to relieve the national emergency if you do not cover the various pieces that fit into what cause the national emergency. The Chicago port area is one of the pieces. If you leave it out, you are not going to have an effective solution to the national emergency.

So I do not believe that the President can deal with a regional emergency under the present law, although I think it would be derelict if he did not try to deal with each piece that fits into the national emergency once the national emergency has been found to exist.

The CHAIRMAN. I have nothing further. Thank you very much, Senator.

Senator MILLER. Thank you very much, Mr. Chairman.

The CHAIRMAN. Our next witness is Congressman James Harvey, who has introduced a disputed bill in the House of Representatives.

STATEMENT OF HON. JAMES HARVEY, A U.S. REPRESENTATIVE IN CONGRESS FROM THE EIGHTH DISTRICT OF THE STATE OF MICHIGAN, ACCOMPANIED BY MICHAEL WEINBERG, STAFF MEMBER

Mr. HARVEY. Mr. Chairman, my bill has been introduced several different times in the House and it is similar to S. 2655.

The CHAIRMAN. And your number? Of course you have a separate introduction. You are the first sponsor?

Mr. HARVEY. Yes, sir.

The CHAIRMAN. We welcome you to the committee and are pleased to hear your testimony on this legislation.

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

Let me first of all introduce the young man with me on my staff who is Michael Weinberg, and say Mr. Chairman that in the years I have been in Congress this is the first time that I have requested permission to impose myself on any committee of the U.S. Senate.

But I felt that this, No. 1, was a very vital subject to our country.

The CHAIRMAN. Well, it is no imposition. We welcome you here and I will say this, I think you are the first Member of the House that has come over with charts to make it crystal clear to us.

Thank you very much.

Mr. HARVEY. And No. 2, I was going to say that our committee, our Subcommittee on Transportation and the House Committee on Interstate and Foreign Commerce, has just finished its hearings on this same subject matter. We have not yet gone into our markup sessions, but we have completed our hearings.

And No. 3, Senator Stafford, who was one of the sponsors of the same bill that I had introduced earlier in the House, has since that time introduced this bill——

The CHAIRMAN. He was a sponsor in the House as well?

Mr. HARVEY. He was a sponsor in the House as well. We now have some 71 sponsors in the House, both Democrat and Republicans, both liberal and conservative in both parties, which is quite a substantial number.

(Discussion off the record.)

Mr. HARVEY. I might ask permission, if I could, Mr. Chairman, to include my statement in full, and if it is all right, I will perhaps cover the first few pages of it and discuss——

The CHAIRMAN. Well, that will be all right and it will be included and certainly we will study it later.

Mr. HARVEY. I will just cover the first few pages and not tie up too much of your time.

Mr. Chairman, as a member of the Transportation and Aeronautics Subcommittee of the House Committee on Interstate and Foreign Commerce, I have long been aware of the problem now being studied at these Senate hearings and at the hearings just recently concluded by our subcommittee in the House. National railroad strikes have been recurring with all too familiar regularity since I first came to Congress almost 11 years ago. Each time, to prevent economic hardship and to protect the public welfare, Congress has enacted temporary, 11th-hour solutions.

It's time—unquestionably late but still of great necessity—that this Congress show both the political courage and leadership that is so necessary in controversial legislation such as this.

The 92d Congress, unlike those of the past, must have the courage to tell both management and labor that our Nation's 220 million people can no longer be pawns in all too frequent and crippling rail strikes. The kind of courage that I refer to was best recorded some years ago by a member of this great body, the late President John F. Kennedy, in his book "Profiles in Courage."

It has been easy—too easy—for past Congresses to "ride the tide" of management-labor rail disputes. Emergency strike legislation has languished over the years. I submit, however, it's time that this Congress seize the opportunity and enact historic permanent legislation that is reasonable and fair to all concerned.

I believe sincerely that if Congress fails to act soon, we who serve as Senators and Representatives had better "bone up" on how to run the railroads. "Nationalization" used to be a dirty word. More and more thought, however, is being given to such Government action. Just last week, in testimony before our House subcommittee, C. L. Dennis, Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, outlined a legislative proposal that would authorize the President to "take possession and control and to operate the rail transportation system or systems involved in unadjusted labor disputes."

On the same morning, a representative of the American Bar Association listed "executive receivership" as a possible alternative for the settling of rail disputes. Two of my colleagues in the House—Congressman Pickle and Congressman Dingell—have introduced legislation that calls for Government seizure in times of emergency disputes. I note also that Senator Javits' Emergency Labor Disputes Act of 1971 includes possession as a possible alternative solution.

I do not believe this is what our country wants or needs. We in Congress have an obligation to give our free enterprise system a chance. Frequent rail and air disputes are economically devastating. We cannot and we must not tolerate them any longer.

Just recently, the United Transportation Union concluded the first selective rail strike in railroad history. The difference, however, between this so-called selective strike and a national walkout was hard to discern. Without court-imposed limitations, the strike affected 17 percent of the revenue ton-mile capabilities in the Eastern region, 26 percent in the Southeastern region, and 43 percent in the Western region.

In all, 10 class I carriers were struck. If the unions had escalated the walkout on August 6 as planned—fortunately the strike was settled on August 2—43 percent of the Eastern region and 55 percent of the Western region would have been without rail service. And it is interesting to note, Mr. Chairman, that these figures would far exceed the limits of selective strikes as defined in the bill backed by organized labor itself, which is, of course, no more than three carriers in any region and no more than 40 percent of the revenue ton-miles. To the California farmer, the West Virginia coal miner, the Georgia poultry grower, or the Oregon lumberman, whose reliance on rail services is total and limited to one carrier, the effect was hardly selective.

During the August recess, I contacted some of the Nation's major industrial and agricultural associations to determine the effect of the UTU selective strike on their industries. The answers are startling.

Curtailment of rail service in Oregon alone amounted to a $19.4 million daily loss in the forest products industry. The daily loss to the California economy from the inability of the farmers to ship their produce reached $11.2 million. Chrysler reported that if the strike had continued for another 2 weeks, it would have been forced to close 35 plants and to lay off an estimated 110,000 workers.

While the strike is generally accepted as a basic right of the American worker, it is clear that the "selective strike," as currently practiced, is little improvement over the national strikes which have occurred in the recent past in the railroad industry.

In light of the *Delaware & Hudson* decision, we in Congress must admit that the rail unions now have the right to call selective strikes. From the testimony in my own subcommittee it is obvious that the railroad brotherhoods have fought long and hard for this right, and they do not intend to relinquish it.

It is unrealistic to assume that Congress will act to remove this right and, yet, we clearly cannot permit selective strikes to remain unbridled. What is needed and what is provided in the legislation which 70 cosponsors and I have proposed is that the right to a selective strike be circumscribed with appropriate safeguards for the public interest. Both the burden of unlimited selective strikes and the threat of nationalization require that this Congress find a solution to rail industry disputes.

In my remarks this morning, I will address myself only to those issues relating to emergency rail and air disputes. While I realize that this committee has before it legislation—notably Senator Javits' Emergency Labor Disputes Act of 1971 and Senator Brock's Management Labor Commission and Court Act—which speaks to labor disputes in general, my work has been confined to amending the Railway Labor Act of 1926, chiefly because the inadequacies of that act have brought emergency rail disputes to Congress so many times in recent years.

This committee has and will hear testimony supporting the positions of both labor and management. Both groups have presented legislative packets favorable to their own positions. Clearly, we need a compromise solution, one that addresses itself to the realities of a very complex situation. We need legislation that will not neglect the court-imposed right of selective strikes, while at the same time provide for mechanisms that will handle these strikes should they escalate to a point that threatens the national health or safety. It must be an equitable solution, and one that is favorable to the administration, for they will have the burden of enforcing it.

In recent years, the outcome of rail strikes has been fairly predictable; the threat of a complete stoppage of rail transportation forces the President to turn the matter over to the Congress. Here the substantive details of the individual dispute are settled, in whole or in part, in committee and on the floor of the House and the Senate, the unions are required to resume their jobs, and the Nation's railroads operate again.

During the recent UTU strike, however, the circumstances were somewhat different. The Supreme Court, by refusing to overturn a district court ruling, affirmed the right of the railroad unions to strike selectively. When national bargaining between the UTU and the car-

riers broke down, and all provisions of the Railway Labor Act were exhausted, the United Transportation Union elected to strike first four and then six additional carriers; five more were scheduled to be struck if the walkout had not ended when it did.

Since it is no longer required to shut down all the Nation's carriers simultaneously, and since a major part of the rail transportation system was supposed to continue to operate, the UTU presumed that there would be no national emergency and, consequently, no need to involve the Congress in order to terminate the strike. Eventually, the UTU felt, a settlement between the disputing parties would bring the selective strike to an end. That is precisely what happened, but not until the Nation suffered very severe economic consequences and the administration came within a whisker of calling once again for emergency legislation.

There is much to be said for using selective strikes in the rail industry labor disputes, provided, however, that proper safeguards and limits are applied. It has been the advent of national bargaining and a presumption that all carriers had to be struck, together with a public antipathy to such nationwide strikes, that have led to the unique situation in which the rail industry finds itself. Any possible remedies, such as the judicial ruling for selective strikes, which will preserve the benefits of national bargaining without inducing the national strike congressional settlement syndrome, should by all means be given serious consideration.

The public interest, however, is still not met under the present new selective strike situation. That is, the resulting economic impact on business and commerce, as well as the general disruption of public affairs, is such that public opinion will not long permit the administration and the Congress to stand idly by.

In addition, under present law and judicial rulings, any selective strike is very apt to escalate to a full, nationwide strike and this is just about what happened in the month of August. This could occur either as a result of careful move and countermove by the carriers and union managements, or uncontrollably through individual carrier lockouts or wildcat strikes as the situation deteriorates across the country.

Now it must be admitted that the concept of public interest is one which has never been, and may never be satisfactorily defined. For example, a major auto manufacturing strike such as we experienced last year, or a shutdown of the steel industry, may well be fundamentally more disruptive of the country's well-being than would stopping the Nation's trains. Whether any one of these is to be considered a national emergency, however, depends on many factors, including the decisions of the Chief Executive, as well as the mood of the public.

Consequently, we can never hope to see laws written which will specify exactly to what degree a union can strike, or precisely when management is justified in a lockout. It may be that some day we will, in fact, proceed beyond today's acceptance of the strike and lockouts as tools of legitimized economic warfare in the settlement of questions of working conditions.

But until that new day dawns, we need somehow to find a balance between three contending rights: That of the individual to work only under conditions acceptable to him, that of management to operate

its business in an efficient and profitable manner, and that of the public to be protected from undue disruption of its affairs due to conflicts between the first two rights.

I believe that there are solutions to the problem. Certainly, the present law covering the railroad industry has not worked, as evidenced by the number of times the Congress has been required to intervene. And the recent interpretation of the right to strike selectively cannot be the final answer, since escalation to a national or near national shutdown is highly probable.

What is needed is twofold. First, a revision of law which will restore the incentive to the parties to undertake serious collective bargaining and to reach settlements without each time, resorting to Congress. Second, a revision of law which will enable the President, if and when negotiations nevertheless have failed, to take administrative actions until a resolution of the conflict is achieved.

With regard to this latter point, a key requirement is flexibility. Certainly, no one administrative procedure will be appropriate for all of the different situations and the wide variety of substantive issues which will arise in the future.

The President must, therefore, be provided with a variety of tools with which to work. And, if these tools are in fact sufficient, he must be given the power—indeed, he must be required—to use them judiciously but inexorably until the dispute at hand is settled.

But this very flexibility, which is so necessary when finally needed, is also the key element in avoiding the need for its use in the first place. For almost every knowledgeable observer agrees that it has been the certainty of governmental action which has, in the past, contributed most to the failure of collective bargaining in the railroad industry. A situation is needed in which neither party can foresee that the Government will intervene to use their potential advantage. Then, and only then, can the usual procedures of collective bargaining move forward fruitfully.

There have been several procedures or solutions that have been proposed to remedy the problem. Several members of the Senate have introduced legislation, some of which I have mentioned.

I want to say just a word now about the Railway Labor Act as it exists today.

Looking at the chart there to my left you can see that if the labor-management bargaining conference fails to solve a dispute, the National Mediation Board is required to use its best efforts to bring them to agreement. If it fails, and if either party then refuses to submit the dispute to arbitration, the parties are then required to retain the status quo for a period of 30 days.

During this period, the President may create an emergency board to investigate the report within an additional 30 days. After the report, a third waiting period of 30 days is provided after which the parties are free to resort to self-help. That is, the carriers can institute changes unilaterally, and the unions can strike, either nationally, or now, selectively.

Among the various proposals now under consideration, the one which will most drastically affect not only the major dispute provisions, but also the entire Railway Labor Act, is the administration bill, S. 560. This bill would transfer rail and air labor relations bodily

from RLA to the Taft-Hartley Act. Then it would add new provisions to Taft-Hartley to cover major disputes in the entire transportation industry.

I think in my own judgment, Mr. Chairman, the administration bill would be better than no solution at all, but I must say to the committee that I do find that it has several defects in it, which I think should be corrected, and which cause me to disagree with the approach that they take.

I first of all disagree with eliminating the Railway Labor Act. I think that the long history of that act since 1926 has stood our country well. A very useful case history has been built up. I can tell you from the testimony before our subcommittee that all of railway labor will fight this tooth and nail if we try to abandon the Railway Labor Act.

They know how it works, they believe in its function, and they like it very much.

I think also that the maritime, the longshore, the trucking industry are all unique. I think they differ from the rail and the air industry. I see no need to lump them together.

It has been our thought, as we worked on this in the House, that, frankly, if we could find a formula for the solution of this problem as it applies principally to the rail industry, and also to some extent to the air industry which is covered under the Railway Labor Act, we would be fortunate. We would start small and continue to use the Railway Labor Act. If that formula worked, we would have plenty of time after that to spread it to other industries for the settlement of these disputes.

Obviously, what the administration bill does to the Taft-Hartley, as you can see on the chart up there, is that after the familiar 80-day injunction, they would submit three new Presidential options.

The first one is partial operation. I don't have to describe it to you because you have read the bill, I am sure. But it would have a committee decide just how much each carrier should curtail its operation.

I would say to the committee that I very seriously question this. I think it is quite a bureaucratic approach, and I can't believe today that partial operation of our railroads is a solution to any dispute, really.

Having the Federal Government make the decision as to how much the carriers themselves should curtail their operation is to me projecting the Federal Government right into the midst of the dispute between carrier and labor, and this is wrong.

The second and third option is a 3-day delay and the final offer selection which I think is very good. I will have something more to say about it in a few minutes.

My own feeling is that the major error in the administration bill is that it limits the President to the exercise of only one option. I don't know how you feel over here in the Senate, but at least a good many of us in the House feel that this is wrong. We feel that over the last 10 years we have had many rail disputes, and they have seemed to come every 6 months or every year, and in each case they come because there is no solution in the Railway Labor Act. The next step is for the President to send it to Congress and ask the Congress to act. If there is one thing that we are agreed upon, it is that we want a solution that does not cause Congress to have to step into the picture.

Now, in the administration bill, if partial operation did not work, the President's only solution would be to come to Congress. If he

should choose a 30-day cooling-off period and it didn't work, he would have to come to Congress. As I say, I think this is a major error in the administration bill.

I would like to say a word about the labor bill, the bill introduced by the chairman and Senator Kennedy here in the Senate. Again, this modifies the Railway Labor Act which I happen to agree with, but the alternatives that it offers after the Presidential Emergency Board are certainly very, very few, if any at all.

As I read the bill, it offers very simply two alternatives. One is the national strike which we have been presented with in the past, and one is a selective strike.

The selective strike, it is true, is defined. It is defined with very broad limits as being no more than any three carriers in any region of the country that affect not more than 40 percent of the revenue ton-miles. But the definition has little meaning, it seems to me, if you continue beyond the selective strike and go to the national strike itself.

I would point out beyond that, the language in the bill authorizing a national strike certainly would prevent the President from intervening in that particular case, because if Congress has authorized it, I don't know how in a national strike he is going to come in and intervene. I think that would be a mistake.

It also removes from the carriers the right to make work rules, changes, or a lockout, and it seems to me that this is a mistake. It changes the balance of power and vests all the power in one party.

The CHAIRMAN. We are going to turn your page to another chart. I wonder if Mr. Weinberg would show where on the chart would the designation partial operations fit under S. 832?

Mr. WEINBERG. As I read it——

The CHAIRMAN. See, there is the authority of the Secretary of Transportation to require partial operation for essential commodities.

Mr. HARVEY. That is right; that is correct.

The CHAIRMAN. Where is that on the chart? Just so we get the scheme.

Mr. WEINBERG. They would have to come off of both the national and selective. As we read the bill, if the Secretary permits it, that is essential for the national health and safety. They can be authorized to be transported either if there is a national strike in process, or if the roads under selective strike are due to carry these commodities.

The CHAIRMAN. Would it be an inordinate request for me to ask you to put that down before the next showing of this?

Mr. WEINBERG. No.

Mr. HARVEY. We would be very happy to add it, Mr. Chairman. Obviously, that is contained in your bill, just as it is contained in the Stagger bill in the House.

I might say, however, that I don't think any more highly of partial operation under this bill than I do under the administrative bill. I think that it is subject to the same objections in both cases.

The CHAIRMAN. Well, you said that earlier, but I do think that it should be included in this description.

Mr. HARVEY. We certainly stand corrected in that regard. Let me say, Mr. Chairman and members of the committee, the big evident objection to the labor bill, other than it would continue to permit a national strike, it still fails to provide a solution for a national strike where the small strike is escalated into a national strike.

This is just precisely what happened in the month of August of this year. This bill would not have solved that problem because the limits, the limits of the selective strike as defined in the labor bill, 40 percent of the revenue ton-miles would have been exceeded had the UTU carried out their threat. Actually, they were exceeded in one region of the country as it was, and this bill would not have solved the problem.

Would you turn to the next chart, please.

The CHAIRMAN. Before we get off this. It was just pointed out to me that in S. 2655, Senator Stafford's bill, which I gather is identical to yours——

Mr. HARVEY. Yes, indeed.

The CHAIRMAN (continuing). There is this provision. It is on page 66–B.

Mr. HARVEY. For limited partial operation.

The CHAIRMAN. Yes.

Mr. HARVEY. That is correct. We recognize that it has some merit, let's say. It has some merit, so we have included it, but I don't think it should be one of the options, Mr. Chairman, that the President should have to rely on or come back to Congress.

The CHAIRMAN. This is all proof of the pudding. This is a tough and complex problem we are dealing with.

Mr. HARVEY. Yes, indeed, it is; and you will note that our bill also authorized selective strike which the other bills don't. We don't say that the labor bill is all bad or all wrong; we think it has some merit. We think the administration bill also has some merit, and we have tried to seize what we think are good aspects of both bills and to combine them into a single approach if we can.

If I could now turn to the bill that I first introduced in the House and that Senator Stafford has since introduced in the Senate. As I mentioned, we now have 71 cosponsors on this bill. It is a compromise bill.

We started out by retaining the Railway Labor Act for the reasons that I mentioned. And I might point out first that the provisions of the Railway Labor Act are the same right across the top of the board, beyond the Presidential Emergency Board and the waiting period, until we come down into the presidential options. Then, we start out with selective strikes. We provide that they shall be permitted and that labor has a right to these selective strikes.

As I said earlier, they have won this in the court. I think they are going to be very reluctant to give up the selective strike, and I cannot see this Congress either in the House or the Senate voting to take away this right to selective strike.

Consequently I have felt all along, as have many of those in the House, that our job was to basically define this right to selective strike within tolerable limits. We try to do that where we provide that the strike shall be permitted unless the President shall find that they would cause immediate imperilment of the national health and safety.

We have a provision in the bill also that would provide—we call it an antiwhipsaw provision. It would provide that any selective strike, that any settlement must in turn be offered by the union to all of the carriers.

Our second option——

The CHAIRMAN. Now, wait; let me understand.

That one got by me. Would you say that again?

Mr. HARVEY. We provide, first of all, Mr. Chairman, for a selective strike.

The CHAIRMAN. Yes.

Mr. HARVEY. We define it although our limits differ.

The CHAIRMAN. 100 percent?

Mr. HARVEY. It is two carriers. Instead of being 40 percent of the revenue ton-miles it is 20 percent of the revenue ton-miles. But then we provide that in that selective strike that whatever agreement is reached between labor and management must in turn be offered by the unions to the other carriers. Do you follow me?

The CHAIRMAN. Yes.

Mr. HARVEY. We do this to prevent the whipsawing, for example, that has taken place particularly in the airline industry in recent years, where one union has struck this carrier and then jumped to another carrier, and sought to raise their demands. We feel that selective strike could be utilized in this fashion, within tolerable limits.

Senator PACKWOOD. May I ask a question?

Congressman, do I understand that if one road is struck in a week and your ton-mile weight does not apply and whatever the effect of that strike on that one road might be on the region, it in no way changes the effect of your act?

Mr. HARVEY. Yes. And we had to do that because of the Pennsylvania Railroad. The Pennsylvania Railroad would, of course, exceed the limits of our bill with reference to revenue ton-miles; is that correct?

Mr. WEINBERG. Yes.

Senator PACKWOOD. So if the Pennsylvania Railroad is struck, your bill has no way of ending it?

Mr. HARVEY. Except that the President would have the right under the legislation I propose to find that a selective strike under any circumstances could imperil the national health and safety.

Senator PACKWOOD. That is why I wasn't sure. I wasn't sure if your bill read in such a way that if only one carrier in a region is struck, that it really doesn't matter what the effect is; do I read it wrong?

Mr. HARVEY. You read it wrong because it always matters what the effect is. The President always has the right. In fact, we require that the President, before the selective strike takes place, must first certify, Senator Packwood, that the strike will not affect the national health and safety.

There are obviously some roads that can't be struck. I have in my district where Senator Packwood has been on occasion, one of the shortest lines in the country, less than a hundred miles long and very profitable. If it went on strike it wouldn't affect the country at all. There are many like that, I am sure.

There are others where one line being on strike, such as the Pennsylvania Railroad would very well affect the country. The President always has the right also to end the strike at any time that it affects the national health and safety.

Senator PACKWOOD. But he has to make the finding of emergency. That is what I am getting at. He has to decide that a strike at the Pennsylvania or the Southern Pacific does affect the national health and safety.

Mr. HARVEY. That is correct.

Senator PACKWOOD. And if he doesn't make that finding or the Court doesn't sustain that finding, then there is no way to end a strike of one railroad in one region?

Mr. HARVEY. If he finds that it doesn't.

Senator PACKWOOD. Or if somebody takes the President to Court on it.

Mr. HARVEY. Well, it is provided in the bill, however, that if the circumstances change that his findings can change, and he can thereafter make a different determination and end the strike. It is entirely possible that he starts out with a finding that the strike of a paricular line will not affect the national health and safety and that after the course of 6 months or 7 months or 9 months or a year that he finds that the particular strike does affect the national health and safety. At that point he could intervene and he could go to one of the other options: either the 30-day delay or he could go to final-offer selection.

Senator PACKWOOD. But he has to make that finding?

Mr. HARVEY. Yes.

Senator PACKWOOD. It is inconceivable that the Pennsylvania Railroad would be struck for a very lengthy period of time without substantial effect on the Nation. And that strike going on for 30 or 60 days. We have got a half or a third of the people in this country using that one railroad.

Mr. HARVEY. Well, I think you are probably very close to being correct and that is one of the railroads that comes too close to being the lifeblood of our country. It affects the industry on the east coast. It affects our auto industries in the Midwest.

Not only that, let's say, it connects with other lines, probably more than any other railroad in the country. Yet, I would not want to say to the employees of the Pennsylvania Railroad that never, under any circumstances, can you go on strike for any period of time. I think that that finding should be made by the President if that is the case.

Just in conclusion, Mr. Chairman, I wish to point out the other two alternatives that we have set out on the chart. The one is a 30-day cooling-off period, and the other is final-offer selection, which is identical with the one in the administration bill. We do require that the offers be sealed offers. We do feel that that would have some merit as far as organized labor is concerned.

I think there are any number of options that we could add to this if we wanted to. The most important feature of the bill that we have introduced and that Senator Stafford has introduced however, would be the sequential aspect of the bill. In other words, it gives the President the right to take not just one option but any one of several options. And I think that this is necessary. He can, if he feels the parties are very close to settlement, take a 30-day delay. If that 30 days expires, certainly he ought to be able to go to the option of final-offer selection without having to come to Congress to do it.

Mr. Chairman, I have more than abused my time here. I have taken more time than I have intended, but I want to say to the committee that I very much appreciate the opportunity to appear before you today. If I can answer any questions I would be delighted to do so.

The CHAIRMAN. I have suggested to Senator Dominick, the author of one of our bills, that if he had any questions I certainly hope that he would address them to you.

Senator DOMINICK. Mr. Chairman, I want to say at the outset that I have been extremely interested in listening to Congressman Harvey's statement. I know how deeply he has considered emergency strikes, and their possible resolutions. I don't think I have any particular questions at the moment except for the following, which I will try to phrase in this manner, Jim.

Does your bill affect industries other than those covered by the Railroad Labor Act, such as the longshoremen, who for example, are presently striking?

Mr. HARVEY. No, our bill would only cover the railroad industry and the airline industry. As I mentioned earlier, before you had come in, Senator, it was our feeling that each of these industries are unique. It was our feeling that the Railroad Labor Act has a very useful history and it is our knowledge that the organized labor wants very much to retain the Railway Labor Act under any and all circumstances.

It would not, however, cover the longshoreman strike. It would not cover many other strikes.

Senator DOMINICK. Have you given any thought to the idea of providing the Presidential Emergency Board with similar powers in the event that the Presidentially ordered cooling-off period under the Taft-Hartley Act proves unsuccessful in reaching a settlement? In that way you could affect both the longshoremen's type strike and also an extended steel strike which we had a few years ago.

Mr. HARVEY. Well, I personally would have no hesitancy about supporting such a bill. It would not bother me one bit. I personally would support a bill containing compulsory arbitration, but I have tried to be realistic as to what would pass, first of all, our committee in the House. And then what would pass the House as a whole. This bill is what we have come up with in that regard.

I think there is no question that some sort of change in our labor law with regard to some other industries is desirable. I do question whether or not such a change could be enacted practically in this particular Congress. And I would say to Senator Dominick that in the 11 years that you and I have been in Congress together, I do not recall once a maritime strike or longshoremen strike coming before Congress. All of those have been settled after the Taft-Hartley. The ones that have come before us have been the railway strikes.

Senator DOMINICK. It is my hope that the strike will fall now with the Presidential decision. We had a real bad problem if you remember in the steel industry a few years ago, and obviously whether it is a longshoreman strike or whether it is a steel strike or whatever it may be, the general public in those effected areas are practically wiped out by the strike regardless of whether it was a steel, longshoreman, or railroad strike.

Mr. HARVEY. Well, both acts are deficient in that regard. They provide no solution after the present procedure.

Mr. DOMINICK. Mr. Chairman, if I may I would like to introduce at this point a statement I have made in the record and comment a little bit on the same points that Congressman Harvey has made. I would like to have you up here, Jim.

Mr. HARVEY. Thank you, sir.

Mr. DOMINICK. And I would also like to say that I am not wedded particularly to the exact provisions of the bill that I have introduced, although I think it does offer some alternative which are not in the

Javits' bill and which perhaps are not even in the Harvey-Stafford bill. I would also suggest that in the event we get around to making a decision on what we are going to do, that we consider the possibility of establishing some kind of a board in the event that the cooling off period of Taft-Hartley does not work and provide a settlement so that the operations for a final settlement of some kind will be applicable in those types of situations, as well as under the Transportation Act.

The CHAIRMAN. Yours deals with transportation?

Mr. DOMINICK. Mine deals with transportation, but what I am saying is it could easily be made an amendment which would be effective on all other major impact strikes.

The CHAIRMAN. That statement will appear in the record at the conclusion of Congressman Harvey's.

Do you have anything further?

Senator PACKWOOD. Yes; I have got a couple of more.

Jim, I have always been at a loss to understand how they lump the airlines and the railroads together and say that they are different than other forms of transportation. What we are really talking about, I think, in terms of endangering the national health and safety is this: The movement of freight and not the movement of passengers and the airline industry hauls so little freight that I do not know how you can lump it and say airlines in the same breath as railroads and exclude trucks which are more intimate and necessary for the movement of freight than the airlines?

Mr. HARVEY. Well, Senator Packwood, I would not submit that there is great logic to that particular lumping. The reasoning is as you suggest that because they are lumped together in the Railway Labor Act themselves. In the Railway Labor Act themselves the rail and the air industries are just as different as can be. I know that you have scheduled here, yet this morning, Mr. Tipton and members of the ATA and they will tell you of those differences, obviously. The difference is that when Northwest Airlines, for example, goes on strike, going out to your home country, there is still United Airlines that carries freight and passengers, and there is still the railroads and the trucklines. So really you do not have the problem that you could have when a railroad goes on strike. Usually you have one railroad serving an area. In some areas there are two and possibly three, but in most parts of the country there are only one. I cannot defend making the distinction. If I had my "druthers," as they say, I would like to solve the problems of all the transportation industries at one time. But I have been in Congress long enough to know what a momentous task that would be.

It was our hope, as I said previously, that we could find some sort of a compromise formula, start small in the Railroad Labor Act in these industries and then, if it worked, to spread it to the others.

Senator PACKWOOD. As I understand your bill, and I want to make sure I understand this, the options do not have to be selected in the order shown; the President has the right to choose any he wants to?

Mr. HARVEY. With one exception. That would be the selective strike. We do provide that the unions have a right to strike selectively within the limits that we provide and providing it does not affect the national health and safety.

Senator PACKWOOD. I have nothing further.

Senator DOMINICK. Could I ask one more question?

The CHAIRMAN. Certainly.

Senator DOMINICK. Are you changing the wording as to when the Emergency Board would be appointed? In other words, now it must be considered almost a national emergency practically before you can do anything effectively. Are you assuming that you are going to have a national emergency again?

Mr. HARVEY. No, the threshold tests in both cases, for the Railway Labor Act and for the Taft-Hartley, are both the same. The one is an interruption to commerce in any region of the country in the Railway Labor Act, and the other is a national emergency as spelled out in Taft-Hartley. We do not change that whatsoever.

Senator DOMINICK. Well, the difficulty is that up to date the regional concept which is implicit in the Railway Labor Act, has not been applied, in my opinion.

In other words, the act says deprive any section of needed transportation, but it has not really been followed that way, as far as I can see.

Am I wrong in that?

Mr. HARVEY. No, I think you are correct that the President in each case has looked for an effect on the national health and safety rather than on an interruption of commerce, to any region of the country. He has not really made any sharp distinction between the Railway Labor Act and the Taft-Hartley in application.

Senator DOMINICK. If you leave the wording the way it is, in your opinion could this then be applicable under your bill to the Pennsylvania Central situation where you only have one railroad on strike?

Mr. HARVEY. Yes, I believe you could. Certainly, because the President could still find in that case that it would affect the national health and safety.

Senator DOMINICK. By the time that you get down to the final operations that you have on your chart here, you have gone through a reasonably long period of time.

You have gone through a 30-day wait following the National Mediation Board and then you have a Presidential Emergency Board and you have another 60-day wait. So you have had quite a period of time while the strike has been in existence in one form or another?

Mr. HARVEY. That is correct.

Senator DOMINICK. Then you come down to your presidential operations. He has another 30-day cooling-off period. Now, you have already been going on an awfully long while before you get down to that and it seems to me unlikely that that would be used. Second, I think it would be awfully unlikely for the President at that point or the Emergency Board to say. OK, make a selective strike since they have already been on strike for that long. Therefore, you come down to the final operation, it seems to me, which it the final offer selection.

So, although, it looks like you have got three operations, you have really only got one left?

Mr. HARVEY. Well, I would point out, Senator Dominick, that we have provided that the President can use them in sequence. We had considerable questions whether we should include the 30-day delay. However I would point out that in the ETU strike in the month of August, that just 5 days before the strike was settled, the New York

Times and the Washington Post carried stories to the effect that settlement of the strike was eminent. Then all of a sudden we were plunged into despair because the strike had not been settled. If the deadline had been there then the President would have had to make a choice of what do I do.

We think that he should have a very flexible choice at this point. If 1, or 2, or 3 or 30 days will help him get that strike settled by collective bargaining, he ought to be able to proceed down that route.

If on the other hand he feels that he wants to go immediately into the final offer of selection, he ought to be able to proceed in that direction.

Senator DOMINICK. The other question that I have in mind is this One of the problems that many of the labor people, both in the unions and in management, have talked to me about is the fact that it seems that almost every single major strike that we have had winds up in the White House. That sooner or later people say, "All right, we cannot bargain together and we cannot make a settlement this way because maybe one or the other of us would get a better deal if we go to the White House."

So they would withhold making an agreement. It seems to me that your machinery intensifies nonconciliation. That is why in our bill we got away from the White House involvement and simply had three Secretaries appointed as the Board and kept it out of the White House. A neutral Board can then decide without having the implications at least or the political pressures involved in strike settling.

Mr. HARVEY. Well, my only difference would be that I think when you do get three Secretaries involved, you do have the White House involved, and it does not matter what administration you have.

Harry Truman had that sign that said "the buck stops here." He is responsible, the President is, for whatever action the Secretary takes. He does bear that responsibility. I do not think he can escape it. I think that is what final offer selection was designed to avoid, and this is why I like it. It is a new procedure, but I think instead of the President having to make this decision or instead of the Board of Arbitration having to make the decision, the parties themselves are forced together in their bargaining. They are forced to submit offers and then one of those two offers is selected. I think this has great benefit.

Senator DOMINICK. Well, I think that that provision is in my bill too and I think it ought to very definitely be an included option, but I am just concerned over dumping everything in the hands of the White House, but we will hold that position at the moment.

It seems to me that this again intensifies the problem we have had in labor relations.

Mr. HARVEY. If I could only add one thing. The only thing worse than dumping it in the hands of the White House, would be dumping it in the hands of Congress. The Congress is ill prepared to bring about a settlement. They do not have the time and inclination to make the study necessary in a situation like this.

Senator DOMINICK. I do not think you will get any disagreement from a single member of this committee on that.

The CHAIRMAN. Senator Randolph.

Senator RANDOLPH. In February of 1970 the administration, as I understand it, proposed the bill?

Mr. HARVEY. It was about that date; yes, indeed, sir.

Senator RANDOLPH. Perhaps, Peter, you can help on that. Was that the correct time? It seems to me it was February 1970.

Senator DOMINICK. I think that is correct, but I am not sure.

Senator RANDOLPH. It causes me to ask you, Representative Harvey, and you have given certainly careful attention to this subject matter, what would be your statement as to the reason that there has not been any action on that leglislation?

Mr. HARVEY. Well, I think that probably the legislation that this committee is considering which is similar to that which we have just finished our hearings on in the House, is probably the most controversial legislation that the Congress could take up.

It is a matter of considerable dispute between Labor and Management. There has been no meeting of the minds, whatsoever, and I think that that would probably be the reason for it. Organized Labor, Senator Randolph, has fought these changes that we are talking about today. They have appeared in all of the appearances before our subcommittee. We have had aat least, I would say, a dozen of their representatives appear. In each case they have fought any solution which gave finality.

In other words, when you go beyond the step in the labor bill of either the selective strike or the national strike, when you try to solve it by any means whatsoever, they have resisted at that particular point. And in many respects I cannot blame them. I wish they thought otherwise, but after all they have won a new right to selective strike in the Delaware and Hudson case. They guard that very jealously, and they are not about to give it up. I think that is the reason for it.

Senator RANDOLPH. I read from an editorial in the San Francisco Examiner of yesterday. It concludes, "It is high time Congress recognize the semimonopolistic nature of both unions and management. . .

Now, this editorial uses the word management. You do not do that. You just said unions, and I will continue.

". . . in these essential industries and compel them, through passage of the administration bill, to move goods and people without interuptions."

Mr. HARVEY. Well, sir, if I did not use management it was not because I intended to omit them, I would—and I had made clear in our own hearings in the House, Senator Randolph, that this matter is just like a divorce case, really. There is plenty of fault on both sides. The failure of management to seriously pursue collective bargaining in the Railroad disputes is clearly evident, and the failure of the unions also to seriously collective bargain is evident. They both recognize that the national strike was eventually coming to Congress. There is plenty of fault to go around.

Senator RANDOPH. Mr. Chairman, with the permission of the members of the committee, I would like to insert at this point this editorial, "Taft-Hartley Act Not the Answer," from which I have just read.

The CHAIRMAN. Is there an objection to the request?

[No response.]

The CHAIRMAN. None is heard. It will certainly be included.

(The information referred to follows:)

[From the San Francisco (Calif.) Examiner, Oct. 6, 1971]

TAFT-HARTLEY ACT NOT THE ANSWER

The failure of federal law to cope adequately with strikes in essential transportation industries was demonstrated again this week when President Nixon was compelled to invoke the Taft-Hartley Act against the longshore strike.

This settled nothing. The act can only halt the strike for an 80-day cooling off period, after which the strike can resume.

The President's action was taken reluctantly. Both he and Labor Secretary James Hodgson have publicly criticized the ineffectiveness of Taft-Hartley. Hodgson asserting that it merely gives both sides an 80-day period in which to refuel for renewed hostilities.

A committee of the U.S. Senate opened hearings this week on a bill to strengthen Taft-Hartley, chiefly to make it applicable to regional as well as national strikes deeply affecting the national welfare. But this is not enough.

The need for a federal law that will compel quick settlement of crippling transportation strikes in a manner fair to all sides. Such strikes are simply unbearable because of the great damage they do to the nation's economic fabric and to innocent victims—meaning shippers and travelers.

Such a law was proposed by Mr. Nixon to the Congress in February, 1970, and has repeatedly been urged upon the lawmakers since. It would apply to all major elements of the transportation industry—railroads, airlines, shipping, trucking and longshoring.

The bill provides that at the end of an 80-day cooling off period the President could exercise any of three options:

Extend the cooling off period another 30 days.

Require operation of a portion of the struck industry for up to six months.

Require a binding settlement based on final offers of the two contesting parties.

Both houses of Congress have kept the Nixon measure in committee because of opposition from management and labor, chiefly the latter. Meanwhile innocent third parties, meaning the public, do the suffering.

It is high time Congress recognized the semi-monopolistic nature of both unions and management in these essential industries and compelled them, through passage of the administration bill, to move goods and people without interruption

Senator RANDOLPH. Representative Harvey, I have not had an opportunity to follow your testimony or read your statement, but I think it is most helpful for such a student of the subject. You would rather be called a student than an expert?

Mr. HARVEY. Yes, indeed.

Senator RANDOLPH. Because you are still groping for the answers, but to come over from the other side of the Capitol I think is wholesome, in a matter of this kind.

Mr. HARVEY. Thank you.

(The prepared statement of Congressman Harvey follows:)

STATEMENT OF REPRESENTATIVE JAMES HARVEY
BEFORE THE LABOR SUBCOMMITTEE
OF THE SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE

ON EMERGENCY STRIKE LEGISLATION
October 7, 1971

Mr. Chairman, as a member of the Transportation and Aeronautics Subcommittee of the House Committee on Interstate and Foreign Commerce, I have long been aware of the problem now being studied at these Senate hearings and at the hearings just recently concluded in our Subcommittee in the House. National railroad strikes have been recurring with all-too-familiar regularity since I first came to Congress almost eleven years ago. Each time, to prevent economic hardship and to protect the public welfare, Congress has enacted temporary, eleventh hour solutions.

It's time -- unquestionably late but still of great necessity -- that this Congress show both the political courage and leadership that is so necessary in controversial legislation such as this. The 92nd Congress, unlike those of the past, must have the courage to tell both management and labor that our nation's 220 million people can no longer be pawns in all too frequent and crippling rail strikes. The kind of courage that I refer to was best recorded some years ago by a Member of this great body, the late President John F. Kennedy, in his book, "Profiles In Courage." It has been easy -- too easy -- for past Congresses to "ride the tide" of management-labor rail disputes. Emergency strike legislation has languished over the years. I submit, however, it's time that this Congress seize the opportunity and enact historic permanent legislation that is reasonable and fair to all concerned.

I believe sincerely that if Congress fails to act soon, we who serve as Senators and Representatives had better "bone-up" on how to run the railroads. "Nationalization" used to be a dirty word. More and more thought, however, is being given to such Government action. Just last week, in testimony before our House Subcommittee, C. L. Dennis, Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, outlined a legislative proposal that would

authorize the President to "take possession and control and to operate the rail transportation system or systems involved in unadjusted labor disputes." On the same morning, a representative of the American Bar Association listed "Executive Receivership" as a possible alternative for the settling of rail disputes. Two of my colleagues in the House -- Congressman Pickle and Congressman Dingell -- have introduced legislation that calls for government seizure in times of emergency disputes. I note also that Senator Javits' "Emergency Labor Disputes Act of 1971" includes possession as a possible alternative solution.

I do not believe this is what our country wants or needs. We in Congress have an obligation to give our free enterprise system a chance. Frequent rail and air disputes are economically devastating. We cannot and we must not tolerate them any longer.

Just recently, the United Transportation Union concluded the first selective rail strike in railroad history. The difference, however, between this so-called selective strike and a national walkout was hard to discern. Without court-imposed limitations, the strike affected 17% of the revenue ton mile capabilities in the Eastern region, 26% in the Southeastern region, and 43% in the Western region. In all, ten Class-I carriers were struck. If the unions had escalated the walkout on August 6th as planned -- fortunately the strike was settled on August 2nd -- 43% of the Eastern region and 55% of the Western region would have been without rail service. Technically, the U.T.U. stoppage was a selective strike; to the California farmer, the West Virginia coal miner, the Georgia poultry grower, or the Oregon lumberman, whose reliance on rail services is total and limited to one carrier, the effect was hardly selective.

During the August recess, I contacted some of the nation's major industrial and agricultural associations to determine the effect of the U.T.U. selective strike on their industries. The answers are startling! Curtailment of rail service in Oregon alone amounted to a $19.4 million daily loss in the forest products industry. The daily loss to the California economy from the inability of the farmers to ship their produce reached $11.2 million. Chrysler reported that if the strike had continued for another two weeks, it would have been forced to close 35 plants and to lay off an estimated 110,000 workers.

While the strike is generally accepted as a basic right of the American worker, it is clear that the "selective strike," as currently practiced, is little improvement over the national strikes which have occurred in the recent past in the railroad industry. In light of the Delaware and Hudson decision, we in Congress must admit that the rail unions now have the right to call selective strikes. From the testimony in my own Subcommittee, it is obvious that the Railroad Brotherhoods have fought long and hard for this right, and they do not intend to relinquish it. It is unrealistic to assume that Congress will act to remove this right and, yet, we clearly cannot permit selective strikes to remain unbridled. What is needed -- and what is provided in the legislation which 70 cosponsors and I have proposed -- is that the right to a selective strike be circumscribed with appropriate safeguards for the public interest. Both the burden of unlimited selective strikes and the threat of nationalization require that this Congress find a solution to rail industry disputes.

In my remarks this morning, I will address myself only to those issues relating to emergency rail and air disputes. While I

realize that this Committee has before it legislation -- notably Senator Javits' "Emergency Labor Disputes Act of 1971" and Senator Brock's "Management Labor Commission and Court Act" -- which speaks to labor disputes in general, my work has been confined to amending the Railway Labor Act of 1926, chiefly because the inadequacies of that Act have brought emergency rail disputes to Congress so many times in recent years.

This Committee has and will hear testimony supporting the positions of both labor and management. Both groups have presented legislative packets favorable to their own positions. Clearly, we need a compromise solution, one that addresses itself to the realities of a very complex situation. We need legislation that will not neglect the court-imposed right of selective strikes, while at the same time provide for mechanisms that will handle these strikes should they escalate to a point that threatens the national health or safety. It must be an equitable solution, and one that is favorable to the Administration, for they will have the burden of enforcing it.

In recent years, the outcome of rail strikes has been fairly predictable: the threat of a complete stoppage of rail transportation forces the President to turn the matter over to the Congress. Here the substantive details of the individual dispute are settled, in whole or in part, in committee and on the Floor of the House and the Senate, the unions are required to resume their jobs, and the nation's railroads operate again.

During the recent U.T.U. strike, however, the circumstances were somewhat different. The Supreme Court, by refusing to overturn a District Court ruling, affirmed the right of the railroad unions to strike selectively. When national bargaining between the U.T.U.

and the carriers broke down, and all provisions of the Railway Labor Act were exhausted, the United Transportation Union elected to strike first four and then six additional carriers; five more were scheduled to be struck if the walkout had not ended when it did. Since it is no longer required to shut down all of the nation's carriers simultaneously, and since a major part of the rail transportation system was supposed to continue to operate, the U.T.U. presumed that there would be no national emergency and, consequently, no need to involve the Congress in order to terminate the strike. Eventually, the U.T.U. felt, a settlement between the disputing parties would bring the selective strike to an end. That is precisely what happened, but not until the nation suffered very severe economic consequences and the Administration came within a whisker of calling once again for emergency legislation.

There is much to be said for using selective strikes in the rail industry labor disputes, PROVIDED, HOWEVER, that proper safeguards and limits are applied. It has been the advent of national bargaining and a presumption that all carriers had to be struck, together with a public antipathy to such nationwide strikes, that have led to the unique situation in which the rail industry finds itself. Any possible remedies, such as the judicial ruling for selective strikes, which will preserve the benefits of national bargaining without inducing the national strike/Congressional settlement syndrome, should by all means be given serious consideration.

The public interest, however, is still not met under the present new selective strike situation. That is, the resulting economic impact on business and commerce, as well as the general disruption of public affairs, is such that public opinion will not

long permit the Administration and the Congress to stand idly by. In addition, under present law and judicial rulings, any selective strike is very apt to escalate to a full, nationwide strike. This could occur either as a result of careful move and counter-move by the carriers and union managements, or uncontrollably through individual carrier lockouts or wildcat strikes as the situation deteriorates across the country.

Now is must be admitted that the concept of public interest is one which has never been, and may never be, satisfactorily defined. For example, a major auto manufacturing strike such as we experienced last year, or a shutdown of the steel industry, may well be fundamentally more disruptive of the country's well-being than would stopping the nation's trains. Whether any one of these is to be considered a national emergency, however, depends on many factors, including the decisions of the Chief Executive, as well as the mood of the public.

Consequently, we can never hope to see laws written which will specify exactly to what degree a union can strike, or precisely when management is justified in a lockout. It may be that some day we will, in fact, proceed beyond today's acceptance of the strike and lockouts as tools of legitimized economic warfare in the settlement of questions of working conditions. But until that new day dawns, we need somehow to find a balance between three contending rights: that of the individual to work only under conditions acceptable to him, that of management to operate its business in an efficient and profitable manner, and that of the public to be protected from undue disruption of its affairs due to conflicts between the first two rights.

I believe that there are solutions to the problem. Certainly, the present law covering the railroad industry has not worked, as evidenced by the number of times the Congress has been required to intervene. And the recent interpretation of the right to strike selectively cannot be the final answer, since escalation to a national or near national shutdown is highly probable. What is needed is twofold. First, a revision of law which will restore the incentive to the parties to undertake serious collective bargaining and to reach settlements without, each time, resorting to Congress. Second, a revision of law which will enable the President, if and when negotiations nevertheless have failed, to take administrative actions until a resolution of the conflict is achieved.

With regard to this latter point, a key requirement is flexibility. Certainly, no one administrative procedure will be appropriate for all of the different situations and the wide variety of substantive issues which will arise in the future. The President must, therefore, be provided with a variety of tools with which to work. And, if these tools are in fact sufficient, he must be given the power -- indeed, he must be required -- to use them judiciously but inexorably until the dispute at hand is settled.

But this very flexibility, which is so necessary when finally needed, is also the key element in avoiding the need for its use in the first place. For almost every knowledgeable observer agrees that it has been the certainty of governmental action which has, in the past, contributed most to the failure of collective bargaining in the railroad industry. A situation is needed in which neither party can foresee that the Government will intervene to

their potential advantage. Then, and only then, can the usual procedures of collective bargaining move forward fruitfully.

What solutions have been proposed to remedy the present, unfortunate situation? Several distinguished Members of the Senate have proposed solutions to emergency rail disputes which are contained in the various bills now before this Committee. Since the bill which I and my 70 cosponsors introduced on the House side adopts many of the best points of these various bills, I would like to take a few moments to describe and compare their various approaches. I have not attempted to describe Senator Taft's novel proposal simply because time only permits me to discuss those bills which had a direct influence on my own legislative work.

Let me illustrate with the first chart how the Railway Labor Act functions with regard to major disputes concerning changes in pay, rules, or working conditions. If the labor-management bargaining conference fails to solve a dispute, the National Mediation Board is required to use its best efforts to bring them to agreement. If it fails, and if either party then refuses to submit the dispute to arbitration, the parties are then required to retain the status quo for a period of thirty days.

During this period, the President may create an Emergency Board to investigate and report within an additional thirty days. After the report, a third waiting period of thirty days is provided, after which the parties are free to resort to "self-help." That is, the carriers can institute changes unilaterally, and the unions can strike, either nationally or, now, selectively.

Among the various proposals now under consideration, the one which will most drastically affect not only the major dispute provisions, but also the entire Railway Labor Act, is the Administration bill, S. 560. This bill would transfer rail and air labor relations bodily from RLA to the Taft-Hartley Act. Then it would add new provisions to Taft-Hartley to cover major disputes in the entire transportation industry. This approach is somewhat over reactive, in my view. There are many useful provisions which have evolved over the years under RLA, and they probably should not be scuttled wholesale. Organized labor, in its testimony before my House Subcommittee, continually reaffirmed my opinion that the RLA should be kept intact. In addition, I believe the record shows that the maritime, longshore and trucking industry problems are all unique -- and surely are all different from those of rail and air -- and should not be linked together in new legislation.

The major provisions of the Administration bill are outlined on the second chart, where three presidential options are shown. The first option, Partial Operations, would have a committee decide how much each railroad should curtail operations to simulate the pressures of a strike. The approach is bureaucratic in the extreme, and would have the effect of having the Federal Government involve itself in the details of a pseudo-strike, hardly a situation to encourage collective bargaining settlements.

The other two options provided in the Administration bill are very promising, and I will defer speaking to them until later. A major limitation to the bill, however, is contained in the provision that only <u>one</u> of the options can be selected by the President in any dispute. If that selection fails to achieve a

settlement, there would be no recourse but to send the dispute back to Congress. This flaw is so major that I cannot emphasize too strongly how this provision undermines the whole idea of improving the present law. If we want to encourage collective bargaining and remove the Congress from the role of arbitrator, the President must be free to find solutions within the administrative process.

The bill supported most strongly by the railroad unions, S. 832, is outlined on the third chart. It quite simply modifies RLA by providing that, when all other provisions have been exhausted, the unions are free to strike either nationally or selectively. On the one hand, provision in law for a national strike would prohibit either the President or Congress from intervening, and the public interest would seem not to be adequately protected. On the other hand, the right to strike, while in accord generally with practice in other industries, needs both balance and safeguards. S. 832, while permitting strikes, effectively removes from the carriers the balancing right to institute work rule changes (as they did in the U.T.U. strike) or to lock out.

An essential requirement in any attempt to reduce strife in the railroad industry, and to encourage the peaceful settlement of disputes, is that a careful balance between the parties should be fashioned. The main effect of this bill would be to place almost unlimited power in the hands of one party to the dispute. For this reason, although I accept the strike as an inherent right, I cannot support the bill as it is written.

Now, I would like to mention the major provisions of the bill my cosponsors and I have introduced. As I have suggested

earlier, I believe RLA should be retained as enabling legislation, and I have added three options for Presidential action as shown on my last chart.

First, I would suggest that selective strikes be permitted by the President unless he finds, in a particular instance, that they would cause immediate imperilment of the national health and safety. However, this option must be circumscribed with appropriate safeguards to insure that the resulting shutdown of transportation does not immediately result in, nor escalate to, a situation which the public refuses to countenance.

In particular, our bill would require that any settlement arrived at between the union and any struck carrier must be offered, intact, to all of the other carriers who had participated in the national bargaining. This will help avoid any tendency to "whipsaw" by gaining successively better settlements from each carrier, in turn. In addition, the limitations on the selective strike are more firmly drawn, so that no more than 20% of the nation's rail service would be affected at any one time, regardless of the number of simultaneous disputes.

As a second option, I would, of course, permit the President to call for additional time at the bargaining table. Many instances will arise where the vagaries of calendars and of argument will require only more time to resolve.

Third, I would adopt the novel suggestion put forward by the Administration under the title of Final Offer Selection. This process, not yet tried anywhere to my knowledge, holds the promise of eliminating the divisiveness of compulsory arbitration while

providing an extremely strong impetus to collective bargaining, and an assurance to the public that a final resolution of the dispute will be achieved. What this proposal provides is that, after the parties have bargained to their best ability, each puts forward a final offer which constitutes a complete and binding agreement. Then one and only one of these offers will be selected, complete and intact, by a board composed of public members. The essence of this procedure is that each party is induced, first to resolve as many issues as possible during bargaining, and, second, to make the most reasonable possible final bid on all outstanding issues. For the selection board, which is charged with the public interest, will select that final offer they find to be most reasonable in view of the facts of the situation.

In addition, I imagine that there are other options which might be given to the President to increase the flexibility of his response. In particular, I would like to stress the sequential aspects of my bill, which would permit the President to choose from among the three options until a solution is reached. As I mentioned earlier, the Administration's bill, on the other hand, permits the President one and only one option. However, the important point is that the Administration must be given the power to deal with labor disputes which threaten the nation, to deal with them fairly, and firmly, so that Congress does not have to be involved in each individual dispute, and so that the public interest will be protected.

The legislation that I have sponsored embodies the three major points that I have just mentioned. Since May 13, 1971, when I first introduced my proposal as H. R. 8385, I have received bipartisan support of 70 of my colleagues in the House. My bill has

been reintroduced with minor technical modifications six times, as H. R. 9088, H. R. 9089, H. R. 9571, H. R. 9820, H. R. 10433 and H. R. 10781.

The broad support that my proposal has gained is both personally gratifying and significant, for it indicates the depth of feeling that exists in the House for permanent rail strike legislation. Naturally, I am very pleased that this distinguished Senate Committee has scheduled hearings on this very important subject, and it was an honor to speak with you today. I look forward to the rapid emergence of sound and equitable legislation that will serve the interests of all the people.

COSPONSORS OF EMERGENCY STRIKE LEGISLATION
AS OF OCTOBER 7, 1971

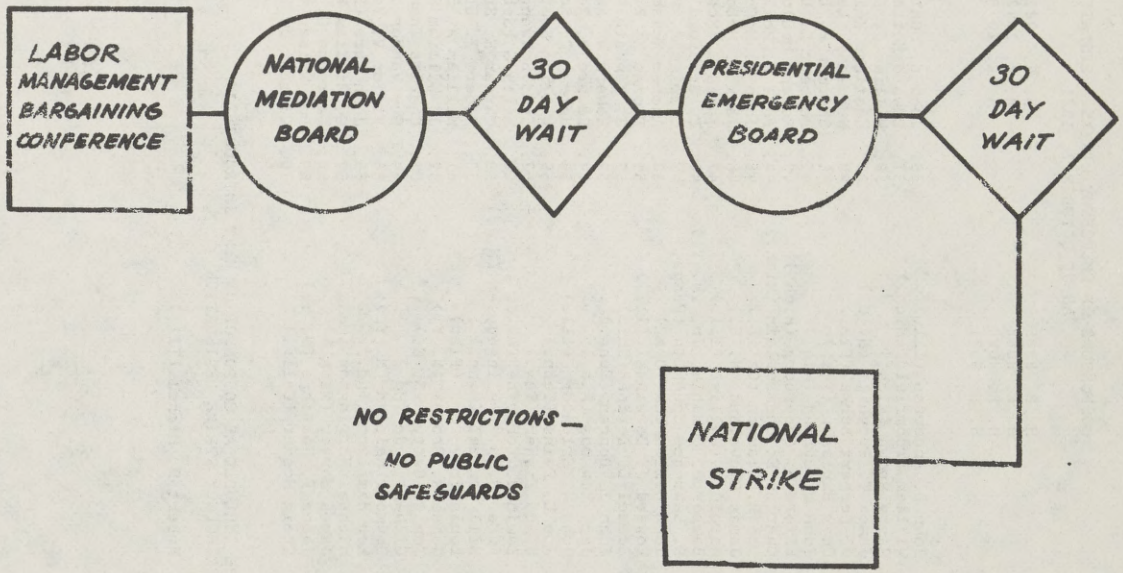
H. R. 8385
H. R. 9088
H. R. 9089
H. R. 9571
H. R. 9820
H. R. 10433
H. R. 10781

1. John B. Anderson (Ill.)
2. William Broomfield (Mich.)
3. Garry Brown (Mich.)
4. James T. Broyhill (N. C.)
5. J. Herbert Burke (Fla.)
6. Omar Burleson (Tex.)
7. John W. Byrnes (Wis.)
8. Elford A. Cederberg (Mich.)
9. Charles E. Chamberlain (Mich.)
10. Don H. Clausen (Calif.)
11. James Cleveland (N. H.)
12. Harold R. Collier (Ill.)
13. Barber B. Conable, Jr. (N. Y.)
14. R. Lawrence Coughlin (Penna.)
15. John Dellenback (Ore.)
16. Edward J. Derwinski (Ill.)
17. Samuel L. Devine (Ohio)
18. John J. Duncan (Tenn.)
19. Jack Edwards (Ala.)
20. John N. Erlenborn (Ill.)
21. Joe L. Evins (Tenn.)
22. O. C. Fisher (Tex.)
23. Edwin B. Forsythe (N. J.)
24. Peter H. B. Frelinghuysen (N.J.)
25. Bill Frenzel (Minn.)
26. Louis Frey, Jr. (Fla.)
27. James R. Grover (N. Y.)
28. Tom S. Gettys (S. C.)
29. Gilbert Gude (Md.)
30. Seymour Halpern (N. Y.)
31. Lee Hamilton (Ind.)
32. Michael Harrington (Mass.)
33. James Harvey (Mich.)
34. James F. Hastings (N. Y.)
35. Craig Hosmer (Calif.)
36. John E. Hunt (N. J.)
37. Edward Hutchinson (Mich.)
38. William J. Keating (Ohio)
39. Hastings Keith (Mass.)
40. Norman F. Lent (N. Y.)
41. Sherman P. Lloyd (Utah)
42. Delbert L. Latta (Ohio)
43. Robert McClory (Ill.)
44. Paul N. McCloskey (Calif.)
45. John Y. McCollister (Nebr.)
46. Jack H. McDonald (Mich.)
47. James D. McKevitt (Colo.)
48. F. Bradford Morse (Mass.)
49. Charles A. Mosher (Ohio)
50. Ancher Nelsen (Minn.)
51. Thomas M. Rees (Calif.)
52. J. Kenneth Robinson (Va.)
53. Howard W. Robison (N. Y.)
54. Edward R. Roybal (Calif.)
55. Herman T. Schneebeli (Penna.)
56. William Scott (Va.)
57. Fred Schwengel (Iowa)
58. Keith G. Sebelius (Kan.)
59. Garner E. Shriver (Kan.)
60. Robert T. Stafford (Vt.)
61. William A. Steiger (Wis.)
62. J. William Stanton (Ohio)
63. Charles Thone (Nebr.)
64. Guy Vander Jagt (Mich.)
65. Victor V. Veysey (Calif.)
66. John Ware (Penna.)
67. G. William Whitehurst (Va.)
68. Lawrence G. Williams (Penna.)
69. Bob Wilson (Calif.)
70. Clement J. Zablocki (Wis.)

TO BE INCLUDED AS COSPONSOR ON NEXT INTRODUCTION
OF EMERGENCY STRIKE LEGISLATION

71. Robert H. Michel (Ill.)

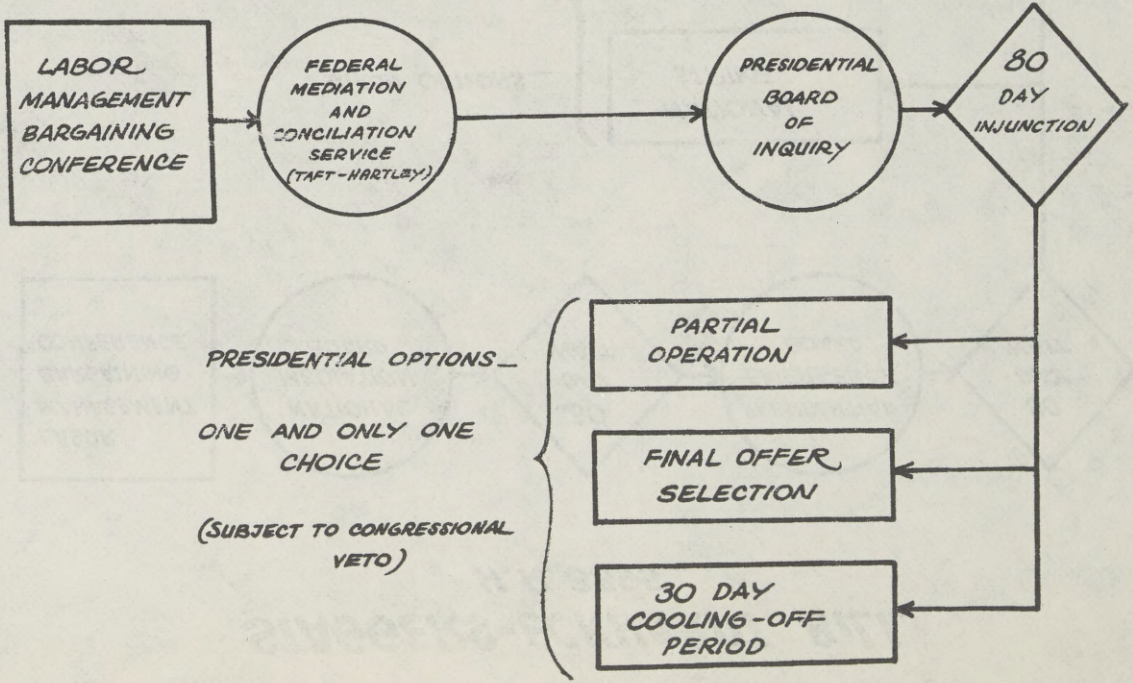
RAILWAY-LABOR ACT



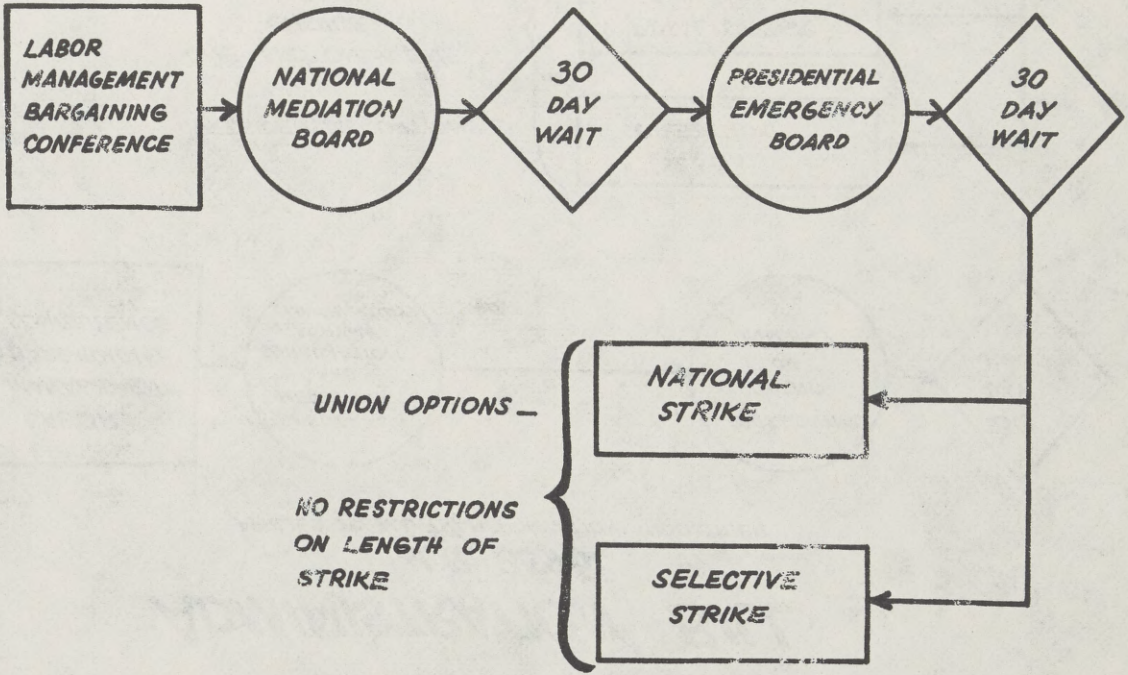
ADMINISTRATION BILL

H.R. 3596

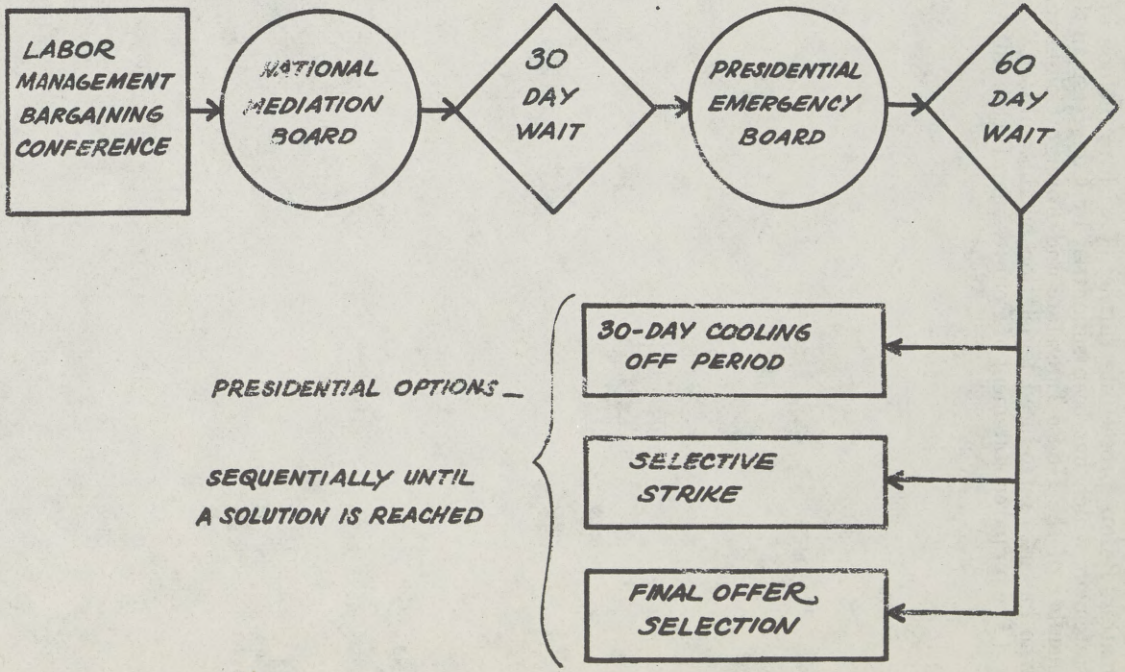
APPLIES TO ALL TRANSPORTATION INDUSTRIES



STAGGERS-ECKHARDT BILL
H.R. 3595



HARVEY BILL
H. R. 9088



The CHAIRMAN. It was a very productive presentation, Congressman Harvey, and I wish to thank all of you for your assistance in this matter. Before proceeding further, I wish to include in the record a statement which has been submitted by Congressman J. J. Pickle, a member of the House Interstate and Foreign Commerce Committee, who has also introduced legislation on this subject.

(The prepared statement of Congressman Pickle follows:)

CONGRESSMAN J. J. PICKLE

STATEMENT BEFORE THE SENATE LABOR AND PUBLIC WELFARE COMMITTEE
EMERGENCY STRIKE LEGISLATION

OCTOBER 7, 1971

Mr. Chairman. I have been requesting for several years the hearings that are now being held to consider legislation regulating management-labor disputes in the transportation industry. For six years, I have authored legislation that offered new approaches for settlement. During the last railroad work stoppage in July, everytime I read my morning mail, I got several reminders of the fact that collective bargaining is not working the railroad industry. I'm still getting mail on this matter. These letters I speak of are from shippers who are paralyzed by the lack of rail service.

We are all resolved that the Railway Labor Act must be made to work better. There is a growing consensus that it needs an overhaul. I have to agree with a Department of Labor official who calls the present Railway Labor Act "an incredibly convoluted procedure." He went on to compare this Act with a Rube Goldberg device. The only difference is a Rube Goldberg machine always worked in the end. Unfortunately, theRailway Act keeps on breaking down.

This 1926 Act has been invoked 100 times since WW II, nine times since 1963. Congress has had to step in after the cooling off machinery of the Act has expired and failed to produce a settlement.

In 1966, Congress was in the process of ordering striking machinists back to work in a dispute with the union and five major airlines when the parties reached a settlement ending a 42-day old strike. In 1967, Congress acted 3 times to deal with a nationwide rail strike, the first strike in 20 years. Two actions postponed the strike, the third ended the strike after a two-day walkout. This problem involved the shopcraft unions versus the railroads.

In the spring of 1970, Congress headed off a rail strike first by postponing the strike for a month or so, and later, by enacting

legislation that imposed a 17-month dispute between the management and four shop craft unions. In December, 1970, Congress was beat to the crossing. We tried to avoid another strike by enacting an 81-day moratorium, but action came too late to stop a brief walkout. This dispute also involved the shopcraft unions and the railroads.

In May of this year, 1971, a short strike prompted Congress to approve emergency legislation that sent 13,500 signalmen back to work and ordered the railroads to give the workers an interim 13.5 per cent wage increase. Surely you know what my next line is going to be--that's a helluva way to run a railroad--for both labor and management.

And that's my whole purpose in my legislative attempt for a permanent solution...the Congress should not be charged with settling disputes between labor and management.

But, the Railway Labor Act is old and rusty. It has lost much of its muscle. As a result, collective bargaining has broken down. The Railway Labor Act does little if anything to encourage management or labor to settle their differences because, as a matter of practice, neither side begins to bargain until a presidential emergency board is appointed. Even then, the bargaining is suspect because each side makes extreme demands because they expect the board to strike a compromise.

In my opinion, a legislative overhaul of the Railway Labor Act is the only real permanent solution.

Mr. Chairman, for the last five years, I have felt like a man crying "wolf." I've introduced and re-introduced the "arsenal of weapons" approach to legislation and I've complained that a strike was coming, and nobody was listening.

Well, the strikes have been coming more frequently, and the nation, and Congress, seems to have started listening.

We need legislation for several obvious reasons:

One, collective bargaining is not working.

Two, the nation's economy is so shaky that we simply cannot afford another nation-wide tie-up.

And third, the Railway Labor Act is as antiquated as a 1929 Dusenberg and not nearly as classic.

In candor, I must say that the only bill which could ever pass the Congress would have to be a bill which would have provisions which are distasteful to both labor and management.

Also, if you are to be completely realistic, you must consider all the factors which have and will contribute to delay in getting legislation passed: the disagreement between labor and management over compulsory arbitration, the calm which always follows the passage of emergency legislation, and the consequences of the final court decision on selective strikes. All these things add to the delay. All these things take the heat off for action.

Now that I have talked generally about the problems, I want to discuss my personal solution, H.R. 2357.

Mr. Chairman, I want to point out that I have discussed my bill with members of the Labor Committee of the American Bar Association. This Labor Committee has drafted strike legislation in the transportation field and the ABA has approved the proposal. The ABA proposal and my bill are not too far apart.

The bill amends Section 10 of the Railway Labor Act--that section which authorizes the National Mediation Board to notify the President when a dispute of certain seriousness occurs. The President, then, may create an Emergency Board (which, in effect, is another mediation board) to consider the dispute and try to effect a settlement.

If the Emergency Board, under present law, fails then the parti are free to strike.

After these procedures are exhausted, there is no remedy available, other than Congressional intervention. The parties are free t strike or lockout.

Under my bill, when the President is notified by the National Mediation Board of a dispute, he immediately may proceed under either of two broad alternatives: (1) If he determines that the dispute is not one of immediate urgency, he may proceed through another mediation board, termed an Emergency Board. On the other hand, (2) if he determines that the national defense, health, or safety is imperiled, he may immediately proceed under remedies involving a Special Board (arbitration); limited seizure of the concerned carriers; or a Congressional remedy in which the President specifically recommends a settlement, or any combination of these three items.

The bill provides that if the Emergency Board route is completed, then the dispute may proceed through the remedies of arbitration, seizure of Congressional relief, simply on the standard that the dispute threatens to interrupt essential transportation service in a given area. It is not necessary that a "national emergency" be found in order to reach the final three alternatives, and this provision assures that the flow of procedures will not become log-jammed as they have done in the past.

The approach of my bill, in broadest terms, is to lengthen the process for reaching a voluntary settlement, and give the President the widest possible range of alternatives for dealing with a serious dispute. It is called an "arsenal of weapons" procedure.

It gives him authority to take any of several alternatives at each step along the way, and it generally allows him to pick and choose between the alternatives, or to select a procedure incorporating several aspects of the choices involved.

It even allows him to take no action, if he so desires, leaving the dispute open to normal bargaining and strike remedies.

To respond to any kind of situation, the bill gives the President alternatives which are or might be highly onerous to both sides.

If it is deemed that the union has not bargained in good faith, the President might invoke a form of arbitration; if management appears to be the party which has not lived up to its bargaining duties, then the President might ultimately select a remedy involving a limited form of government seizure of the carrier involved.

In this way, the parties will remain uncertain of the method of any final government intervention, and with distasteful alternatives resting in the discretion of the President, neither labor nor management would want to appear to be the unreasonable bargaining party.

This is the way to restore true collective bargaining and this is the way to promote voluntary settlements between the parties. This may be the best way to save collective bargaining.

I would like to say a word at this point about my including a provision for seizure in the bill. First, I realize that it is a very extreme measure, and that in our sytem of government, its place is found, if ever, only in the narrowest of instances.

As you know, seizure was not included in the bill I first introduced in 1967. As you also know, we saw absolutely no action on that 1967 measure. It did not budge an inch--even though it did serve as the ad hoc remedy for the 1967 rail strike.

The House Interstate and Foreign Commerce Committee for several years now has had bills which take either of two approaches for solving rail and airline disputes. Either they process only with some form of compulsory arbitration, or they utilize only a form of seizure.

It is clear now that this is a lop-sided approach and one which does not have a chance to run the legislative gauntlet. There must be a balance built in the law, and unfortunately, it seems that balance in a choice of procedures approach, calls for alternatives which are truly repugnant to each side.

This is the method by which the public makes its voice heard. And this is the means for assuring that neither party makes unreasonalbe demands or fails to bargain.

Some critics have said the multiple choice of procedures gives the President too much of a burden and too much authority. Frankly, I think one of the greatest attractions is the varied choice of procedures. The President is not bound to take extreme steps when the dispute does not warrant it, and throughout the negotiations, both parties are left "in the dark" as to whether there will be any intervention at all--and this I believe is conducive to good faith bargaining--and finally, if intervention is needed, the President may tailor the remedy to fit the need.

Mr. Chairman, there are several bills before our committee. My bill is just one such approach. And, I am willing to consider amendments to my legislation which would incorporate most or all of the features of the other bills. This should be done to strengthen the President's position in national transportation strike

For example, a major alternative is missing from the arsenal I propose. This is the selective strike. The courts have ruled that a selective strike is legal in the railroad industry where bargaining is done on a national basis. However, a lot of questions were left unanswered by the Supreme Court's decision which upheld the Court of Appeals in allowing selective strikes.

A big question is: what percentage of our railroad system can we allow to be inactivated by a dispute and still protect the public interest of the nation. In looking for the legal test, should the question be limited to the effect on a particular region or should we consider the effect, in the entire nation?

Also, should the selective strike be allowed to swing into play before one of the other alternatives in the arsenal of weapons approach is utilized? If we make selective strike procedure required first, then we may never see a settlement of any strike.

Actually, a selective strike does not lead to settlement of the central dispute between labor and management. It does allow labor and management to slash at each others' pocketbook while

forcing the government to stand by powerless. Powerless, that is, until a national emergency is declared. Selective strike is a weapon; it should not have priority or legal sanction above all other choices.

Mr. Chairman, strikes in the transportation industry, particularly the railroad industry, are different from other national strikes. A large segment of our society depends on the railroads to haul the stuff that commerce is all about--everything from food to building materials to machinery and so on. During a rail strike, raw materials and finished products alike sit idle. Eventually, so do the consumers.

The point is, Mr. Chairman, a decision ultimate must be reached: how long can a selective strike be allowed to continue? I think there is obviously a point in time when the President must say "that's enough" to both labor and management. At this point, the President must look for another alternative in his arsenal of weapons.

One alternative could be binding arbitration or the "last offer" approach. This approach is covered in the legislation offered by our friend and colleague, Honorable James Harvey. His bill allows the President flexibility to move from a selective strike to the last offer alternative. I agree with the philosophy behind the latitude given the President, but I think it would be wise to expand his authority to allow the President to choose either last offer or binding arbitration.

Several bills before us deal with selective strikes, and obviously, there is a place for this approach in the arsenal of weapons. Care should be taken, however, to make this approach on a par or equity with the other weapons in the bag. I think we must make certain that the President would not choose one gun over the other...each should be the same size barrel.

As we range through the possible legislative solutions presented to this Committee, we must consider the last offer alternative. I have no real objections to the last offer approach other than to say I would prefer some other approaches--like the mediation to finality suggestion over this particular solution. Here again, in the arsenal of weapons approach, you could include both approaches. Under either system, a third party is, in effect, writing a contract for the disputing parties. For the last offer approach, a board makes the final decision. Under mediation to finality or binding arbitration, a board again is charged with the responsibility of working out a compromise.

Regardless of the final form of permanent legislation, I think the main point is that something should be on the books to handle these disputes. Too often, Congress is called on to select a means to settle disputes, and it invariably works out that one side or the other feels they have been wronged. That type of action hardly encompasses the goals we seek--to avert strikes while at all times preserving collective bargaining.

SCHEMATIC OUTLINE OF PICKLE TRANSPORTATION STRIKE BILL

Mediation Board

Reports if a dispute exists which threatens "substantially to interrupt interstate or foreign commerce to a degree such as to deprive any section of the country of essential transportation service."

↓

President

"In his discretion," may thereupon create an Emergency Board; or, if he determines that the "dispute immediately imperils the national defense, health or safety, he may proceed under the provisions of subsection (b), (c) or (d)."

Emergency Board (Mediation)

1) Size & membership is choice of President;
2) Board must report within 60-120 days of appointment;
3) If instructed by President, Board report will contain findings of fact and/or recommendations for settlement.

↓

President

1) Holds Emgy Bd report for 30 days cooling-off;
2) After cooling-off, President may return dispute to Emgy Bd for 30 days consideration and for their recommendation on whether to proceed under (b), (c) or (d);
3) President may proceed under (b), (c) or (d) or any combination thereof; he is not bound to follow the recommendations of the Emgy Bd as to which procedures to follow;
4) If President elects to proceed under (b), (c) or (d), he may impose the recommended settlement of the Emgy Bd as interim working conditions, pending the time required to exhaust procedures of (b), (c) and (d).
5) Whenever President determines to pursue (b), (c) or (d) (whether or not an Emgy Bd was used) he shall notify the parties 10 days before entering such procedures--such notice need not specify to the parties which of the steps or combination thereof will be taken.

(b). Special Board (Arbitration)

1) Parties have 10 days to select members and procedures; if they fail to do so, President performs this function;
2) Board is composed of 5 members; 3 public, one labor and one management
3) Board has from 60-120 days from appointment to report;
4) Board has power to make a settlement binding on the parties for a period of the Board's choice, but less than 2 years;

(c). Seizure of concerned carriers

1) Management of carriers is continued by Secretary of Commerce;
2) All corporate activities continue as in the normal course of business;
3) Working conditions remain the same unless the President imposed the Emgy Bd recommendations.

(d). Congressional remedy.

1) If the President elects to proceed under the provisions of this subsection, "he shall transmit to Congress such recommendations for legislation as he may determine are required."

The CHAIRMAN. Our next witness will be Mr. Stuart G. Tipton, president of the Air Transportation Association of America.

We welcome you President Tipton.

Senator Randolph will be sharing this until he is called away. We are certainly glad to have you here.

STATEMENT OF STUART G. TIPTON, PRESIDENT OF THE AIR TRANSPORT ASSOCIATION OF AMERICA, ACCOMPANIED BY EVERETT M. GOULARD, COUNSEL

Mr. TIPTON. Mr. Chairman, and members of the committee, I am delighted to have this opportunity to come before your committee and discuss this whole series of serious questions.

At the outset I would like to introduce myself as president of the Air Transport Association of America which represents virtually all the American scheduled airlines and I would also like to introduce the gentleman on my right, Mr. Everett M. Goulard. Mr. Goulard is a partner in the New York law firm of Poletti, Freidin, Prashker, Feldman, and Gartner. This firm is counsel for the airline industrial relations conference.

Mr. Goulard until quite recently was vice president of industrial relations of Pan American World Airways.

Mr. Chairman, my statement is quite a thick one and I would like, if I may, to have the entire statement received in the record and summarize the statement for the committee since I realize that your time is limited.

The CHAIRMAN. Well, it certainly will be included and we appreciate your understanding of our problems. I see that it is a very complete and comprehensive statement.

Senator RANDOLPH. How long have you been testifying before Senate and House committees, Mr. Tipton?

Mr. TIPTON. I think it is 34 years.

Senator RANDOLPH. So you know what is required in it.

Mr. TIPTON. I have a great deal of experience in witnessing the terrible crises that are imposed on both Houses of Congress and their committees, so I usually try to keep my statements short.

In summarizing my statement I will however read the first four and a half pages and then summarize the remainder.

Thus far in these hearings, the attention has been focused primarily on railway labor problems. We are here today, however, to ask you to focus on airline labor problems also. We, too, operate under the Railway Labor Act, and we, too, are encountering difficulties which merit the attention of the Congress.

Until a few years ago, the airlines were unique in industry as they kept lowering fares in the face of rising costs. Technological improvements partially offset normal increases in wages and other costs. Not long ago, it began to be apparent that this process would not work any longer. Airline wages began rising at a rate which exceeded most other industries. Fares had to be raised to meet rising wages. Members of Congress and others understandably criticized the fare increases, but no one pointed out the main cause of the problem, the tremendous increase in airline wages. Wages have gotten out of hand because collective bargaining was not working as it was intended to.

When the administration's bill, S. 560, was presented to the Congress more than a year ago, we welcomed this indication of desire on the part of the Government to examine these problems in detail and to seek solutions. We still do recognize that S. 560 is a good contribution to the thinking on this subject.

However, upon a careful analysis of the effect of the legislation upon airline industrial relations, we came to the conclusion that it is not adequate; that it does not provide needed protection for the interests of the airlines, their employees, their customers, and the areas they serve. Nor does it hold any promise of checking the constant rise of transport labor costs which have resulted in higher prices and reduced service for the consumer. There are several reasons for these conclusions; I will state them briefly.

S. 560 provides that the Government will not consider intervention in a transportation labor dispute unless the national health and safety is imperiled. This standard is so rigid that it would be the most extraordinary air transport dispute which would receive Government attention.

The airlines do not engage in national bargaining and, consequently, strikes that affect airlines are limited to individual carriers. Thus, while a airline strike could do great public damage and cause great inconvenience, it could not be found that the national health and safety is imperiled. In addition, S. 560 takes a sort of meatax approach to the Railway Labor Act, eliminating both the provisions which have proven useful and those that need replacement.

The railroad industry, also covered by the Railway Labor Act, reached the same conclusion in its study of the administration bill. Consequently, both industries created expert groups to work together to determine whether a constructive alternative could be proposed.

After months of study, this joint group produced a bill which it regards as a better method of avoiding strikes in the railroad and airline industries, one that preserves the best part of our present system, accepts some of the principles of the administration's bill, and develops other approaches that are not included in either. This proposal, in essence, is pending before the committee as S. 2060, introduced by Senator Dominick. It proposes the following steps.

If, after having gone through the negotiations and mediatory process of the Railway Labor Act, a dispute is not resolved, it is considered by a panel appointed by the Secretaries of Commerce, Labor, and Transportation. After investigation of the dispute, the panel recommends to the three Cabinet members one of the following four courses of action:

1. That the Government do nothing and thus release the parties for an economic test of strength, if they care to have one;

2. That a board be created to determine the facts and make recommendations much as the present emergency boards do;

3. That a board be created to make a binding determination that one of the last offers of one or the other party constitutes the contract between the parties; or

4. That the dispute be submitted to binding arbitration.

In making this determination as to whether to intervene or not to intervene, the Secretaries would be able to take into account a very

wide range of public interests and would not be required to restrict themselves to the narrow consideration of the concept of the "national health and safety."

They could consider the impact of the strike upon a region of the country where the impact may be very severe from the standpoint of the economy of the region and of the people living there. They would be able to consider the inflationary effects of a possible strike settlement upon passengers and shippers, and upon the economy as a whole. They would examine the impact of a strike or a high wage settlement on the continued viability of a needed airline. In the case of international airline service, they could take into account the ability of the U.S. carriers to maintain service and competitive ability required in the national interest.

The Government should not bind itself to ignore major aspects of the public and consumer interest in determining whether Government intervention is justified.

On the other hand, by giving the three Cabinet Secretaries the discretion to withhold Government intervention entirely, Government participation in labor-management disputes would not become so extensive that the parties would be discouraged from true collective bargaining.

As a matter of fact, the very flexibility and uncertainty which are created by the options made available to the Government, will encourage such bargaining. Neither party will have assurance that the Government would intervene, or, if intervention is decided upon, what course of action would be adopted. Rather than being faced with all these unknowns, the bargainers should and would be anxious to settle their problems among themselves—a course of action that all of us prefer.

(The prepared statement of Mr. Tipton follows:)

Statement of Stuart G. Tipton, President of the Air Transport Association of America, Before the Labor Subcommittee of the Senate Committee on Labor and Public Welfare, re S. 560, and Other Bills to Amend the Railway Labor Act

My name is Stuart G. Tipton. I am president of the Air Transport Association of America, a trade and service organization representing virtually all the scheduled airlines of the United States. Association members include the domestic trunks, the U.S. international airlines, the local service airlines, and the Hawaiian, Alaskan, and all-cargo air carriers, which together form the backbone of the industry's air transport system.

We appreciate the opportunity to come before this Committee and express our views concerning strikes in transportation.

Thus far in these hearings, the attention has been focused primarily on railway labor problems. We are here today, however, to ask you to focus on airline labor problems also. We too operate under the Railway Labor Act and we too are encountering difficulties which merit the attention of the Congress.

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The Government should not bind itself to ignore major aspects of the public and consumer interest in detemining whether Government intervention is justified. On the other hand, by giving the three Cabinet Secretaries the discretion to withhold Government intervention entirely, Government participation in labor-management disputes would not become so extensive that the parties would be discouraged from true collective bargaining. As a matter of fact, the very flexibility and uncertainty which are created by the options made available to the Government, will encourage such bargaining. Neither party will have assurance that the Government would intervene or, if intervention is decided upon, what course of action would be adopted. Rather than being faced with all these unknowns, the bargainers should and would be anxious to settle their problems among themselves -- a course of action that all of us prefer.

Is Any Legislation Needed?

I will now address myself to the threshold question which is in the mind of all members of the Committee -- why should any legislation be passed providing for special Government treatment of railroad and airline strikes. There are many good and sound reasons for doing so. I will set them out as they relate to air transport.

Established Congressional Policy

The first reason is that Congress has already decided that both industries require special Governmental treatment. Implementation of the

national policy as expressed by the Congress in the Railway Labor Act, Federal Aviation Act, and Department of Transportation Act requires enactment of special legislation.

In 1936, Congress determined that the public interest in air transportation required that the industry should be made subject to the Railway Labor Act. The first purpose of that Act as expressed by Congress is, "To avoid any interruption to commerce or to the operation of any carrier engaged therein."

Under the Federal Aviation Act of 1958, Congress has provided in the Declaration of Policy, that the Civil Aeronautics Board shall consider as being in the public interest and in accordance with the public convenience and necessity: "(b) The regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic conditions in, such transportation...."

The Department of Transportation Act of 1966 provides in part in the Declaration of Purpose: "(a) The Congress hereby declares that the general welfare, the economic growth and stability of the Nation and its security require the development of national transportation policies and programs conducive to the provisions of fast, safe, efficient, and convenient transportation at the lowest cost consistent therewith...."

Economical air transportation to localities, regions, and the Nation is of ever growing importance. The public interest in uninterrupted

air transportation is greater today than it ever was. However, the declarations of national policy cited are not being supported by the existing collective bargaining structures and procedures. Interruptions and threatened interruptions to the operations of carriers are occurring far too frequently. Economical and efficient air transportation cannot be continued if excessive labor cost increases continue to force rates and fares upward as they have in the recent past and are doing today.

Imbalance of Bargaining Power

The second justification for special Governmental attention to airline strikes is the presently existing imbalance in bargaining power between unions and management in the air transport field. It is this imbalance which has resulted in the excessive labor costs in the airline industry. This imbalance results from a number of fundamental characteristics of the airline industry.

The airlines can not stockpile their product as can manufacturers. A manufacturer, such as U.S. Steel or General Electric, in anticipation of a strike, can produce sufficient quantities of its products in order to have an inventory from which to supply the demands of customers for the duration of a strike with no great loss of revenue or competitive position. However, the airline product, in essence, is passenger seats and cargo space flown, and once this capacity is not used, it is gone and can not ever be recouped. Virtually all revenue is stopped and only expenses remain.

The airlines have sought to establish some protection from these disastrous consequences by entering into what is referred to as the Mutual Aid Agreement. In brief, the agreement provides that if an airline is struck, those competing airlines who transport its traffic are required to return to the struck airline the revenue from that traffic, less direct expenses. If these payments by competing airlines do not aggregate a specified percentage of normal operating expenses of the struck airline, all of the parties to the agreement make sufficient contributions to bring the total payment up to that percentage.

This agreement has helped, but it fails completely to solve two other major problems a struck airline encounters. In recent years, in order to take advantage of technological improvement, the airlines have been required to incur enormous capital expenditures -- 10 billion dollars since 1965. The agreement does not contribute toward the payment of interest expenses. Much of the money has had to be borrowed, and borrowed at a very high cost. The long-term debt of the air transport industry at present is approximately $6 billion. The airlines' debt equity ratio stands at 66/34, a sign of financial weakness. Total interest expense for the industry in 1970 was $384 million, more than a million dollars a day. During a strike, these payments must be made and the agreement does not cover them.

An even more important weakness in the Mutual Aid Agreement is that its provisions obviously can not protect the competitive position of the

struck carrier. The air transport industry is a highly competitive business. Of the 400 top air transport markets in the country, 320 of them are served by at least two carriers and 60 of them by three. On major routes in the international field, competition is even heavier. There are 20 carriers operating in the North Atlantic to Europe, plus a host of U.S. and foreign supplementals. When a carrier is struck, his competitors transport the share of the market that he has struggled so hard to attract and he knows that it will take him months and years to get it back.

Further contributing to the imbalance in power of the parties in airline collective bargaining is the bargaining structure which is based on individual carrier negotiations. There is no multi-carrier bargaining and there is no national handling of negotiations. This bargaining structure thus creates an ideal situation for the unions to exploit whipsawing tactics to pressure the carriers into costly bargaining concessions.

The whipsaw tactic can be tried whenever a union is engaged in negotiations with two or more carriers at the same time. In that situation, the union may initially press two demands on both airlines. It may then obtain Airline A's consent to one demand in return for some compensating union concession, in the same way it may obtain Airline B's consent to the other demand. The union will then tell Airline A that Airline B has already accepted this other demand and that it must therefore accept that demand also or be struck. The union tells the same thing to Airline B about the first demand. In this way, the union takes advantage of the absence of

coordination of strategies between the airlines involved, and plays on their natural fear of and resistance to a strike. More often than not, by this whipsawing process, the union is able to force acceptance of most of its major demands from all airlines.

The whipsaw tactic is used not only by one union against those carriers on which it represents employees, but also among the unions representing the same craft or class of employees on different carriers. This whipsaw tactic for inflating settlements is well illustrated by the mechanic negotiations concluded in 1969 and 1970. First, American settled for a top hourly rate of $5.16, and Pan American for $5.23, with the TWU. Next, on Western, the IBT was able to obtain $5.60 an hour, plus a dental plan. This was followed by IAM settlements on United of $5.62 an hour; on TWA, $5.65 an hour; on Texas International, $6.13 an hour; and on Frontier, $6.35 an hour. Also escalated in these negotiations were cost-of-living, shift differentials, and other labor costs. Now, in 1971, with mechanic negotiations being reopened, the carriers which settled first in 1969 were 13% behind in wages and fringe costs and opened negotiations in the face of the 1969 pyramid of labor costs obtained by stepping-stone and whipsaw bargaining.

Multiplicity of unions in the airline industry and the number of crafts or classes with which a carrier must negotiate are other factors which contribute to the lack of parity in airline collective bargaining. The National

Mediation Board currently recognizes ten different crafts or classes which are as follows: mechanics; radio and teletype operators; clerical, office, stores, fleet, and passenger service; stewards, stewardesses, and flight pursers; pilots; dispatchers; meteorologists; flight engineers; flight navigators; and flight kitchen and commissary employees.

Under the craft or class bargaining structure in the airlines, the continued operation of a carrier is threatened frequently. In a period comparable to, for example, the term of a labor contract for a manufacturer under the Labor-Management Relations Act, an airline can be confronted with as many as eight or nine actual strikes or threats thereof. When General Motors, Ford, U.S. Steel, etc. enter negotiations, the concluding of an agreement should insure labor stability for the company for the period of the contract term. When a strike occurs and is resolved, the employer does not face another threatened interruption of business for a reasonable period of time.

Based upon the bargaining structure that is characteristic of the air transport industry, the unions can also pick and choose among the carriers based upon the relative financial strength of the carrier concerned. The stronger carrier might well be prepared to take a strike even with the disastrous consequences previously described. A weak one might not be able to survive. The national unions conduct their individual bargaining skillfully and are, of course, able to tell the strong from the weak. Choosing a financially weak carrier, they can establish wage and fringe benefit patterns which even the strong carrier can not later resist.

Inter-union rivalry for larger settlements also plays a large part in weakening the position of carriers in negotiations. In many crafts or classes in the airline industry, there are two or more industry-wide unions representing workers of the same craft or class. There is a strong motivation for each to demand settlements larger than those obtained by the rival union. This is particularly acute among certain ground employees. Clerical employees are represented by the Air Line Employees Association (ALEA), Brotherhood of Steamship and Airline Clerks (BRAC), and the International Brotherhood of Teamsters (IBT). Within the past two years, there have been three strikes by these unions: the IBT strike against Pan American, August 8-11, 1969; the ALEA strike against National, January 31-May 27, 1970; and the BRAC strike against Northwest, July 8-December 14, 1970. In each case, an element in the dispute was the demand of the union that its settlement be superior to a recent settlement obtained by a rival union on another carrier, or that it be sufficiently higher to enable the union to claim superior bargaining ability to that of its rivals.

The Northwest dispute also illustrates another aspect of inter-union rivalry which contributes to escalating labor costs. In the Northwest dispute, the BRAC informed the carrier that it would have to match the Teamsters' latest trucking agreement because the Teamsters had successfully raided the BRAC on Braniff and Pan American for the representation of clericals.

In saying all this, there is no intention of criticizing unions or charging them with tactics which are in any respect unethical under the existing rules of the game. The point being made is that, in this economic contest, the unions have an ax and the airlines have a penknife. The imbalance of strength at the bargaining table is severe. Even that might not justify Congressional intervention if no public harm resulted from this imbalance, but public harm does result. Air transport consumers, both travelers and shippers, have been and will be required to suffer price increases and service reductions which are sufficiently serious to justify Congressional attention and action.

Imbalance at the Bargaining Table Results in Public Harm

The public harm that is referred to is increased prices and reduction of service to consumers and impairment of the financial stability of the airline system.

Until the latter part of the 60's, the introduction of jet aircraft provided enough productivity gain to offset the unit cost increases in wages and other inflationary pressures of the major airlines. This enabled the airlines to improve the value, the quality and quantity of service, and reduce prices at the same time. The average fare per passenger mile, or yield, declined for six consecutive years between 1962 and 1968, while consumer prices climbed by about 15%. Then labor costs began to rise to alarming levels and since such costs are 50% of total cash operating costs, it was no longer possible to dampen their effect.

Airline wage settlements have been outpacing those of most other industries. While the average salary for airline employees increased by only 3% in 1966, approximately the rate of increase in U. S. industry productivity, average salaries climbed 5% in 1967; 8% in 1968; 10% in 1969; and 15% in 1970. The average airline employee in 1970 earned $12,307, as compared with $6,248 for the average American worker. Workers in manufacturing are paid an average of $3.36 per hour. The average airline employee earns $5.92 per hour.

Flight crew members -- pilots, copilots, and flight engineers -- in 1965 earned on the average $19,700; in 1969, $24,600; and last year were paid $28,800. The top 600 airline pilots in 1965 received an average of $39,700, including fringe benefits and spent an average of 56 hours per month on the flight deck. In 1970, the top 600 pilots received an average of $58,400 and spent 48.5 hours per month on the flight deck, an increase of 47% in compensation and a reduction of 13% in productive time.

If unit wage increases in the industry since 1966 had increased at the same rate as inflation in the U.S. economy (consumer price index), airline costs would have been reduced by $600 million last year and the airlines would have made a profit before taxes of $370 million dollars.

Being unable to dampen these cost increases by increased productivity, there has been a significant downward trend in the industry's financial posture. Since 1965 when our return on investment amounted to 12%, it has continually

dropped, and in 1970 was a mere 1.5%. The industry suffered its first loss since 1960 and the worse one in its history -- $179 million after taxes. We forecast a further substantial loss for 1971.

Normal recession cost cutting has not been enough to offset the high labor costs. Profits have continued to plummet. With carriers continuing to strive to reduce costs to improve their financial positions, the airline customer is now being confronted with flight reductions. From 1962 to 1969, the number of annual flights increased for seven consecutive years, jumping from 3.7 million to 5.4 million. Also, during this period, the average number of seats per flight increased significantly with the introduction of larger aircraft. All of this provided the traveler with ample capacity when and where it was desired. In 1970, the number of airline flights dropped to 5.1 million. In the second half of last year, the carriers found it necessary to begin reducing flights on a unilateral basis. By May 1971, there were 5.2% fewer domestic flights scheduled than in May 1970, resulting from the elimination of 700 daily flights. This will continue. Several carriers are currently involved in plans to further reduce flights on a multilateral basis if approved by the CAB. There is no doubt that cuts in flights have been needed to further reduce costs and some of the cuts have not seriously impaired public service. A considerable amount of service cutting, however, has been on short-haul and thin routes where the public needs it most.

Notwithstanding this cost cutting, service reduction and the furloughing of approximately 12,000 employees, it still has not been possible to solve the financial problem, and prices to the airline passenger and shipper had to go up. As a result of the first round of fare changes, the average yield has risen from 5.46¢ in 1968, to 5.78¢ in 1970, approximately 6%. In April of this year, the CAB approved an across-the-board immediate increase of 6% in domestic fares and a tentative additional 3% increase later this year.

These rising costs have had a particularly adverse effect on airline travelers in short-haul markets. The airline fare structure is cost oriented. Since wage costs per available ton-mile are higher in short-haul markets than in long-haul ones, fares on short-hauls have had to be increased significantly as a result of wage settlements. Between 1968 and 1970, the average yield per passenger mile for the regional airlines has increased from 7.56¢ to 8.43¢, up 12%. This, of course, is the average, but let's examine what has happened to certain fares in some specified short-haul markets during the past several years.

	One Way Coach Fares (Excludes Tax)		
Short-Haul Market	June 1971	June 1968	% Increase
Washington-New York	$23.15	$17.00	36
Boston-New York	22.22	16.00	39
Cleveland-New York	36.11	28.00	29
Washington-Pittsburgh	22.22	17.00	31
Greensboro-Richmond	21.30	17.00	25
Spokane-Portland	28.70	23.00	25
Columbia (Mo.)-Kansas City	20.37*	13.00*	57

*One Class Fare

Even with the fare increases, the regional airlines have not been able to increase fares to cover the losses on their uneconomic routes. As a result, subsidy payments to regional airlines have now increased. In fiscal year 1971, subsidy for regional airlines increased to $58.6 million from $34.3 million in fiscal year 1970. This followed seven consecutive years of decline in such payments. Even with increased subsidy, regional carriers lost $58 million in 1970.

The U.S. airlines flying international routes are also in a disadvantageous position relative to the wage burdens they must support. In 1970, for example, U.S. scheduled airlines international and territorial operations sustained a loss after taxes of $32 million. These carriers must, in most cases, compete head-to-head on major routes with foreign flag airlines. The average annual wage of a U.S. airline employee in 1970 was $12,300. This is more than twice that paid by foreign carriers.

Consider, for instance, that Pan Am must compete across the North Atlantic against BOAC. The captain of a Pan Am 747 jet earns about $68,500 per year. The BOAC captain, however, earns around $22,000. At a uniform fare level, therefore, the U.S. carrier must somehow compete for the traffic and still earn a profit, even though handicapped by a wage disparity. Some wage differentials between U.S. and foreign workers are inevitable, but the extraordinary settlements of the past few years are impossible to overcome.

In summary, the airlines, during the past several years, have experienced significant wage pressures which have caused an increase in airline prices. These belated price boosts, however, have not been sufficient to offset the inflationary spiral. Consequently, a decline in earnings has continued to a point where last year, the industry suffered its worst financial loss in history. In an effort to cut costs to the bone, the carriers have had to reduce flights. All of this has had an adverse effect on the consumer with fares and rates increasing and schedules decreasing.

S. 2060 is the Bill Best Designed to Avoid This Public Harm

The foregoing establishes the need for Congressional action to provide for improved collective bargaining in the airline industry. The only question is what should be the form of that action. Several proposals have been made, but we believe that S. 2060 is the best proposal thus far for the handling of unresolved negotiating disputes. I described the outline of that bill at the outset, now I would like to discuss it in more detail.

The three Cabinet members would review all unresolved disputes in the airline and railroad industries, and this is as it should be. Any such dispute, whether on a large or small carrier, or group of carriers, potentially can disrupt transportation so as to seriously interfere with the transportation of passengers, mail, and cargo. More importantly, though, any such dispute, if left to the economic warfare, can result in an inflationary settlement damaging to the Nation's economy, adversely affect consumers of transportation, impair our international position or otherwise adversely affect the public interest.

Having reviewed the dispute, the three Cabinet members have a variety of choices, choices which are tailored to meet the exigencies of varying bargaining situations. One alternative is to do nothing and leave the parties to self-help. This would be applicable in those situations where it is determined that the dispute has insufficient impact on the public interest to warrant intervention.

A second, the appointment of a neutral board to make non-binding settlement recommendations would be appropriate where the parties may be close to an agreement. However, they may be deadlocked on issues which can be resolved through the objective recommendations of a third party.

A third procedure would be the appointment of a panel to decide which of the parties' final offers is the more reasonable and should be the contract put into effect. It would bring a dispute to a legal conclusion by establishing a contract between the parties. No restriction on duration is placed on the offers and a dispute would be ended for the contract duration. Since the panel would select the most reasonable of the parties' final offers, presumably both parties would move to realistic settlement areas and the dispute could even be settled in negotiations prior to the panel making its decision.

The fourth procedure would be binding arbitration. The inclusion of final and binding arbitration in an arsenal of weapons is sometimes met with a shudder by both labor and industry, but in many cases it would be

preferable to the present system. The principle of disinterested third-party determinations in life-and-death questions of criminal law is readily accepted. Also, there is no hesitancy to permit a jury to determine the dollar value to be placed on a man's legs or his eyes. Nor is it regarded as horrendous to give to a government agency the power to determine how much a consumer shall pay and how much a carrier shall get for air transport and rail service.

Review of stalemated collective bargaining disputes by Cabinet-level officials and presenting them with these choices, would strengthen true collective bargaining in the airline industry. In our opinion this is the greatest virtue of S. 2060. The uncertainty of any intervention would stimulate bargaining.

In such a situation, no employer could fail to strive for a settlement because he could not be sure that a strike would be prohibited. On the other hand, no union could go through negotiations or mediation in a perfunctory fashion because it could not be sure that it would be permitted to strike. Where the parties to a dispute believe that the decision-making will or may be taken out of their hands, they will exert every effort to reach an agreement. The parties prefer a reasonably satisfactory compromise to the uncertainties of a decision by a third party which could be unsatisfactory to one or both of the parties immediately concerned. This is borne out by the experience of employers and unions which commit themselves voluntarily to binding arbitration prior to negotiations. Most agreements are

concluded expeditiously in a much larger percentage of cases than in those instances where arbitration agreements do not exist.

As an example, for several years Pan American has had agreements with certain of its unions to arbitrate future unresolved contract disputes. The result has been that a much higher percentage of cases have been resolved in direct negotiations and in mediation, than has been true in the absence of such agreements. In fact, dozens of contract disputes have been resolved amicably and expeditiously over the bargaining table because of the existence of these agreements to arbitrate, while only two cases have gone to final and binding arbitration. Unfortunately, Pan Am has been able to persuade only a few unions to sign such agreements to arbitrate, while other carriers have not been successful in obtaining any such agreements.

A comparable situation under the Railway Labor Act relates to "minor" disputes -- those disputes which involve the interpretation and application of an existing contract. Minor disputes are subject to final and binding arbitration. Nonetheless, over 90% of the grievances filed are adjusted without the need to go to arbitration.

Other Bills Before the Committee

There are quite a number of other bills before the Committee, all of which have the same objective -- to reduce the public harm caused by transportation strikes without requiring constant reference of these disputes to the Congress. The fact that the Committee has many ideas before

it on this important subject is all to the good and the proposals should be discussed in full recognition that they do seek the same objective and that each one will make an ultimate contribution to sound legislation.

Unnecessary Amendment of the Railway Labor Act

The Administration bill goes much too far in amending the Railway Labor Act. The emergency provisions of that Act have not worked and thus should be revised, but most other provisions are not subject to that criticism.

S. 560 would eliminate the present requirement of the Railway Labor Act that the parties must continue good-faith bargaining through a mediation period determined by the National Mediation Board before resorting to self-help. In its place, the bill would allow either party to reject mediation and would introduce into airline and railroad negotiations the fixed term contract concept of the Labor-Management Relations Act. It would, however, retain the present vertical collective bargaining units provided by the craft or class structure of the Railway Labor Act. The combination of fixed term contracts and the numerous system-wide collective bargaining units of the craft or class structure would produce labor chaos in the airline industry. Imagine, if you will, an airline faced with successive system-wide strikes of pilots; flight engineers; flight navigators; flight dispatchers; stewardesses and pursers; radio and teletype operators; mechanics; and stock and stores employees, each of which is presently recognized under the Railway Labor Act as a separate bargaining unit.

In addition, the Administration bill would wipe out one of the most valuable of our federal laws in terms of the maintenance of labor peace. The Railway Labor Act prohibits strikes over questions of interpretation of collective bargaining contracts, so-called "minor disputes." These are settled in the air transport industry by conciliation or if necessary by binding arbitration.

These are just two examples of the adverse effect of the wholesale revision of the Railway Labor Act. We hope the Committee will address itself to the real problems arising out of that Act, and not go any further than is necessary to solve those problems.

Procedures for Settling a Dispute

The various measures proposed to encourage settlements, the order of their use and the standards governing their employment differ extensively among the various bills before the Committee. Consequently, in order to be reasonably brief, I will probably deal inadequately with them.

In making judgments as to the effectiveness of these measures to be employed, it is crucially important that they place nicely balanced pressures on both parties to the dispute. The objective is to achieve a settlement, but the public interest in such a settlement is not limited to the continued availability of transportation service at any cost. In response to the pressures of a threatened strike, management can err in two directions. It can refuse to concede wholly justifiable demands of its employees. But it can also agree to excessive settlements with the intention of passing on

these extra costs to the consumers that it serves. Settlement measures which pressure management in either of these directions are equally bad.

In examining the bills before the Committee, other than S. 2060, it has appeared to us that they do not contain this nice balance which is required in the public interest. The pressures on management to settle on any terms might be so heavy as to invite them to take the easy course of making the consumer pay.

All of the bills seem to require as a condition precedent to governmental action too great a showing of public harm. For example, the Javits bill, S. 594, contains a threshold standard which is a distinct improvement over the Administration bill since it paves the way for handling disputes which are local as well as national in scope. However, like the other proposals, it still provides too high a level of public harm for government intervention in transport disputes. These standards for intervention appear to have been guided by the concept that so long as transportation needs are met, no other public interest, such as the cost and efficiency of transportation need be of concern. I contrast this with the proposal of S. 2060 in which a Cabinet committee can review any anticipated strike in the railroad or airline industries and make a determination, on the basis of all the public interests involved, whether the disputes merit government attention and the measures to be used.

Those bills which provide for mandatory partial operations by a carrier impose undue pressure on a carrier to settle unwisely because an enforced partial operation can be more costly and destructive than a strike. Airlines and railroads

are integrated units made up of profitable and unprofitable operations. In the case of mandatory operations, there can be no assurance that this balance would be maintained.

The utilization of the selective strike, such as provided for in S. 832, is subject to this same criticism of imposing undue pressure on management. At the present time, where national bargaining is being conducted, selective strikes can be used by the unions but only after due notice, and in pursuance of a national contract. The courts' permission to conduct selective strikes where national bargaining is being used has already weakened management's position severely but, if all limitations are withdrawn, the way is open for the type of whipsawing which has characterized airline negotiations and has contributed so much to the increased cost of air transportation to the public.

The use of seizure as a method of securing settlements again weakens management's position without any corresponding pressures upon the unions to settle. Seizure by the government of a private transportation system is, of course, a drastic measure. Anticipating such a governmental step, management might well be prepared to act irresponsibly in granting demands which would then have to be paid by the users. Seizure can also form the basis for unending litigation between the employer and the government as to the extent of injury by reason of seizure. Furthermore, the risk of ultimate or even immediate socialization is present, such as resulted a few years ago after a New York City bus strike. Before the strike busses were privately owned and operated, but during the strike they were seized and never returned to private operations.

Conclusion

This concludes my testimony, Mr. Chairman. However, S. 2060 includes other amendments to the Railway Labor Act which, while important and necessary, do not need to be presented orally to the Committee at this time. An explanation and justification is set forth in the Appendix to my testimony which I hope can be included in the record. The attention of the Committee is greatly appreciated.

Statement of Stuart G. Tipton
Air Transport Association
Before Senate Labor Subcommittee

APPENDIX

OTHER AMENDMENTS TO THE RAILWAY LABOR ACT INCLUDED IN S. 2060

In addition to the proposed amendments to deal with stalemated collective bargaining disputes, S. 2060 contains several other amendments to strengthen the Railway Labor Act. Many of these proposed changes would amend the Railway Labor Act to accord with national labor policy established by the Congress since the Railway Labor Act was last amended in any substantial manner. Although the Labor-Management Relations Act has been revised periodically during its history in order to adjust to new problems not anticipated in the original legislation, the Railway Labor Act has not received similar attention. Most of the additional amendments in S. 2060 are designed to accomplish this up-dating and to bring the provisions of the Railway Labor Act into harmony with the national labor policy.

Class or Craft Hearings

The National Mediation Board traditionally has taken the position that the only parties to any inquiry under the Railway Labor Act as to the class and craft determinations by the NMB are the competing labor organizations or the employees desiring representation, on the one hand, and the employees desiring to remain unrepresented, on the other. The Board has held that carriers are not entitled, as a matter of right, to participate in any manner in any such proceedings. In practice, when the Board has called a

public hearing, it has allowed the carrier involved to submit factual information, cross-examine witnesses, and state its position with respect to issues in the dispute. The Board, however, has refused to call a public hearing to adduce testimony on the proper scope of the craft or class at the carrier's request, although it will do so at the request of any labor organization which it considers to be a party to the dispute.

The right of employees to organize and bargain collectively through representatives of their own choosing without employer interference is well recognized. However, the Board has improperly excluded the carrier from the determination of what is the appropriate collective bargaining unit or craft or class. Under the Labor-Management Relations Act, the employer has the affirmative right to be heard on the proper scope of the collective bargaining unit. The reasons for recognizing the employers' interest in how his employees are grouped for collective bargaining purposes apply equally to employees under the Railway Labor Act and the Labor-Management Relations Act. These reasons include a desire to avoid a multiplicity of bargaining units or a grouping of employees having no community of interest within a single unit.

The Board's position on carrier participation in representation proceedings arises in part from the fact that the Railway Labor Act initially applied only to the railroad industry in which the bargaining unit structure was well defined by custom and practice. Issues involved in a bargaining unit dispute, therefore, related more to the determination of which representative was desired by the employees rather than the appropriate collective bargaining

unit. As the Board has frequently noted in its determinations, crafts or classes in the airline industry were not as clearly structured at the time the airline industry was brought under the Railway Labor Act as had been true in the railroad industry. The rapid changes taking place in the airline industry, coincident with its growth, have made the crafts or classes in the airline industry much less defined.

Unless one or more of the organizations involved requests a public hearing, the Board presently allows the competing unions to determine the scope of the craft or class according to their judgment of the most desirable grouping of employees for their own purposes. Under those circumstances, the carrier has no opportunity to present to the National Mediation Board factual information to demonstrate the work inter-relationship, community of interest, prior history of collective bargaining, effect of the employee grouping on the carrier's operations or testimony on any other factors which the Board normally uses in determining the appropriate craft or class. Clearly, the carrier should be in a position to request a hearing when bargaining unit questions arise, and whether or not a hearing is granted, have its views considered as a full party to the proceeding.

National Mediation Board craft or class determinations normally are not subject to judicial review and, thus, the carrier is left without a remedy if a faulty class or craft determination results in damage to him.

Representation Elections

Traditionally, the National Mediation Board has taken the position

that employees under the Railway Labor Act are obligated to select a collective bargaining representative. The Board's theory has been that a representation election is for the purpose of selecting a representative -- not to ascertain whether in fact the employees desire a collective bargaining representative and, if they do, which representative they wish. Accordingly, the Board has used a form of ballot which does not give the employees the opportunity to indicate that they do not want a collective bargaining representative.

The theory under which the Board has administered representation elections finds no support in the legislative history of the Railway Labor Act. In fact, this theory has been specifically repudiated in the decision of the Supreme Court of the United States in Brotherhood of Railway Clerks v. Association for the Benefit of Non-Contract Employees, 380 US 650 (1965), and still more recently in the decision of the United States Court of Appeals for the District of Columbia in the cases of the International Brotherhood of Teamsters v. Brotherhood of Railway and Airline Clerks, and the National Mediation Board v. Brotherhood of Railway and Airline Clerks (68 LRRM 2651). Since certiorari was denied by the Supreme Court, the Court of Appeals decision in these cases represents the established judicial construction of the Railway Labor Act with respect to representation disputes.

Looking to the legislative history of the 1934 amendments to the Railway Labor Act, the House report on H.R. 9861 states:

> "2. It [H.R. 9861] provides that employees shall be free to join any labor union of their choice and likewise be free

> to refrain from joining any union if that be their desire and forbids interference by the carrier's officers with the exercise of said rights." (Emphasis supplied.) (House Rep. No. 1944, 73d Cong. 2d Sess., 1934, p. 2. H.R. 9861 was enacted into law on June 21, 1934, as the 1934 amendments to the Railway Labor Act.)

Similarly, Joseph P. Eastman, Federal Coordinator of Transportation and principal draftsman of the legislation, expressed his view of the bill:

> "No, it does not require collective bargaining on the part of employees. If the employees do not wish to organize, prefer to deal individually with the management with regard to these matters, why that, of course, is left open to them, or it should be." (House Rep. 1944, 73d Cong., 2d Sess., p. 2.)

And in the Senate, Senator Robert F. Wagner, supporter of this legislation and author of the National Labor Relations Act, stated his understanding of the bill:

> "I didn't understand these provisions compelled an employee to join any particular union. I thought the purpose of it was just the opposite, to see that the men have absolute liberty to join any union or to remain unorganized." (Senate hearings on S. 3266, 73d Cong., 2d Sess., 1934.)

Thus, it is clear that the Congress intended to preserve the right

of employees to remain unrepresented.

The Court of Appeals decision in the IBT v. BRAC case specifically referred to the Supreme Court's construction of the Railway Labor Act confirming the legislative intent and noted that the National Mediation Board has the power to certify to the carrier that the employees do not wish a collective bargaining representative. The Court of Appeals stated:

> "... the Clerks' argument does not and can not vault over the hurdle erected by the Supreme Court's decision in Brotherhood of Railway Clerks v. Association for the Benefit of Non-Contract Employees, 380 US 650 (1965). There the Supreme Court indicated that employees under the Railway Labor Act were to have the option of rejecting collective representation entirely. The decision precludes a ruling that the Board's sole power is to certify someone or group as an employee representative, imposing on the carrier a duty to treat with that representative. We think the Board has the power to certify to the carrier that a particular group of employees has no representative to carry on the negotiations contemplated by the Railway Labor Act, thereby relegating the carrier and its employees to employment relationships and contracts not presently governed by the Railway Labor Act."

Clearly, the Board should be required to revise its representation procedures in accordance with the established judicial construction of the Railway Labor Act. This can be done in no other manner than to allow the employees an opportunity to vote "no union" if they desire to remain unrepresented.

The national labor policy as expressed by Congress in the Labor-Management Relations Act expressly provides that employees shall have the right to refrain from selecting union representation and makes it illegal to interfere with an employee's right to vote for no representation. No reason whatsoever exists for not giving employees covered by the Railway Labor Act the same protected right to vote against union representation as employees have in all other industries. To deny employees the right to vote "no union" conflicts with the personal liberties of employees and constitutes wrongful interference with their freedom of choice.

Jurisdictional Disputes

In addition, we propose that the National Mediation Board be given a statutory mandate to resolve jurisdictional disputes which presently may fester without any permanent resolution.

The Railway Labor Act contains no effective machinery for resolving inter-union jurisdictional disputes which can seriously disrupt stable labor relations on a carrier. Such disputes arise when a union representing a group of employees on a carrier and one or more other unions representing other groups of employees on the carrier disagree as to which group certain

employees or prospective employees belong for purposes of collective bargaining. The carrier is caught in the middle by bargaining demands from each competing union and allegations of refusal to bargain. If a carrier does bargain with one, he may in good faith select the wrong union and be in violation of the Railway Labor Act.

The carrier should not be put in this unconscionable position. A jurisdictional dispute as to which group given employees belong for bargaining purposes is, in fact, a representation dispute which the NMB should be required to resolve, just as it is required to resolve other types of representation disputes. Unresolved jurisdictional disputes are even more disruptive of stable labor relations than other types of representation disputes.

The problem which jurisdictional disputes create underscores the need to recognize a carrier as a true party in interest in all representation matters. If two or more competing unions claim a group of employees as being under the respective aegis of each, and no union seeks a representation investigation by the NMB, the carrier must bear the brunt of the dispute, but is powerless under the Act to request a Board investigation and determination of the issues. This is patently unfair to the carrier. Thus, there is a need to correct this deficiency in the Act as administered by the NMB to obtain a representation investigation, as well as a need to provide that a carrier need not treat with any union prior to the Board making a decision on the issues involved.

Exclusion of Supervisors From Act

S. 2060 also would eliminate the organizing of supervisors and subordinate officials, thus bringing the dividing line between management and labor into harmony with that under the Labor-Management Relations Act.

The Railway Labor Act covers every person in the service of a common carrier by air performing the work of "an employee" or "subordinate official." The Act defines those employees entitled to collective bargaining representation as only those employees who perform "...work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission...."

Supervisors are a part of management and rightfully should not be treated as rank-and-file employees. The exclusion of supervisory personnel merely recognizes the industrial facts of life. The Railway Labor Act should not permit bargaining relationships in which people are compelled to have conflicting interests.

Under the Board's present determinations, flight instructors who are responsible for the training and evaluation of airline pilots are subject to organization as "subordinate officials" and may be represented by the same labor organization as the pilots they train. Similarly, the Board's determinations with respect to the clerical, office, passenger, and fleet service craft or class has included in the same bargaining unit supervisors and the employees they supervise.

The difficulties such situations cause are obvious. A management employee can not perform as effectively the essential functions of his job which may involve the discipline or release of an employee for just cause, when he is either in the same bargaining unit or represented by a union like the employee whom he evaluates, whether or not the same union, or different unions under the AFL-CIO banner, or tied together by inter-union agreements not to cross picket lines, or the like. The result necessarily is a lowering of performance standards in a business whose very existence depends upon the maintenance of high standards.

Congress recognized the essential conflict of interest in allowing supervisors to be organized when, in enacting the Taft-Hartley Act in 1947, it specifically excluded supervisors from coverage of the Labor-Management Relations Act. These same considerations warrant changing the Railway Labor Act to make clear the exclusion from collective bargaining of supervisory personnel.

The inclusion of "subordinate officials" under the coverage of the Act for collective bargaining purposes, was not considered in 1936 when Congress added Title II to the Railway Labor Act and thereby extended to air carriers and their employees the provisions of a statute originally enacted to cover the railroad industry. This is clear from the reference in the Act to the work defined as that of a "subordinate official" in the orders of the Interstate Commerce Commission. The Interstate Commerce

Commission has no jurisdiction to define the work of employees or officials in the airline industry. The criterion generally used by the ICC is solely to define work in relation to railroad duties. It has no application to the airline industry and the Act should be amended to exclude all airline management personnel, including all levels of supervision, from its coverage.

Secondary Boycotts

S. 2060 would also apply the existing national policy of prohibiting secondary boycotts to the railroad and airline industries. The Railway Labor Act contains no ban against secondary boycotts, a tactic whereby a union having a dispute with one employer seeks to coerce other employers not involved to stop doing business with the primary employer, i.e., the one actually involved in the labor dispute.

Secondary boycotts serve to expand the economic warfare involved in a labor dispute after the procedures of the Railway Labor Act may have been exhausted. Carriers and other employers having no direct involvement in a labor dispute should not be coerced for the purpose of forcing them to stop doing business with a carrier having a primary labor dispute. The unfairness of secondary boycotts has long been recognized by Congress through the Labor-Management Relations Act which outlaws them.

The national policy against secondary boycotts should be extended to the airline and railroad industries. Not only because of the inherent unfairness of such boycotts, but because their effect is counter to one of

the basic purposes of the Railway Labor Act, to wit, the avoidance of the interruption of commerce as a result of labor disputes. Use of the secondary boycott can seriously disrupt the service of neutral carriers.

Secondary boycotts coerce neutral employers to stop doing business with another employer and, as such, constitute an unwarranted restraint of trade. Any such restraint of trade is contrary to the public interest and should be eliminated. All of these changes would simply bring practices under the Railway Labor Act into conformity with those now existing in other industries.

Elimination of Ratification Votes

S. 2060 also would amend the Act to cover certain specific problems that have arisen since the passage of the Act. Representatives of both labor and management would be required to have full authority to enter into a final agreement when negotiations are conducted, thus eliminating the increasingly severe problem of collective bargaining settlements not being settlements at all because of the failure of the ratification process.

Labor contract negotiators selected as the representatives of a carrier's employees, as well as the carrier representatives in collective bargaining, should be empowered to consummate final and binding labor contracts without resort to ratification votes. The maintenance of stable labor relations and the avoidance of interruption to essential transportation are the primary purposes of the Railway Labor Act. The keystone upon which the Act stands is free collective bargaining in good faith between the carriers and the duly designated representatives of their employees. If conferences between representatives at the bargaining table are to be meaningful, then it is necessary to amend the Act so as to make it clear that the representatives who negotiate on behalf of the employees have the authority to conclude a binding, final agreement and are not mere intermediaries carrying proposals between the union membership and the company negotiators.

Ratification votes serve to undermine true negotiations and interfere with the timely making of agreements. As George Meany, President of the AFL-CIO, stated, "Now it is the union that comes to the bargaining table

without the power to act. And this is bad bargaining. This is not the way to bargain." Concurring with Mr. Meany is the Air Line Pilots Association which, in the past, has strongly opposed ratification votes and has publicly asserted that union negotiators should have the authority to reach a final and binding agreement. A classical example of a ratification vote undermining the bargaining process, creating undue delay, and fomenting greater labor strife is the ratification vote in the 1966 dispute between the IAM and five airlines. In the dispute, the membership rejected an agreement concluded only after marathon negotiations in which the President of the United States personally intervened and brought intense pressure on the parties to reach an agreement; an agreement which all experts agreed was generous for all employees. After the President of the United States and the IAM leaders made a dramatic, nationwide, prime-time television appearance to announce a settlement of the contract and the strike that at the time was 24 days old, the union membership defied the President and its own union leaders by rejecting the settlement three-to-one. The strike continued for an additional 19 days after rejection of the Presidentially mediated settlement.

Through the process of ratification votes, agreements are submitted for approval or rejection to individuals not familiar with the complex factors involved in reaching the agreement and who have little or no understanding of the bargaining process. The absurdity of ratification votes and their adverse effect on proper collective bargaining, for example, has been noted by the Air Line Pilots Association in its negotiators handbook. The handbook

states, "... It is unreasonable to expect a pilot group to learn, absorb, and evaluate in detail all the complexities of a typical pilot agreement. The answer would seem to be a more thorough appreciation of the importance of selection, background, education, and collective bargaining experience of pilot representatives and closer coordination between those representatives. We therefore subscribe very strongly to the theory of present policy which is consistent with the requirements of the Railway Labor Act that, for collective bargaining to be effective, each party to the negotiation should come to the bargaining table with authority to act for their respective group."

The requirement for ratification by the union membership not only undermines the authority of union negotiating committees - it affects the strategy and tactics employed at the bargaining table, and even the bargaining priorities. At times, both labor and management are impelled to insist on or accept proposals which, although they are of minimal value in relation to issues discussed, have high emotional value. In effect, ratification votes require the company to bargain with the entire membership, rather than the duly designated representatives of its employees.

Tenure of NMB Members

Finally, S. 2060 would increase the term of office for NMB Members from three to five years. The Congress of the United States has recognized the public interest in uninterrupted interstate commerce by providing in the Railway Labor Act special legislation for the railroad and airline industries. As is well known, the collective bargaining contracts in these

industries are extremely complicated and involve unique problems. The fact that the airlines and railroads are considered vested with a public interest and subject to special regulations through, in the case of the airlines, the Civil Aeronautics Board and the Federal Aviation Administration, further increases the difficulties in these industries in arriving at settlements through the processes specified in the Railway Labor Act.

The unique quality of railroad and airline labor relations requires of the National Mediation Board a familiarity with transportation labor relations that is not obtainable in other industries. Board members need the experience which comes only from participating in the mediation of several rounds of negotiations with the major crafts or classes in the railroad and airline industries. This invaluable and unique experience can hardly be gained within a single three-year term as at present for the members of the National Mediation Board. Additionally, the fact that the Board is an extremely small agency with little staff to provide continuity in the event of the replacement of a Board member further indicates the need for extending the term of office of the Board members.

Continuity in the office, additionally, will provide opportunity for Board members to give guidance based upon first-hand knowledge and experience to the parties in those serious labor disputes which involve transportation services essential to the nation.

Accordingly, the air transport industry believes that extending the term of office of the Board members from three years to at least five years

would be beneficial in the administration of the Railway Labor Act. Additionally, it would be in keeping with the terms of the members of other agencies, such as the National Labor Relations Board, whose members have a five-year term, as do the Commissioners of the Federal Power Commission and the Equal Employment Opportunity Commission; the six-year terms of the Civil Aeronautics Board; and the seven-year terms of the Federal Communications Commission and the Federal Trade Commission.

Amendments Relating Solely to the Railroad Industry

There are two other matters of importance covered by S. 2060 which relate to the railroad industry alone. These are abolition of the National Railroad Adjustment Board and the elimination of the payment of railroad unemployment benefits to strikers. The spokesman for the railroad industry can more appropriately discuss these matters. However, we do strongly endorse these proposals and give our full support to their enactment.

August 4, 1971

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Mr. TIPTON. I will now leave the text of my statement and summarize the remainder of it as briefly as I can.

I think the first question that we have to address ourselves to is a question as to why special Government treatment of railroad and airline strikes should be provided for. And I will list the reasons as briefly as I can.

In the first place, the special treatment of airlines and railways has already been determined by the Congress in a variety of differences. In the Railway Labor Act itself, the airlines and the railways were put together under that act many, many years ago.

Both airlines and railroads are regulated industries, and thus their prices are fixed and their profits are limited. In many statutes listed in my statement, the Congress has determined that airlines and railroads are entitled to and require special treatment by the Congress.

A second reason for addressing ourselves to these industries especially is because of the presently existing imbalance of bargaining power in the union and management in the air transport field, and the reasons for that are several.

The airlines, of course, cannot stockpile their product as the manufacturers. If an airline is on strike, it is out of business. And there is no way for it to protect its economic position or provide for services it is supposed to provide if struck.

Senator RANDOLPH. Mr. Tipton, can I interrupt at that point to say one thing? As you well know, West Virginia is the largest producer of bituminous coal in this country, and there might not seem to be an analogy, but there is no stockpile in coal.

You see, the coal cars or the hoppers take the coal and make deliveries. If a shutdown of a coal mine takes place and the coal cannot be shipped, we have a situation which involves not only the one industry, the producer of coal, but also the rails that move this coal.

Mr. TIPTON. Exactly.

Senator RANDOLPH. So there is always this chain of tragedy that takes place when transportation and products that are necessary to the economic well-being of the country are stopped.

Many people think you can stockpile coal. You don't stockpile coal; it's got to move from the mine to the market.

Mr. TIPTON. Your reference to a chain of tragedies is exactly right.

I think the basic issue before the committee is the extent to which the public interests have to be balanced here. Strikes have varying and sometimes terribly severe impacts on the country as a whole through their indirect effects as well as their direct effects. And I believe that our existing law is too tight in governing intervention in view of the widespread public harm that can be done, which is not dealt with adequately in the present threshold provisions of the law.

To proceed further with the difficulties airlines face in their negotiations and under threatened strike conditions, a second one that needs to be referred to is the fact that airlines engage in individual bargaining, individual airlines and their union. There is no multicarrier bargaining in the air transport union industry, and the result of that has been the use of whipsaw tactics to a great extreme in our industry.

I indicate in my statement, and I will point it out here, that the tactic of inflating statement, settlements have been well shown in the

mechanic negotiations in 1969 and 1970 where American Airlines settled for $5.16 an hour.

During the next 6 months, by piling one settlement on another, it wound up with Frontier settling at $6.35 an hour. So that through this process of individual bargaining and whipsawing, the ability of our industry to bargain collectively with our labor unions is most difficult.

Another problem we have is the great multiplicity of unions in our business and a great multiplicity of classes and crafts into which our industry is organized. There are 10 or 12 of them all listed here, and they are represented by different unions, so that the process of negotiation in the air transport industry is constant, and you are constantly subjected to threats of work stoppages which always causes this piling of settlement upon settlement which has raised the labor cost of the industry so severely.

Also, as a result of this individual bargaining, the union can pick and choose among the airlines and choose the one that can most likely—would most likely be subject to a quick and favorable settlement.

The picking of a financially weak carrier who cannot conceivably stand the strike without going out of business would be the type chosen. When a settlement is reached, a pattern has been set for the industry as a whole.

I am making these comments with respect to the imbalance of the bargaining table. I am not being critical about the unions or the organized airline employees. The tactics they are carrying out are in no respect unethical under the existing rules of the game.

The point I am making here is that the unions have an ax and the airlines have a penknife and that has resulted in actual public harm in the airline industry. If it weren't, of course, for the extent of public harm which I will describe in a moment, there would be no great reason for congressional concern about this imbalance, but there is reason because it reflects itself in very widespread public harm. And the public harm I am talking about is increased prices which our customers must pay, reductions of service to our customers, and the impairment of the financial stability of the airline as a whole.

As I said up until very recent years, the airlines through increasing productivity by acquisition of more efficient airplanes have been able to hold their prices in line notwithstanding very substantial increases in wages. But in recent years it has been impossible to find that.

Let me just indicate a history of wage increases in the industry in these past few years. Beginning in 1967 average salaries climbed and it is stated graphically on this chart also. They climed 5 percent in 1967 over 1966; 8 percent in 1969 over the previous year; 10 percent in 1969 over the previous year; and 15 percent in 1970 over the previous year.

The average was $12,307 a year as compared with $6,248 for the average American worker. Workers in manufacturing were paid an average of $3.36 an hour. The average airline employee earned $5.92 an hour.

Just one example of the extent to which salaries in the airline industry have climbed. Our top 600 airline pilots in 1965 earned an average of $39,700 and spent an average of 56 hours a month on the flight deck.

In 1970 the top 600 pilots received an average of $58,400 and spent 48.5 hours. This is per month on the flight deck. An increase of 47 percent in compensation and reduction of 13 percent in productive time.

If unit wages in 1966 had been increased at the same rate as inflation in the U.S. economy, the Consumer Price Index, the airline cost would have been reduced by $600 million and the airline would have made a profit before taxes of $370 million. Instead, they had a loss of $179 million. That kind of an impact has, of course, backfired on everyone concerned. It backfired on consumers, it backfired on employees.

We had to reduce service by 700 daily flights and a good bit of this service is to communities where the service has resulted in cutting down operations that we really required over the smaller cities and over the weaker routes.

In addition to that we have furloughed approximately 12,000 employees and as I have said prices to the airlines passengers tickets had to go up.

Price increases in the airlines transport industry in the past 2 years have aggregated at the present time, I think, approximately 12 percent. Those price increases have not solved the problem.

The Civil Aeronautics Board has set up a tentative 3-percent increase in addition to that and with losses of $180 million in 1970. Anticipated losses of hopefully a smaller amount but still a lot in 1971. It is clear that the air transport consumer overall is going to be hit as time passes with other price increases, and these percentages I have been given are across-the-board percentiles.

Our rate levels are cost oriented as fixed by the Civil Aeronautics Board since our highest costs are in the short haul. The percentage increase for short hauls has run in the neighborhood of 30 to 35 percent in these past 2 years. Subsidy for regional airlines has been affected obviously.

The regional airlines receive subsidy because they devote themselves to serving smaller points and weaker routes in the country. They are subsidized for that. For years that subsidy had been going down. It had to be increased by congressional appropriation from 34.3 million in fiscal 1970 to 58.6 million in the current year.

U.S. airlines flying internationally are particularly hard hit by these high labor costs because they must hit head to head on major routes with foreign-flag carriers.

Annual wage was $12,300. That is twice that paid by foreign carriers. In the case of airline captains, a captain on a Pan American 747 gets $68,500 a year; a BOAC captain earns about $22,000. These wage costs make it tough to compete in the international field.

So that what I have sought to present to the committee here in very short terms and possibly not too clearly is just this. That collective bargaining in the air transport industry is not working to establish reasonable wage levels. The result in that effect has been to impair the jobs of our own employees, the services we are trying to provide, and the prices we must charge to our consumers. Plus, as I have said, increased subsidies for the regional carriers, increased difficulties by American-flag carriers in competing with their foreign-flag competitors.

Now, I will conclude my statement at this point, Mr. Chairman. I hope that I will be able to answer any questions the committee wishes to ask.

Senator RANDOLPH. Mr. Chairman.

The CHAIRMAN. Certainly.

Senator RANDOLPH. I would like to comment on the statement, not so much as to the facts and figures which I understand and appreciate, but I think the information is necessary for this subcommittee to have during our attempt to develop decent legislation.

President Tipton, there has been considerable discussion of the allegedly small impact of the airlines industry on the national welfare and defense. It has been said that because the airlines are basically passenger carriers, because freight is really the essence of transportation as it is being discussed here, that there is little effect when the airlines are struck.

I think it would be helpful to the members of the subcommittee for you to explain, so that our record will be clear, the ways in which you believe that the air transport industry performs a vital role in national defense.

Mr. TIPTON. I am delighted to have this opportunity to respond. The air transport industry, of course, is not like the railroad. They are in the business of moving masses of freight and the halting of the railroad system has the impact—has a tremendous impact on the economy. We are basically passenger carriers with the exception I will mention in a minute. But passengers are part, and the rapid movement of passengers is also a very important part of the economy of the United States.

Whether those passengers are business passengers going from place to place to) transact the business on which the country's economy reverts, or whether they are tourists going to a section of the country to support the economy of that section, whatever may be the reason, the absence of transportation can also have its impact.

For example, I remember in 1967 when we had a very substantial airline strike. It went on for some time and the result of it was that the Congress became concerned because the impacts on the economy of regions were going to cause the Members of the House and the Senate to get concerned.

For example, the southeastern area of the United States depends heavily on tourism. If tourism is cut off, damage, great damage is done. The impact is different, but it is still important.

Now, the one exception with respect to freight. Airline freight is of course, and compared with the railroads, it is virtually infinitesimal, but what we do transport is crucial freight. It is freight that is so important to the distribution scheme of the country that the shippers are prepared to pay 10 times the freight rates that they could get on the railroads or trucks for moving the same stuff.

The air transport system, I guess you could say, is an integral part of the automobile manufacturing distribution and assembly business, because the automobile industry has found that it is to their advantage to utilize air for the moving of parts and a variety of other things.

Now, I have gone on too long with this answer.

Senator RANDOLPH. Well, I think it is very important because I know many plants where if vital parts could not be shipped by air that the

plant would be down perhaps a week or 10 days, where it is down only perhaps for 1 day because of the carrying of the machinery that is necessary, the special parts that are delivered very quickly. So even the operation of the plant is involved and therefore production plus hundreds of employees, we would say, in a single case; is this true?

Mr. TIPTON. Exactly.

Senator RANDOLPH. Now, Mr. Tipton, how does the civil reserve air fleet—because I think it is a natural question since you have been talking about the air transport competition with surface carriers, how does that program, if it does relate to our consideration of emergency transportation and dispute legislation?

Mr. TIPTON. I think it has an important relationship. The airlines moves thousands of military passengers in peace time and provides the fast transportation that is required by the military. For example, the movements of passengers, troops, and the like from this country to Southeast Asia.

This country sends troops and supplies even to locations in Germany. They are heavily dependent upon air transportation as well as movements within the country, but in an emergency the air transport industry is bound by contract to the military to produce a very high percentage of the air transport fleet within 48 hours to serve military purposes in that operation.

The effect of those contracts has been felt on a number of occasions in the past. I will mention one, and that was the Cuban missile crisis in which we almost had to turn the air transport system edgewise for a period of time in order to move the troops and special material necessary to meet that particular emergency. There have been others, lots of others in which we have had to move and move fast.

Senator RANDOLPH. I have one more question, if I may, Mr. Chairman. I am not sure of my ground here in this question but the unions, as I understand it, are of the opinion that final offer selection is, in fact, compulsory arbitration. What is your response?

Mr. TIPTON. I don't think it is. I think the two techniques are similar in this respect, in that they produce finality. They wind up with a settlement of the dispute. They are different, however in that final offer selection, selectors are bound to take one offer or the other and to that extent the selectors are following the judgments of one party or the other.

Now, in binding arbitration it is quite different in that the selectors review all of the events, including the offers, and try to make a judgment on what is a sound and equitable arrangement between the parties. In binding arbitration you have a flexibility there in the deciders, not unlike, of course, the ability of a court to decide on the basis of his judgment as to what is sound and equitable.

Senator RANDOLPH. Thank you, Mr. Tipton. I shall read your statement very carefully. I know the care with which you prepare your case and I have known your work for a long time.

Mr. TIPTON. Thank you.

The CHAIRMAN. Just one question here.

Was Mohawk the last airline strike that the industry faced?

Mr. TIPTON. I think that the Mohawk and the Northwest strikes, I believe, were going on at the same time. I believe the Northwest settlement was made prior to the Mohawk settlement, though.

The CHAIRMAN. How would your proposal apply in the Mohawk kind of situation?

Mr. TIPTON. In the Mohawk situation they had the normal negotiations. They had mediation under the act. Under the bill proposed here that dispute would have been reported to the panel appointed.

The CHAIRMAN. At what point would that have happened?

Mr. TIPTON. At the point at which the National Mediation Board having already participated in mediation of the dispute reached the conclusion that mediation was not going to be successful.

The CHAIRMAN. When would mediation have been brought into the dispute?

Mr. TIPTON. Under the Railway Labor Act, if either party to the dispute asks for mediation then the National Mediation Board has the jurisdiction and responsibility to mediate between the parties over such period of time as the Board itself considers mediation to be useful and valuable. And when they reached the decision that it is no longer useful and valuable under existing law, they cut the parties loose in fact, and then a period of time is passed and then the union is free to strike.

Now, at that point, under the proposal here, the Mediation Board would report the situation, that this was an unsolved dispute, which in all probability was going to result in a strike, reported to the three secretaries.

Utilizing the panel, they would make a determination to look at it. They would make a determination as to whether the Government should do anything. If they decided that the Government should do nothing then the parties could have at it. Then they might have said, they might have decided that it could be useful here to have a panel review and detail the facts and circumstances and make recommendations.

And again they might decide that the last offer, final offer selection might be good, or that binding arbitration would be good, but that would be their option under those circumstances.

The CHAIRMAN. What do you think would have worked out in the Mohawk situation?

Mr. TIPTON. I am——

The CHAIRMAN. If that is an impossible question, why——

Mr. TIPTON. I really can't answer that and I should have anticipated it, but I don't really know about all the facts and circumstances in the Mohawk situation well enough to know whether there was a national interest or an important public interest in having those issues settled. I don't know enough about the facts, but it is that kind of an inquiry which would be contemplated here by the three secretaries or the panel they appoint would look at the issues between the parties there and decide if those issues presented have special public importance to justify the Government dealing with them.

If they decided not, then, as I say, they could cut the parties loose for self-help. If there were issues which they thought if carried to a conclusion would do public harm, then they would intervene and take some action.

Senator PACKWOOD. I am going to ask first about including the airline industry in whatever bill we come up with. I am trying to find a rationale.

What kind of freight is it that shippers are willing to pay 10 times as much for by using air freight? How critical is this to the national welfare?

Mr. TIPTON. The type of freight is, I would say, two types. One, the emergency shipment on which machinery, the repair machinery is based, and that, of course, is a basic job of the air transport freight system. But of great and increasing importance is air transport participation in the distribution process of industry and of retail sales.

Senator PACKWOOD. Of what?

Mr. TIPTON. Of retail sales. For example, I was mentioning the automobile manufacturers. Now, increasingly automobile manufacturers have utilized the air transport system to avoid having their dealers maintaining enormous inventories of parts and you have a constant flow of parts keeping up the inventories of the various dealers and service departments all over the country.

Also, they utilize air transportation in the process of assembling automobiles. They utilized air transport for many of the pieces that they have issued from a main factory to their assembly plant and that, if cut off, if that system cut off while the freight does not show up in large tonnages, it is crucial to the maintenance of a factory.

Now, in the case of retail sales, the air transport freight has become particularly important because here, again, the retailer who sells whatever will decide that he does not want to keep a great stock of merchandise on hand, and he then relies upon air transportation to move from the manufacturer to him, small bits every day.

Now that——

Senator PACKWOD. Let me interrupt you. The thrust of all this legislation is the suddenness with which curtailment of transportation can strangle our country. The railroads shut down nationally, our country shuts down; and if trucking shuts down, then our country would shut down.

But if the whole airline industry in the United States were shut down for a year, apart from the fact that the tourists can't go to the Southeast, where is the national transportation network that seriously threatened? We can still get to the factory 9 or 10 days later. Parts can still get to retailers. But where is that thrust of urgency, that threat to the economy if we had a national airline strike?

Mr. TIPTON. I think it is important, and I think this has been demonstrated over many years. I think it is important to the maintenance of the industrial machine of this country that people move, the travel of an executive or an officer or an engineer or any one of a variety.

Senator PACKWOOD. But people do move; they move on trains if they want to.

Mr. TIPTON. If you would slow down the industrial machine of the country by telling people that instead of going to the west coast in 5 hours, you must take two and a half days, that would have a drastic effect. We have never experienced it; we don't know how drastic an effect it would be, but it would have a drastic effect upon the industrial operation of the country. I have no doubt about it, and it would even be worse in the case of the very long hauls across the Atlantic and Pacific and into Latin America.

The management and operation of major enterprises rests upon the movement of their people from one point to the other. Not just move-

ment, but movement fast. Our whole industrial machine is based upon moving fast. We transport 170 million people and we better put it, we sell 170-million tickets each year.

Half of those are business people. That is 85 million trips taken by businessmen and they don't take them unnecessarily for the operation of the industry in which they are located.

So that the speed and efficiency with which the country's industrial machine works is becoming vast movement of people, and I think that I surely would not sit here and try to convince you that shutting down air transportation would produce the dramatic and immediate effect People would not be hungry, but over a term, it would have a widespread and disastrous effect upon our industries and also I don't think we can disregard the impact of the failure of tourists to move——

Senator PACKWOOD. No, I don't, either.

Mr. TIPTON (continuing). On the economy of the country.

Senator PACKWOOD. But this is not the emergency. A 6-month steel strike, or a 4-month auto strike has a cancerous effect and it is substantial to the economy, and tourism is, but this isn't the thrust of this legislation. It is the lifesaving effect of transportation throughout the country.

Mr. TIPTON. Let me comment further on this matter because it goes to the heart of this matter.

In addition to the disastrous impact of lengthy strikes on airlines, and I think it would be disastrous—in addition to that, in the case of airlines, the legislation contributes a further public benefit, in that it improves the collective-bargaining process.

Now, prevailing in the air transport industry, in that I stress the fact that we have difficulties in bargaining and our wages have climbed out of sight and I think that this bill would contribute to a balancing of the powers and strengths of the two parties without outweighing or overweighing either one of them and I think that is an important objective of this legislation as well.

Senator PACKWOOD. I have nothing further.

Senator DOMINICK. Mr. Tipton, I have been most interested in reading your testimony and I am privileged to have been able to introduce your bill as a further element in this discourse. I was particularly interested in your comments concerning situations where an airline had a clause with the union which provided for final arbitration, compulsory arbitration, or whatever you want to call it.

That 90 percent, as I recall your figures, of the disputes were settled before they were forced to compulsory arbitration. Recently, both labor and management have strongly opposed any form of compulsory arbitration.

Senator DOMINICK. This has been dwelled on by both Senators and Congressmen alike and laymen during the railroad strikes and everyone stated that you shouldn't have compulsory arbitration. When you come to Congress with an unresolved strike, you have compulsory arbitration anyway, so we are really appealing to semantics more than anything.

Your opinion, as I gather it, is that if you had these alternatives available at least one of which is in the form of some form of compulsory settlement that the net result would be to get most of these disputes settled before it got to that point, is that correct?

Mr. TIPTON. That is our judgment based upon a great deal of experience in our industrywide binding arbitration that the very existence of provisions for binding arbitration results in more effective settlement. I would like Mr. Goulard to comment on this subject also. Because he has had a deep familiarity with it.

Senator DOMINICK. That would be helpful.

Mr. GOULARD. Senator, as Mr. Tipton indicated at the outset, I did work for Pan American World Airways for a good number of years and I think we pioneered in the field of voluntary arbitration of major disputes. In other words, we were able to reach an agreement with the union far in advance of the contract negotiation that we would arbitrate the issues unresolved in negotiations. Our experience where we have had such agreements is that we have almost never had to resort to the arbitration proceeding.

Why? Because the uncertainty of what an arbitrator would do in fact provided a substantial incentive to collective bargaining rather than stultified collective bargaining as so many people claim would be the case. We think it is akin to the situation in court where lawyers settle more cases before final decision of the judge by far than are permitted to go to final decision.

The 90 percent to which you referred in Mr. Tipton's testimony is in the settlement of grievances, and I think this is very important. Unlike Taft-Hartley Act industries, we are bound to arbitrate all grievance disputes under the contract, and it has been very successful over the years.

Why? There has been no legal strike over grievances and the illegal strikes have been quickly enjoined, and 90 percent of the grievances have been settled without resort to arbitration.

Senator DOMINICK. It is also my recollection that Pan American was the only one that had these compulsory arbitration clauses in existence, is that correct?

Mr. GOULARD. I think that is still the case.

Senator DOMINICK. Is it not true——

Mr. GOULARD. I am sorry, sir. Mr. Tipton advised me that is for major disputes, for contract disputes. All airlines and all railroads, of course, have arbitration of grievance disputes.

Senator DOMINICK. I was going to say that the railroads have this final arbitration on the grievance disputes.

Mr. GOULARD. Oh, yes.

Senator DOMINICK. In fact, I remember just for the record that the railroad union leaders were up here and advocated very strongly that may be maintained because they thought it had been extremely beneficial in solving a lot of grievance problems.

Mr. GOULARD. Management and labor are in complete accord on that.

Senator DOMINICK. In further reply to Senator Packwood's comments on whether or not the airlines should be included in this legislation, the thing that has always concerned me is that the airlines are totally dependent upon the Government, much more so than practically any other industry that I know of in terms of their scheduling, their rates, their service areas, the certificate of convenience and necessity which they must maintain, the very strict regulations and rules on safety and on pilots and copilots' training. It strikes me that the basic

reason behind this is in the defense of our country to maintain a reserve fleet to help out in times of emergency with our Air Force, both in transportation of people and in transportation of equipment.

Do you feel that continuation of the present situation with unrestricted rights to strike, in effect, and no satisfactory mechanism as yet to resolve it, would have an effect on the availability of that reserve fleet?

Mr. TIPTON. I think it would inevitably and for this reason: I have described the impact of the present collective bargaining situation that prevails in our industry, the final impact on the industry itself, if that continues as it has been going with huge losses, I think it can be no question but that over a period the industry will be seriously weakened.

In the interest of maintaining a fleet and of not merely a reserve fleet, but a reserve whole service of reserve airplanes and pilots and mechanics and everything that goes with that airplane, in the interest of maintaining that, you need a financially strong industry. They must buy the equipment and they must pay for it and they must operate it.

So this has a very important effect on our ability to do a good job. We have done a good job in the past. We want to continue to do a good job. This legislation will definitely help us do such a job.

Senator DOMINICK. Mr. Tipton, you were here when Congressman Harvey testified on behalf of his bill which Senator Stafford has also put in. Their bill, as I understand it, provides for three sequential presidential options where the bill which I have introduced provides for only one.

In what way do you think that one of four options would be better or worse than three sequential options?

Mr. TIPTON. I think that the virtue of having the four options which must be chosen, one of which must be chosen at the outset, is that it does create this uncertainty on the part of the parties to the dispute which we regard as so valuable. You are bargaining and you don't know whether there is going to be Government interference or what is going to be done if the Government does intervene. If you have a sequential or an ability to choose one and then go back and choose another, you tend to eliminate this element of uncertainty which we think is extremely valuable. You may want to add to that.

Mr. GOULARD. Well, no, except to elaborate just a bit. It seems to me—and I have been a negotiator for many years—it would seem to us almost inevitable that if the Government intervened, the tendency would be to pick the milder of the alternatives and proceed until you have to use the strongest weapon. So as Mr. Tipton says, the element of uncertainty and thus the stimulus to collective bargaining is really eliminated.

Senator DOMINICK. So your feeling under the Stafford-Harvey approach, what you would finally end up with is the final offer selection?

Mr. GOULARD. Well, of course, under that bill you have to go to selective strikes first except in certain circumstances. But it would seem to us that the tendency would be to always select an additional cooling-off period, and then finally end up with a final offer selection.

Mr. TIPTON. I think the bargainers could pretty well determine what was going to happen to whom all during the discussion. Under the bill that you have proposed, no one would know, and I think that is

a tremendously valuable attribute, because what one really wants here is a settlement of disputes by the parties, and if you can put in incentives of this sort, good.

Senator DOMINICK. I gather from your testimony in behalf of the Railway Labor Act, that you feel there are extremely important provisions in it which should be maintained. Do you include in that the work of the National Mediation Board? Has this been helpful or effective?

Mr. TIPTON. I will make a brief statement, and my statement is yes, but I would like to have Mr. Goulard add to it, as he has worked with them for years.

Mr. GOULARD. Well, the answer is yes without any qualifications, for two reasons: One, that the Board itself has been effective, conscientious and able, that is the Board itself and the staff. But very important also is the fact that as a matter of right and obligation, the Mediation Board has the duty to enter unresolved disputes and neither party, no matter how adamant at the moment, and that applies to either management or labor, can turn the Board aside, and the power of the Mediation Board to come in and inject itself and influence the course of bargaining and try to force bargaining, use its power to hold the case to force the parties to bargain rather than just resort to self-help, has been invaluable in the past. Without this—Mr. Tipton has pointed out that we have a sorry state of affairs—our plight would have been even sorrier.

Senator DOMINICK. I think that is all I have.

Senator PACKWOOD. Tell me a little more about the Pan American arbitration situation. Do they actually have an agreement with some union to arbitrate terms of new contracts?

Mr. GOULARD. Yes, Senator, that's correct.

Senator PACKWOOD. And does the arbitrator have the power to write into the new contract a further agreement between the parties that they shall arbitrate that contract? Is the arbitrator given that power?

Mr. GOULARD. That is an interesting question.

Senator PACKWOOD. Does he have the right to write terms of the contract?

Mr. GOULARD. Well, both parties have to accept it. He has the power to resolve unresolved issues and if one party is requesting a continuation and the other party is disputing it, he can arbitrate that.

Senator PACKWOOD. I was assuming that Pan American was probably pretty happy with it, and that the union never wanted it.

Mr. GOULARD. Well, actually, both Pan American and the union were initially happy because it was a completely voluntary agreement.

Senator PACKWOOD. Tell me under the Railway Labor Act, explain to me the difference between a grievance under the existing agreement and the major disputes which the Mediation Board has the power to settle?

Mr. GOULARD. Well, a grievance in effect is a dispute over the interpretation of an existing contract clause rather than the making of a new clause.

Under the Railway Labor Act, it is not the Mediation Board, but in the case of the railroads, a National Board of Adjustment which has the power to decide the grievance in the final analysis.

Senator PACKWOOD. And that is the interpretation of anything arising under the existing contract?

Mr. GOULARD. That's correct.

Senator PACKWOOD. All right, now, what is a major dispute?

Mr. GOULARD. A major dispute is a dispute over the terms of a contract being negotiated. Simply stated, a wage demand.

Senator PACKWOOD. And for that, we have to go through all of the procedures, but the upshot is finally of a strike because there is no way to close the settlement?

Mr. GOULARD. That's correct.

Senator PACKWOOD. I have no other questions. Thank you very much. That will adjourn the hearing for today.

(Whereupon, the hearing was adjourned subject to the call of the Chair.)