

Y4
.L 11/2
Em 3/3
971-72

1043

9214
L 11/2
Em 3/3
971-72
972

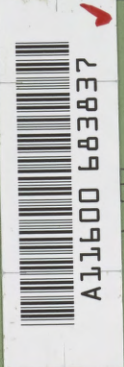
NATIONAL EMERGENCY DISPUTES, 1971-72

PT. 2
GOVERNMENT
Storage

MENTS

2 1972

LIBRARY
STATE UNIVERSITY



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, S. 3232, S. 3243

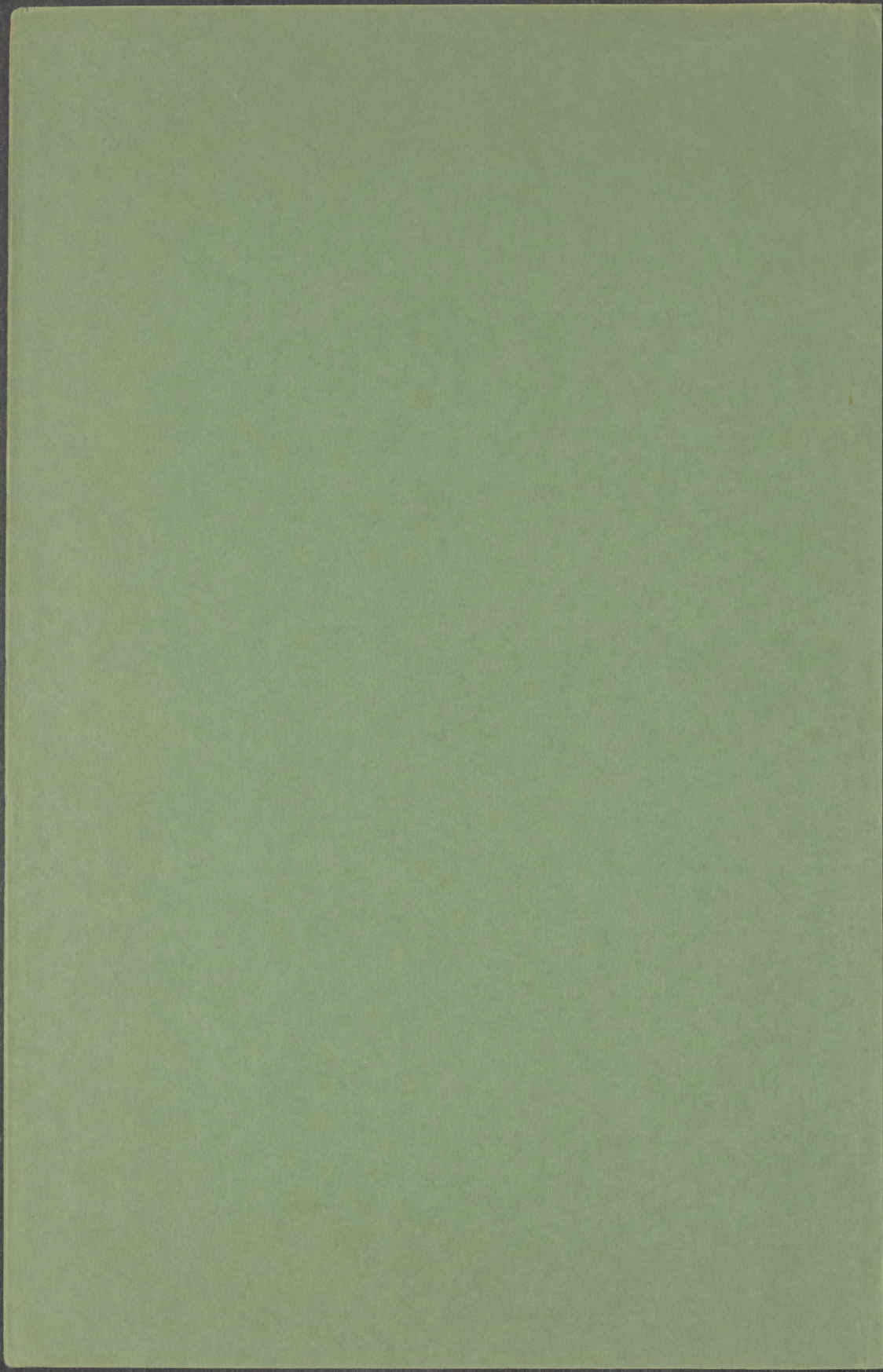
LEGISLATION RELATING TO SETTLEMENT OF EMERGENCY
LABOR-MANAGEMENT DISPUTES

OCTOBER 28; DECEMBER 7 AND 9, 1971

PART 2

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





NATIONAL EMERGENCY DISPUTES, 1971-72

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, S. 3232, S. 3243

LEGISLATION RELATING TO SETTLEMENT OF EMERGENCY
LABOR-MANAGEMENT DISPUTES

OCTOBER 28; DECEMBER 7 AND 9, 1971

PART 2

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



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1972

HEARINGS

COMMITTEE ON LABOR AND PUBLIC WELFARE

HARRISON A. WILLIAMS, Jr., New Jersey, *Chairman*
JENNINGS RANDOLPH, West Virginia
CLAIBORNE PELL, Rhode Island
EDWARD M. KENNEDY, Massachusetts
GAYLORD NELSON, Wisconsin
WALTER F. MONDALE, Minnesota
THOMAS F. EAGLETON, Missouri
ALAN CRANSTON, California
HAROLD E. HUGHES, Iowa
ADLAI E. STEVENSON III, Illinois

JACOB K. JAVITS, New York
WINSTON PROUTY, Vermont
PETER H. DOMINICK, Colorado
RICHARD S. SCHWEIKER, Pennsylvania
BOB PACKWOOD, Oregon
ROBERT TAFT, Jr., Ohio
J. GLENN BEALL, Jr., Maryland

STEWART E. MCCLURE, *Staff Director*
ROBERT E. NAGLE, *General Counsel*
ROY H. MILLENSON, *Minority Staff Director*
EUGENE MITTELMAN, *Minority Counsel*

SUBCOMMITTEE ON LABOR

HARRISON A. WILLIAMS, Jr., New Jersey, *Chairman*
JENNINGS RANDOLPH, West Virginia
CLAIBORNE PELL, Rhode Island
GAYLORD NELSON, Wisconsin
THOMAS F. EAGLETON, Missouri
ADLAI E. STEVENSON III, Illinois
HAROLD E. HUGHES, Iowa

JACOB K. JAVITS, New York
WINSTON PROUTY, Vermont
RICHARD S. SCHWEIKER, Pennsylvania
BOB PACKWOOD, Oregon
ROBERT TAFT, Jr., Ohio

GERALD M. FEDER, *Counsel*
EUGENE MITTELMAN, *Minority Labor Counsel*

(II)



CONTENTS

CHRONOLOGICAL LIST OF WITNESSES

THURSDAY, OCTOBER 28, 1971

Dennis, C. L., president, Brotherhood of Railway, Airline & Steamship Clerks, accompanied by James L. Highsaw, Esquire, Washington, D.C.	Page 425
--	-------------

TUESDAY, DECEMBER 7, 1971

Amundsen, Paul A., executive director, the American Association of Port Authorities -----	441
Smetana, Gerald, labor relations counsel of Sears, Roebuck & Co., representing the American Retail Federation, accompanied by Lawrence D. Ehrlich -----	461
O'Donnell, Capt. John J., president, Air Line Pilots Association International, presented by Gary Green, director, legal department, ALPA, accompanied by James F. Gartland -----	531

THURSDAY, DECEMBER 9, 1971

Hodgson, Hon. James D., Secretary of Labor, accompanied by Richard F. Schubert, Solicitor of the Department of Labor, and Mitchell Strickler, attorney, Department of Labor -----	553
---	-----

STATEMENTS

Amundsen, Paul A., executive director, the American Association of Port Authorities -----	441
Dennis, C. L., president, Brotherhood of Railway, Airline & Steamship Clerks, accompanied by James L. Highsaw, Esquire, Washington, D.C.	425
Frick, Kenneth E., Administrator, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture -----	697
Hodgson, Hon. James D., Secretary of Labor, accompanied by Richard F. Schubert, Solicitor of the Department of Labor, and Mitchell Strickler, attorney, Department of Labor -----	553
Appendix to statement -----	735
O'Donnell, Capt. John J., president, Air Line Pilots Association International, presented by Gary Green, director, legal department, ALPA, accompanied by James F. Gartland -----	531
Pearson, James B., a U.S. Senator from the State of Kansas, prepared statement -----	558
Smetana, Gerald, labor relations counsel of Sears, Roebuck & Co., representing the American Retail Federation, accompanied by Lawrence D. Ehrlich -----	461
Prepared statement -----	479

ADDITIONAL INFORMATION

Affidavit of:	
Campbell, Phil J., Acting Secretary of Agriculture, November 24, 1971 -----	700
Hardin, Clifford M., Secretary of Agriculture, October 5, 1971 -----	685
Palmy, Clarence D., October 6, 1971 -----	568

Articles, publications, etc. :		Page
“Dock Strike Causes 1 Million-Ton Loss In Grain Exports,” from the Journal of Commerce, November 23, 1971-----		697
Impact on the Railroad Industry of the United Mine Workers Strike and the International Longshoremen Association's Strike, Report of John W. Ingram, Administrator, Federal Railroad Administration, Nov. 11, 1971-----		724
Stevedoring Industry Dispute, Atlantic and Gulf Coasts, 1968-69—International Longshoremen's Association (AFL-CIO) v. Shipping and Stevedoring Companies-----		448
National Emergency Disputes Under the Labor Management Relations (Taft-Hartley) Act-----		446
United Transportation Union's Selective Strike: July 16 to August 2, 1971, survey of the impact of-----		592
Communication to :		
Secretary, Federal Railroad Administrator, from John W. Ingram, November 11, 1971, with attachment-----		723
Memorandum :		
Amicable Settlement of Labor Disputes and to Prevent Stoppages in the Maritime Industry-----		457
Legal and Constitutional Sufficiency of the Proposed Legislation for Resolution of National Emergency Disputes in the Transportation Industry, by Gerard C. Smetana, on behalf of the American Retail Federation-----		502
Preliminary Analysis of the Impact of the July 16 to August 2, 1971 UTU Strike, to the Secretary of the Department of Transportation, August 13, 1971-----		584
Miscellaneous :		
Labor cases—cited 66 LC, <i>U.S. v. Longshoremen's Association, Local 418, No. 181-A45</i> , December 3, 1971-----		573
Questions and Answers :		
Questions submitted by Hon. Robert Taft, Jr., a U.S. Senator from the State of Ohio to Secretary of Labor James D. Hodges, with response in connection with work rules provisions of S. 2959-----		712

NATIONAL EMERGENCY DISPUTES, 1971-72

THURSDAY, OCTOBER 28, 1971

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

The subcommittee met at 11:25 a.m., in room 4232, New Senate Office Building, Senator Jacob K. Javits, presiding pro tempore.

Present: Senators Javits (presiding pro tempore), Hughes, and Stafford.

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

Senator JAVITS. The committee will come to order.

Our hearings this morning continue on a series of bills dealing with emergency labor disputes, and our first witness is Mr. C. L. Dennis, President of the Brotherhood of Railway, Airline and Steamship Clerks.

Mr. Dennis, we welcome you. Your statement, without objection, will appear in the record; and please feel free to brief it for us or read parts of it, as you choose.

STATEMENT OF C. L. DENNIS, PRESIDENT, BROTHERHOOD OF RAILWAY, AIRLINE & STEAMSHIP CLERKS, ACCOMPANIED BY JAMES L. HIGHSAW, ESQ., WASHINGTON, D.C.

Mr. DENNIS. Thank you, Senator.

On my left is Jim Highsaw, our attorney in Washington representing our brotherhood.

I will hurriedly go through my statement.

Mr. Chairman and members of the committee: My name is C. L. Dennis. I am international president of the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees. I was originally elected to this position at the 1963 convention of the Brotherhood and reelected at the 1967 and 1971 conventions. The Brotherhood is the duly designated representative of approximately 200,000 employees of railroads, airlines and express companies in the United States subject to the provisions of the Railway Labor Act. In addition, the Brotherhood represents railroad and airline employees in Canada as well as other transportation employees in the United States subject to the provisions of the National Labor Relations Act. I have had the privilege of appearing before this subcommittee on many occasions to discuss with you our common problems. My present appearance is probably the most important of these occasions since

you have before you proposals which, in our opinion, would effectively destroy collective bargaining and the rights of employees.

As you are well aware, the labor relations of the railroads and air-lines of this country are presently governed by the provisions of the Railway Labor Act. The status was originally enacted in 1926 and has been amended by the Congress from time to time with respect to particular problems.

Major amendments occurred first in 1934 when Congress set up the system of resolving employee grievances and disputes concerning the interpretation and application of collective bargaining agreements by the National Railroad Adjustment Board. In 1951 the statute was again amended to authorize agreements containing union security provisions. Finally, in 1966, the Adjustment Board provisions were amended to make them more equitable to employees and to provide for Public Law Boards to take some of the grievance workload off the National Railroad Adjustment Board. The legislation now before you proposes major amendments to these procedures.

There is before you S. 560, which is the bill submitted by the administration to deal with these subjects, and S. 832, which is the legislation submitted at the request of the railroad brotherhoods. There are also before you a number of other bills to which I shall address myself.

In the hearings before the House of Representatives on this subject, the railroad brotherhoods were united in their opposition to the House counterpart of S. 560 and in support of the alternative proposals which are before you in S. 832. I can now affirm to you that such are the views of this brotherhood and its more than 200,000 members.

Since the legislation before you is primarily directed at labor disputes arising under the Railway Labor Act and indeed have arisen in large measure out of experiences of recent years with respect to those disputes. I think it would be useful in understanding the proposals to first briefly review the existing provisions.

The principal purpose of the Railway Labor Act set forth in the original 1926 act and carried through to the present time, is to provide for prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions and to avoid any interruption to commerce or to the operation of any carrier engaged therein.

To this end, Congress placed a duty upon all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements. This duty lies at the heart of the Railway Labor Act. The remainder of the act with respect to collective bargaining is designed to provide a framework within which reasonable efforts will result in a settlement of all disputes.

Thus, the act prohibits a carrier from making any changes in collective bargaining agreements except in accordance with the provisions of the act in accordance with the provisions of an agreement. Any proposed changes must be served upon the other party in writing, and conferences must promptly begin with respect to such proposals. If the parties are unable to agree in such conferences, either party may invoke the mediation services of the National Mediation Board, which is then required to mediate the dispute. If the Mediation Board is unsuccessful in its efforts, the mandatory procedures of the act have been exhausted. However, if the dispute threatens to interrupt interstate commerce to such an extent as to deprive any section of the country of

essential transportation service, the President may appoint an Emergency Board to investigate the dispute and report thereon.

Once the procedures of the act are invoked, the parties are required to maintain the status quo until all mandatory procedures are exhausted. In cases where an emergency board is appointed, the status quo must be maintained for 30 days after such board makes its report.

This scheme contains no provision for compulsory settlement in any guise. The policy is one of good-faith collective bargaining, with the right of employees to withdraw their services or strike after mandatory provisions of the act have been exhausted, and an equal right of carriers to put into effect their proposed changes once the mandatory provisions have been exhausted. It is this policy of the Congress which the proposals before you in S. 560 and other bills would change.

These bills would destroy the right of the employee, whereas the proposals supported by the brotherhoods in S. 832 seek to limit the adverse economic effects of strikes in cases where the mandatory procedures of the act have been exhausted without a solution of the dispute.

This brotherhood, as well as the other transportation unions, recognize that developments of the last decade have given rise to a situation in which it is desirable to make some changes with respect to the rights of parties to take unilateral action where the mandatory provisions of the law have been exhausted. However, the brotherhood and other unions do not believe that any situations exist calling for a complete destruction of their right to strike, because no matter in what kind of garment it is clothed, such destruction means the end of effective collective bargaining and the substitution of settlements by some type of governmental fiat.

Such an approach to problems of our country is contrary to the basic principles of a democratic society and constitutes an admission that such principles will not work. It is supported by an argument that such a radical departure from our recognized principles offers a ready solution for the problem of collective bargaining. Experience, however, clearly shows us that this is a pure illusion.

Let us take a look at what S. 560 specifically proposes.

This proposed legislation, which is applicable to airlines, the maritime industry, the longshore industry, trucking, as well as railroads, would repeal the provisions of the Railway Labor Act relating to mediation, voluntary arbitration, and emergency investigation boards and reports. It would substitute essentially the present procedures of the Labor Management Relations Act, as amended, to which are added additional features. If negotiations fail to produce a settlement and a strike is threatened, the Federal Government would be able to obtain an injunction for a so-called 80-day cooling-off period. The act would thus extend the principle of the cooling-off period to industries under the Railway Labor Act to which it has not previously applied.

If the dispute is not settled during this period of time, the administration's proposal would give the President the option of invoking any one of three procedures. These are:

1. Continued bargaining and mediation for an additional 30 days;
2. A partial strike if authorized by a special board; and

3. Settlement by the selection of the final offer of one of the parties by a board selected for that purpose.

The President is not required to choose one of the three options. He may simply make recommendations to the Congress. Finally, either House of Congress may reject the option chosen by the President. Thus, the proposal does not by any means relieve the Congress of the burden of becoming involved in recurrent disputes.

It could be argued at first glance that the proposed legislation is not an effort to impose a compulsory governmental-engineered settlement, but provides a reasonable group of options for the President to induce settlement. However, I submit to you that such an analysis is not realistic.

In my opinion, the reality is that the only one of the options likely to be invoked is that of the final offer procedures with the ultimate threat of a forced settlement. The first option of an additional period of 30 days of bargaining is highly unlikely to be invoked by any administration because S. 560 is based on argument that the present procedures, which provide a much longer period for negotiations, have not been successful. I, also in all honesty, cannot say that I envisage any administration invoking the second option. No, gentlemen, these proposed alternates are pure window dressing for the third option which it can reasonably be expected will be imposed upon the employees in every instance.

It is difficult to perceive a proposal more unfair to the interests of the workingman of this country. Upon the basis of past experience, the three-member panel provided by the third option to select either the so-called final offer of the employees or the employers as the settlement of the dispute would be appointed by the President.

Such panel, like any other public office filled by the President, will reflect the orientation and thinking of the President and of the administration involved, and what is more important, regardless of political label, will reflect the basic economic orientation of our country.

The economic organization of this country is based upon the profit motive, and it is our experience that this fact makes it an impossibility, except in rare instances, to pick a panel to decide a labor question in terms of genuine "impartiality." The so-called impartial or public members of such a panel are most likely to be individuals whose family background, education, and associations have been such that when it comes to a showdown between profits on one hand, and the right of a workingman to a fair and decent wage, the workingman will come in last. Such individuals can only understand with feeling the arguments of the business community. They have no feeling for the arguments of the workingman; and even where an effort is made to consider his arguments, it is done so only in a cold, intellectual vacuum.

I do not mean by this statement to suggest that every emergency board that has been appointed in the past, and that every panel of any sort ever appointed by the Government, is biased and prejudiced. That is not the case. The problem is not one of bias in a legal sense. Rather, it is a question of the background predilections of the individual. Nor is what I have said true with respect to the arbitration of grievances. This is a narrow function of applying established rules. In contrast, the individuals comprising an option 3 board are concerned with issues of public policy.

In addition, anyone who thinks that such a bill will produce effective collective bargaining with a final offer from the employer which could be deemed to be fair and equitable to the employees has not, in my opinion, experienced the grinding mill of labor negotiations.

In the case of carriers subject to the Railway Labor Act, problems have arisen in large measure because of the refusal of the carriers to engage in meaningful and realistic collective bargaining. It is this factor which largely explains any failure under the Railway Labor Act. This has in no small degree been the result of the failure of the principal railroad officers to join with their counterparts in the unions in the bargaining process.

For example, the recent dispute of the United Transportation Union with the railroads was not settled until the railroad presidents became personally involved—a suggestion which I made to the President when the representatives of railroad labor met with him while this dispute was still in progress.

I see no incentive in option 3 for the carriers to engage in the type of bargaining that would produce a reasonable result.

It is my opinion that the creation of a Government-imposed solution—which is what the carriers have always sought—will simply mean more of their past strategy.

What is needed in this situation is effective collective bargaining; not Government-imposed solutions.

The proposals of S. 560 would almost certainly result in an erosion of wage rates, rules, and working conditions of employees. In too many, if not all cases, a panel appointed by the President to consider final offers would be confronted with a final offer from the carrier which would almost certainly be unrealistic.

Because of what I have already said about the makeup of such panels, the carriers will not be incurring much risk by refusing to make a reasonable offer. There is no reason to support that their offers would be any more reasonable than in emergency board hearings. It would be the employees who would run the risk. Thereafter, the chances of a panel appointed by the President imposing an unrealistic final offer of the carriers would be very great indeed.

Moreover, although S. 560 purports to expedite negotiations, it is actually so cumbersome that it would impose delay upon delay in the settlement of collective bargaining disputes. Even if a President, by some chance, should choose to adopt the second option of appointing a board to determine whether a partial strike could be conducted, the decision of such a board would follow only after a proceeding highly judicial in nature, and expensive to the employees, which would turn a public policy problem into an exercise of technical procedures.

Finally, based upon past experience, it is likely that if such a board should determine that a partial strike could be conducted, the carriers would exercise the right of court review provided by the bill, and obtain restraining orders pending court review. This provision of the bill would, moreover, substitute the judgment of courts for the board as to whether a partial strike should be conducted—a matter which is improper for judicial inquiry—and which the courts are not fitted to properly perform. This legislation is so designed that the second option is an illusion even if a President should purport to adopt it.

Therefore, S. 560 in the name of dealing with so-called strike emergencies, would simply sell the employee down the river. No employee or self-respecting representative of employees, could support such a proposal.

Before concluding my statement on S. 560, I should also like to place before you my strong objections to the provisions of the bill which would substitute private arbitration to settle disputes concerning the interpretation or application of agreements for the settlement of such disputes by the National Railroad Adjustment Board or a public law board as provided for by the Railway Labor Act. Such a change would impose enormous financial burdens on unions and would nullify the great advance made by the Congress when it amended the Railway Labor Act to establish the Adjustment Board procedures. To the extent that the board is overburdened, the 1966 amendments authorizing public law boards has alleviated the burden. The administration proposal would seriously impair the employee's right to a decision of his grievances.

Our brotherhood is opposed to any proposal before you which, no matter how labeled, undertakes some form of compulsory settlement of disputes relating to the making or revision of collective bargaining agreements.

In this connection, I would like to refer specifically to S. 2060 supported by the Association of American Railroads. Among other things, this bill sets up a procedure which culminates in options to be exercised by the Secretaries of Labor, Commerce, and Transportation, one of which is to direct the parties to arbitrate the dispute. Although the path to compulsory settlement follows a different route from that set forth in S. 560, it is subject to the same objections which I have made with respect to that proposal.

The employee could expect compulsory arbitration in every case and could expect that the results would be the same as I have previously outlined if the final offer option of S. 560 is utilized.

In addition, I would also like to briefly discuss with you the proposal sponsored by Congressman Harvey, who has appeared before you in support thereof. I testified against the proposal in the hearings held by the Transportation and Aeronautics Subcommittee of the House Committee on Interstate and Foreign Commerce. I stated, among other things, that the proposal was simply another form of achieving compulsory settlement. Since the date of my testimony an additional bill has been introduced by Congressman Harvey, identified as H.R. 11281, which makes some changes in the proposal to which I previously addressed myself.

The present proposal permits a selective strike by labor unions which has not been adjusted under the provisions of the Railway Labor Act, but upon a more restricted basis than is proposed by the organizations in S. 832. Moreover, the proposal authorizes the President, following a notification from the National Mediation Board with respect to the threatened nature of the dispute to interrupt interstate commerce, to call off the selective strike instituted by the unions.

Following this action, the National Mediation Board is required to recommend specific actions to the President for settlement of the dispute. If it is not settled within 60 days the President may then exercise certain options. These include an additional cooling-off period of

30 days, a limited selective strike, and the final offer option similar to that contained in S. 560.

In my opinion, this proposal does not offer, as has been suggested, a reasonable compromise between the views of the unions and those who seek compulsory settlement of labor disputes. The latest revision still permits the President to opt for a compulsory settlement through the final offer procedure. While the path to this final act is somewhat more tortuous than under the other proposal, the end result is the same. The employee can have no genuine expectation that he will wind up with anything but the final offer compulsory settlement. Thus, the end result to the employee will be the same, although his path to the final crossroad is slightly different. Once there, he can expect only the same treatment.

While opposing the administration bill and similar legislative proposals, this brotherhood recognizes that some change must be made in the present situation.

As a consequence of court decisions applying the Railway Labor Act, almost all wage and rule movements on the Nation's railroads have in recent years produced the threat of a nationwide railroad strike, giving rise to a situation in which Congress has intervened on several occasions during the decade of the 1960's.

The Federal courts have held that where there is a history of collective bargaining on a nationwide basis with respect to a particular subject matter, then collective bargaining must be performed with all of the railroads as a group. Within this framework, practically all wage and rule movements are handled upon a nationwide basis. Once the mandatory procedures of the statute have been exhausted without a settlement of a collective bargaining dispute, there is a confrontation between the employees on the one hand, and the whole group of rail carriers upon the other.

However, this brotherhood does not believe that it is necessary to destroy the only effective weapon the employee has to insure good faith bargaining on the part of the carrier—that is, the right to strike—in order to prevent those effects of a strike which, in our present economic organization, can be said to have adverse effects.

This brotherhood, along with the other transportation unions, therefore, supports S. 832, which is designed to alleviate the impact of a strike without destroying the right to strike.

The substance of this proposed legislation is that where the mandatory procedures of the Railway Labor Act have been exhausted, the employees may conduct either a selective strike against one or a small number of carriers, or a broader strike which shall, however, be only a partial strike. Subsection (d) of the proposed legislation defines the maximum limits of what may be called a selective strike so that it would not exceed three carriers, or 40 percent of the revenue ton-miles in a region.

The Federal courts, within the past year, have recognized the validity of a selective strike under the existing Railway Labor Act provision; however, that decision does not place any limitation on the number of carriers that can be struck. Its only limit is that there be adequate notice of the strike to each carrier involved, and that the purpose of the selective strike be to accomplish an overall agreement with all of the carriers involved in the bargaining. Thus, the pro-

posals of the labor organizations with respect to a selective strike already have received judicial confirmation and the present legislation simply spells out the conditions under which such a strike may be conducted. Although this brotherhood was not involved, the application of the selective strike principle in the dispute last summer between the United Transportation Union and the Nation's railroads brought about a settlement of the dispute without the adverse effects of a nationwide railroad strike, and without the need of congressional intervention.

Although this brotherhood supports the principle of selective strike, as set forth in S. 832, it is in the belief of the organization that the provisions of the proposed legislation authorizing a partial strike against all of the carriers involved in a dispute is a preferable means of protecting the right to strike while at the same time insuring the continuation of essential transportation services. This proposal does not endanger the public welfare by a complete shutdown of rail service.

S. 832 requires that the transportation requirements for the protection of the national safety or health including—but not limited to—the transportation of defense materials, coal for electricity, and the continued operation of commuter and other passenger trains must be met.

The determination of these requirements would be left to the Department of Transportation after consultation with the Secretary of Defense and the Secretary of Labor. These limitations would operate both with respect to a selective strike or an across-the-board partial strike. Thus, the employees would be required to provide such transportation services as are essential. Railroads say, as they have in the past, that the partial strike principle is impossible of practical application. However, this contention must be considered in terms of the railroads' desire for an elimination of the employees' right to strike while this brotherhood and the other railroad labor organizations are willing to attempt to work out with the Congress a reasonable compromise between the needs to protect the employees in collective bargaining and the public needs reflected in continued rail operations.

S. 832 proposed by the transportation unions also does not seek to eliminate the right of carrier action to put into effect its own proposed changes in collective bargaining agreements following exhaustion of the mandatory procedures of the Railway Labor Act. This right of the carrier is made subject to only two exceptions: First, if the changes proposed by the carrier are in response to or in anticipation of proposals made by a union, the carrier would not be permitted to put its proposals into effect unilaterally unless it were struck by the union. Such an exception is essential to prevent carriers from converting a limited or selective strike into a national strike by the simple expedient of putting into effect unacceptable work rules or other changes. This is precisely what the railroads attempted to do in the recent dispute with the United Transportation Union and were unsuccessful only because of the restraint shown by the union and the employees.

Second, a carrier would not be permitted to unilaterally put into effect its own provisions if the latter is not permitted by other provisions of the Railway Labor Act. This exception is necessary to preserve existing law.

S. 832 also makes it clear that a carrier cannot shut down its services and lock out its employees on account of a labor dispute. It seems

to this brotherhood that a lockout is inconsistent with the carriers' obligation to serve the public with essential transportation and with the right of the crafts or classes of employees with whom there is no dispute, to continue to work. The provisions of S. 832 insure that carriers cannot escalate a selective or partial strike into a national emergency shutdown in order to pave the way for seeking intervention by the Congress. The limitation is necessary in order to assure that a selective strike may be localized or that essential partial operation of carriers will be maintained in the event of a broader strike.

In addition to the proposals contained in S. 832, this brotherhood believes that the Congress should give serious consideration to an alternative to any kind of a strike by authorizing the President of the United States to take possession and control and operate the rail transportation system or systems involved in an unadjusted labor dispute.

This brotherhood has drafted such legislation, the language and structure of which follow essentially that of Executive Order No. 10155, issued by the President on August 29, 1950, to take over and operate the Nation's railroads, the continued operation of which was then threatened by a pending rail dispute. A copy of the brotherhood's proposal is attached hereto as appendix A.

The proposed legislation provides an alternative to a strike by authorizing the President of the United States to take possession and control and operate the rail transportation system or systems involved in an unadjusted labor dispute.

The bill would authorize the President to act through or with such public or private instrumentalities or persons as he may designate and to delegate his authority.

The bill would authorize the President to utilize the existing managements of any railroad system taken over pursuant to the legislation to continue uninterrupted rail transportation service, including the collection and disbursement of funds and the meeting of obligations except that the collection and disbursement of funds shall be for the account of the United States. The operation of a transportation system taken over pursuant to the bill would be performed under the terms and conditions of employment embodied in collective bargaining agreements in effect upon the date possession and control is taken.

The unique feature of this bill is the provision for the settlement of the labor dispute giving rise to the taking over of the operations by the President. If such dispute is not settled by agreement between the parties within 30 days after the President has taken over the operation, the President may provide for the arbitration of the dispute by a panel of three arbitrators, and their decision shall be final and binding upon the parties pending an agreement between them.

The possession, control, and operation of any transportation system taken pursuant to the bill shall not be terminated by the President until an agreement is reached between the railroads involved and the employees with respect to the labor dispute.

These provisions are designed to provide a strong incentive to both carriers and employees to engage in meaningful collective bargaining. On the side of the railroads, this incentive arises out of the fact that in the absence of an agreement, the President may take possession, control, and operation of the railroad for the account of the United States, and continue such operation until agreement is reached.

The bill also provides an incentive to the employees to reach agreement by means of its arbitration provisions which will impose a settlement upon the employees for an indeterminate period until agreement is reached. Thus, both sides to a labor dispute are faced with uncertain risks which must necessarily impel them toward meaningful collective bargaining rather than just the employee, under the other proposals I have opposed.

In recognition of the constitutional prohibitions against confiscation of property, the bill provides for the payment of just compensation to any rail transportation system taken pursuant thereto. The amount of this compensation is to be determined by the President. If the amount so determined is not satisfactory to the railroad involved, 75 percent shall be paid to the railroad which will then have the option of suing for the remainder of any claim for just compensation which it may have in the U.S. Court of Claims.

In making such a proposal, the brotherhood recognizes that it is incurring, to some extent, the risks involved in the arbitration features of option three of S. 560. However, it is willing to incur such risks within the framework of Government seizure of a railroad because in such a situation there is an incentive upon the carriers to engage in genuine bargaining to avoid seizure, an incentive absent from option three.

Moreover, the arbitration provided for is only a temporary settlement with the ultimate settlement left to bargaining.

Such a proposal offers employees a reasonable chance, in contrast to option three, where the cards are stacked against them.

I also wish to make clear that this proposal is that of the brotherhood alone and is not made upon behalf of any other union. It also is not made in derogation of S. 832, which I fully support, but as an addition thereto.

I respectfully submit that there is a real need for such an alternative proposal. It could easily be incorporated as an alternate for the President, along with the other provisions of S. 832. The very existence of such an option would certainly provide a strong incentive to railroad management to engage in good faith bargaining which is the real crux of our common problem.

The issue of unresolved disputes, and the right to strike would take care of itself if such an incentive existed. There is no reason in equity and justice why presidential options should be designed to pressure employee representatives, while leaving the railroad managements free to pursue their own obdurate course.

Other legislation has been introduced in the Congress providing for seizure, thus recognizing such procedure as a legitimate public interest device. I believe the brotherhood proposal offers a full answer to our common problem.

Appendix A attached, is the bill for seizure.

(Appendix A referred to follows:)

To amend the Railway Labor Act to avoid interruptions of railroad transportation that threaten national safety and health by reason of labor disputes and for other purposes:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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

"Second. As an alternative to a strike of employees against all or substantially all of the nation's railroads in a dispute in which the mandatory procedures of this Act have been exhausted without settlement of the dispute, the President of the United States may take possession and control and operate the transportation system or systems owned or operated by a rail carrier or rail carriers involved in a dispute concerning proposed changes in rates of pay, rules, or working conditions, but such possession and control shall be limited to real and personal property and other assets used or useful in connection with the operation of the transportation system or systems of said rail carrier or rail carriers.

"(a) The President may operate or arrange for the operation of any transportation system which may be taken under this subsection in such manner as he deems necessary to assure to the fullest possible extent continuous and uninterrupted rail transportation service.

"(b) In carrying out the provisions of this subsection, the President may act through or with such public or private instrumentalities or persons as he may designate or may delegate such of his authority as he may deem necessary or desirable. The President may issue such general

- 2 -

and special orders, rules and regulations as may be necessary and appropriate for carrying out the provisions and accomplishing the purposes of this subsection.

"(c) The President may permit the management of a rail carrier whose transportation system may be taken pursuant to this subsection to continue managerial functions to the maximum degree possible consistent with the purposes of this subsection. The boards of directors, trustees, receivers, officers, and employees of such rail carrier shall continue the operation of the said transportation system, including the collection and disbursement of funds thereof, in the usual and ordinary course of business of the rail carrier, in the name of the rail carrier and by means of any agency, association, or other instrumentality now utilized by the rail carrier in accordance with appropriate orders or regulations issued by the President. However, all collection and disbursement of funds shall be for account of the United States.

"(d) Except as the President may from time to time otherwise determine and provide by appropriate order or regulation, existing contracts and agreements to which a rail carrier whose transportation system has been taken under this subsection, is a party, shall remain in full force and effect. Nothing in this subsection shall have the effect of suspending or releasing any obligation owed to any rail carrier affected hereby and all payments shall be made by the persons obligated to the rail carrier to which they are or may become due. Except as the President may otherwise direct, there shall be made in due course payments of principal, interest, sinking funds, and other distributions upon bonds, debentures, and other obligations;

- 3 -

and expenditures may be made for other ordinary corporate purposes. However, no payments of dividends on stock shall be made during the period that a rail carrier is in the possession and control of the United States pursuant to the provisions of this subsection.

"(e) The operation of a transportation system taken hereunder shall be in conformity with all Federal and State laws, Executive Orders, local ordinances, and rules and regulations issued pursuant to such laws, Executive Orders, and ordinances.

"(f) Except with the prior written consent of the President, no receivership, reorganization, or similar proceeding affecting any rail carrier whose transportation system has been taken pursuant to this subsection shall be instituted; and no attachment by process, garnishment, execution or otherwise shall be levied on or against any of the real or personal property or other assets of any such rail carrier during the period of such possession and control by the United States; provided that nothing herein shall prevent or require approval by the President of any action authorized or required by any interlocutory or final decree of any United States court in any reorganization proceedings now pending under the Bankruptcy Acts or in any equity receivership cases now pending.

"(g) The transportation system of any rail carrier taken pursuant to this subsection shall be managed and operated under the terms and conditions of employment, including rates of pay, rules, and working conditions embodied in agreements between the rail carrier involved and representatives of such employees in effect upon the date possession and control of such transportation system is taken pursuant to this subsection.

"(h) If the dispute concerning proposed changes in any such agreement or agreements which gave rise to the assumption of possession and control

- 4 -

of a transportation system or systems pursuant to this subsection is not settled by agreement between the parties involved within thirty days after a taking hereunder, the President may provide for arbitration of said dispute by a panel of three arbitrators appointed by the President, one of which shall be a representative of the employees involved, one a representative of the rail carrier or rail carriers involved, and one a neutral representative. Such arbitration shall be final and binding upon the parties pending agreement between the parties settling the dispute which gave rise to the assumption of possession and control pursuant to this subsection.

"(i) Possession, control and operation of any transportation system or systems or of any real or personal property taken pursuant to this subsection shall be terminated by the President when and not before an agreement is reached between the rail carrier or rail carriers and the employees involved in the dispute which gave rise to the assumption of possession and control.

"(j) The United States shall pay just compensation to any rail carrier or rail carriers whose transportation system, real or personal property, is taken pursuant to this subsection for such possession, control and operation to be determined by the President. If the amount so determined is unsatisfactory to the rail carrier involved, seventy-five percent (75%) shall be paid to such rail carrier and the rail carrier may sue for the remainder of any claimed just compensation in the United States Court of Claims.

2. This Act shall take effect immediately upon its enactment and the legality of any action taken thereafter shall be governed by the Railway Labor Act as amended hereby regardless of when such action was initiated."

Senator JAVITS. Thank you very much, Mr. Dennis.

Mr. Dennis, the Chair will have no questions, except to explain that Senator Williams was delayed in an airplane and asked me to preside, which I am glad to do for the limited time I have.

I would just like to state also that Mr. Paul A. Amundsen, executive director of the American Association of Port Authorities, has opted to give his testimony on another day, so his testimony will be deferred.

Mr. O'Donnell, president of the Airline Pilots Association, is waiting.

Senator Hughes, who would normally be presiding is here. And none of us can stay beyond about 12:15 or 12:20, so if you wish to defer your testimony, Mr. O'Donnell, please inform our committee clerk. If not, we may be able to get through with Mr. Dennis.

Mr. Dennis, may I say for myself, as one Senator, and the ranking member of this committee, that I think you have made one of the most constructive, statesmanlike presentations that I have ever heard made before the Labor Subcommittee, as I consider this subject to be a matter of the highest priority for our country, the residual right of the Nation to operate, not against, but in cooperation with its loyal citizens who are workers on an essential artery of transportation.

I am the author of S. 594, the only bill permitting seizure which has been introduced, and I would say right now that I like your bill.

The only difference I see between the seizure provisions of yours and mine is that I give the employer the option either to have the United States pay compensation, remembering always that the United States pays for the railroad in its struck condition; the United States is not bailing out railroads on a compensation basis. And my provision gives the employer the option to take the avails of the operation. I gather labor does not like that. I am not set on that at all. So I am with you. And I cannot tell you how gratifying it is to at long last see a great trade union come in with an affirmative and constructive proposal.

I realize it is only yours. I know that, and that other unions may or may not go along; but I hope very much that you will do what you can to win other unions to the idea. And I assure you, you have got one ardent cooperator on the committee—that is me.

Mr. DENNIS. I think collective bargaining is the answer to the whole problem, and I think that the incentive is put on both sides equally to bring this about.

I might add, Senator, just this one comment: That today, for the first time, all railroad agreements for all railroad unions that have signed up in the last year are all expiring simultaneously on June 30, 1973.

Now, this eliminates the headlines, the scare to the public, and everything, and the problem of one union coming in today and another union 3 months from now and another contract terminating 3 months later. They are all terminating at the same time.

The Secretary of Labor's office, through Bill Usery, and myself, and eventually Charley Luna, all took the same termination date. It was a 42-month contract, and we brought the termination date together, and this will eliminate in the future the constant, irritable problem of one union striking and the rest of the unions respecting the picket lines, and then 3 months later, the whole thing all over again. And I think this is one big improvement, that for the first time in the history—

well, for a long, long time, for many, many years, for the first time, all of the 20 so-called standard railway labor unions are all terminating at the same time.

Senator JAVITS. Mr. Dennis, this committee has worked very hard to bring that about. We thoroughly agree with you. I say "we" because it has actually been the whole committee. And this gives us a great opportunity.

I think that transportation urgently requires what this very statesmanlike proposal you have laid before us outlines.

I also believe, from other aspects of our national economy, we need it, both on the offshore transportation, which we are suffering from very seriously right now, and utilities; and in other key aspects.

But this will blaze the trail. And I cannot tell you the satisfaction—having labored in this vineyard for years for this proposal of mine, which has no friends at all; certainly not in labor, in management, or anywhere else—to find such eloquent support at long last from people who are consulting the best interests of the worker, which I thought I was doing for at least a decade that I offered this prescription.

I thank you very much.

Senator Hughes?

Senator HUGHES. I have no questions, Mr. Chairman, in the interest of time.

Senator JAVITS. Senator Stafford?

Senator STAFFORD. No questions, Mr. Chairman.

Senator JAVITS. Thank you very much again, Mr. Dennis.

Mr. DENNIS. Thank you, Senator.

Senator JAVITS. Captain O'Donnell, I understand you prefer to go over until our next session?

Mr. O'DONNELL. Yes, sir.

Senator JAVITS. Senator Williams will be here then, I am sure.

Thank you very much. The meeting will stand adjourned.

(Whereupon, at 12:05 p.m., the subcommittee was recessed, subject to the call of the Chair.)

NATIONAL EMERGENCY DISPUTES, 1971-72

TUESDAY, DECEMBER 7, 1971

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

The subcommittee met, pursuant to notice, in room 4232, New Senate Office Building, Senator Harrison A. Williams (chairman of the subcommittee) presiding.

Present: Senators Williams, Stevenson, Hughes, Packwood and Taft.

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

The CHAIRMAN. This is a continuation of the Labor Subcommittee's hearings on Emergency Labor Disputes Legislation.

The witnesses this morning are connected with different industries which are particularly affected, either directly or indirectly, in many of these disputes and have a strong interest in the proposals which have been submitted for dealing with them.

Our first scheduled witness is Mr. Paul A. Amundsen, the executive director of the American Association of Port Authorities.

Where did you come from this morning, Mr. Amundsen?

Mr. AMUNDSEN. I am in Washington.

The CHAIRMAN. Were you here with us the last time?

Mr. AMUNDSEN. Yes, I came up from Florida the last time where I was on another mission.

The CHAIRMAN. We have your statement, Mr. Amundsen, You may proceed any way you want to, either reading it or summarize it.

STATEMENT OF PAUL A. AMUNDSEN, EXECUTIVE DIRECTOR, THE AMERICAN ASSOCIATION OF PORT AUTHORITIES

Mr. AMUNDSEN. Mr. Chairman, my name is Paul A. Amundsen. I am executive director of the American Association of Port Authorities. I have been with the association for about 27 years.

Mr. Chairman, the AAPA appreciates this opportunity to be heard on what we regard as easily the most constructive piece of legislation to be introduced in our 65-year history as an organization. We say this because we function in the public interest, our members being those 80 public authorities, boards and commissions responsible for port operations and development on all U.S. coastlines.

These State, city, or county agencies have provided the physical facilities for handling the major share of this country's foreign commerce at their own cost and risk, having invested some \$7 billion in

local public funds in what is considered to be the most modern national port system on the globe.

Our recent survey indicates that 1,136,162 people are directly employed in the operation of all phases of this system, which moved 559 million tons of foreign trade in 1970 (as versus 417 million in 1969). Another 3,500,000 are in jobs dependent on imports and export.

The Pacific coast segment of our port system was on strike for 100 days. They are working now because of Taft-Hartley. The Atlantic and gulf coast segments ceased to operate on October 1, except for ports in Texas. When Taft-Hartley ends and if the Atlantic and gulf coasts dispute is not settled, we will experience a total shutdown of our Nation's trade gateways with the exception of the Great Lakes where contracts are of different duration.

As public port bodies, we are neutrals in the situation. We are not here to criticize either maritime-linked labor or management; both are vital to the commerce flow we also serve. And we wish equity and justice, fairness and prosperity for them both. The facts and the record, however, make it obvious that we have, and have had for too long, a situation which is intolerable and contrary to the national interest and which is without available means of control in that interest.

Secretary of Labor James D. Hodgson, in his testimony on this legislation has recognized that * * * "the Taft-Hartley emergency disputes provisions warrant high marks for success, except for the longshore and maritime industries." He said :

Of those (12 disputes) settled after the cooling-off period, five were settled without a strike, while seven ended after strikes of varying duration. Six of the seven strikes occurred in the longshore industry, one in the maritime industry. Among these were a three-month shutdown of Pacific Coast shipping and several partial and total shutdowns of East Coast ports, ranging from 10 days to three months.

We have fleshed out the chaotic East and gulf coast record in an attachment to this statement. It shows that longshore strikes alone cost these port systems from 134 to 174 days of total shutdown since October 1, 1964. That is to say, almost half a year in some cases.

We have attached a chronology of the events of the 113-day strike of 1968-69 which illustrates how this happens. Why it happens is also borne out in this chronology. It is clear from this sequence of events going back to 1948 that the strike has become built-in to the bargaining process insofar as the labor contracts of the Atlantic and gulf coasts are concerned. The deep-seated reasons for this are well-known throughout the trade.

Months ago our association contacted the exporters and importers of the Nation and flatly advised them of the probability of the coming strike. We also predicted that the injunction would not be employed this time. The administration has not been using it, plus which both waterfront labor and management have publicly stated that it, too, has become built into the bargaining procedures as simply a postponement of the inevitable. With these advised we have, as a public service, enabled the Nation's shippers at least to better prepare themselves for major disaster.

We also indicated the length of the disaster as being upwards of 90 days, if Federal intervention is lacking. Referring again to the attached chronology, it takes about 30 days to settle the basic so-called

“money package,” after which the union moves sequentially into the series of “outport” contracts, a 60- to 90-day operation at best.

We said one other thing to the shipping public. We said that the remedy was in Congress in the form of S. 560 or similar legislation.

In 1963, following a 33-day Atlantic and Gulf strike, our association took the position reflected in the resolution attached, calling for remedial legislation. It seemed obvious to us at the time that such a course was the only means by which work could proceed while the parties bargained. Testifying before the House Committee on Merchant Marine and Fisheries in that year we said:

It is our opinion that the time has come when we must put an end to the frequent and recurring stoppages which have planned the flow of our essential maritime commerce. With the past record in front of us, with the realization that stopping this flow of maritime commerce reaches and affects in some degree every one of our 50 States and countless thousands of their citizens, failure to control and to halt the sorry record of the past is to invite disaster.

Nothing was done to improve the legislative remedies, and we thereby invited the disasters of 1964-65 and 1968-69.

The extent of these disasters can be calculated in various ways, and estimates have ranged close to \$2.4 billion for the 1968-69 strike. A widely used number is \$20 million a day. This committee can take it on the information of the American Association of Port Authorities that, proceeding from recognized values of the economic impact of a ton of cargo to the port community, the Pacific coast port communities are losing \$2½ million a day. The Atlantic and Gulf coast port communities will lose a total of \$10 million a day of economic impact from cargo flows as the threatening strike takes place.

These are the immediate economics. Our resolution attached cites some broader implications including loss of overseas markets, setbacks in the balance-of-payments program, and industrial upheavals, layoffs, and the like.

Some 2 years ago the then Secretary of Labor began an investigation into the national effect of the longshore strikes which resulted in the issuance in January 1970 of “Impact of Longshore Strikes on the National Economy,” or what we know as the Schultz Report.

Everyone who has lived with this situation over the years has thoroughly repudiated the basic finding of that report, which is that because of a stockpiling exercise in the prestrike period, and a large poststrike backlog of cargo movement, very little damage is done to the overall trade statistics. From this is concluded that there is minimal real damage to the national economy from these stoppages.

Following this simplistic conclusion, much of the balance of the report is a veritable chamber of horrors of strike effects on people, jobs and business. Having performed a statistical exercise, the report brushes these aside as side effects.

This amazing document also proceeds to wave aside the effect of the strikes on balance of payments by stating the stoppage wreaks equal havoc among both exports and imports, thus balancing the scales.

On the question of loss of markets, those who prepared this report took a shortcut. They talked to the Embassies, here in Washington, of other countries, asked them about the effect of the strike on U.S. markets in their countries and they got a diplomatic answer.

Where are balance of payments today? The United States suffered a record 6-months’ deficit in the first half of 1971. Although much of

this is blamed on the overvalued dollar, we would like to place a good share of the blame, on this record, on the longshore strikes. We suggest that the rising curve of world trade of the 1960's both soaked up immediate strike effects, and obscured the hidden damage which is now coming to light. During our work stoppages of the 1960's, our overseas competitors in the world markets have been steadily strengthening their ability to produce and market abroad, and we are now living with the natural results of their ability to produce and our ability not to deliver periodically.

Inserted here, Mr. Chairman, is a letter from a prominent firm that distributes in Switzerland the products of other countries:

AUGUST 3, 1971.

Gentlemen: We have been advised to expect a prolonged Docker strike on the East Coast from November next. For forty years we have represented important American factories. Unfortunately our relations have been upset periodically by the Docker strikes. Our customers are considering us to be an unreliable supplier and therefore in most cases they have switched over to European products. We have been asked many times to represent in Switzerland other important American firms but we have refused in view of the foregoing.

Please report this situation to whom it may be concerned.

Very truly yours,

LAESSER, SA.

Our country is not self-sufficient. Our economy is entirely dependent on foreign sources for many basic raw materials. We remain the world's largest importers and exporters of crude and semiprocessed raw materials, manufactured goods, and agricultural products. These items all flow back and forth in world commerce and when this essential flow stops everyone suffers and no one really gains. This is a situation demanding of remedial legislation.

The manner in which S. 560, with its multiple options, influences the parties toward a bargained settlement is in keeping with our recommendation for bargaining machinery that will allow work to go on while the parties negotiate. This remains our only objective.

We have some suggestions in connection with options given the President in S. 560. We have strong reservations in the feasibility of "partial operation" in our particular industry. We are convinced that it would be extremely difficult to single out port communities which would maintain a flow of cargo and those which would not.

We further suggest, in procedures under Part B—Alternative Procedures Following Initial 80-Day Cooling-Off Period that there appears to be no recognition of a chronic situation in the bill. The investigating boards or panels as described could well insert a triggering mechanism in their final contract findings which would call for renewal of negotiations well before the end of the contract being given board or panel approval so that all or most of the issues involved in the next renewal could be resolved prior to actual expiration of the contract.

We further suggest that the broadest possible language be used to describe the types of emergencies in which the President may act. S. 560 contains such language as "dealing with national emergency disputes" and refers to strikes or lockouts "in the transportation industry or a substantial part thereof."

Certainly a disaster of the proportions of the current Pacific coast dispute wherein a broad area of the citizenry is under the most seri-

ous impact, should be considered a national emergency area. What we are recommending here is that the President have the same powers of decision as he now applies in the case of natural disasters.

We would like to close this statement by adding that we are well aware of the effects of railroad, truck, and airline strikes on our industry and generally in accord with the objects and purposes of S. 560 as remedial legislation for those problems.

We thank the chairman and committee members for this opportunity to be heard on a matter of the first importance.

That concludes my statement, Mr. Chairman. I have several attachments to submit with it, however.

(The material referred to follows:)

NATIONAL EMERGENCY DISPUTES UNDER THE LABOR MANAGEMENT RELATIONS

(TAFT-HARTLEY) ACT

EAST COAST LONGSHORE

1. August 17, 1948 - Board of Inquiry appointed
August 20, 1948 - Reported Board to President
August 21, 1948 - Federal District Court New York issued a 10 day restraining order prohibiting strikes and walk-outs by longshoremen and employers at Atlantic Coast ports
August 24, 1948 - 80 day injunction issued by Court
November 9, 1948 - Anti-strike injunction dissolved
November 10, 1948 - Sporadic work stoppages
November 12, 1948 - Coastwise work stoppage
November 25, 1948 - Agreement reached
November 28, 1948 - Dock workers returned to work

2. October 1, 1953 - Work stoppage of Atlantic Coast dock workers. Board of Inquiry appointed
October 5, 1953 - Report of Board submitted to President
October 5, 1953 - Temporary 10 day restraining order was issued
October 6, 1953 - Longshoremen returned to work
October 15, 1953 - Temporary injunction extended 10 days to October 25
October 20, 1953 - 80-day injunction issued
December 17, 1953 - NLRB scheduled a representation election for December 22nd and 23rd
December 24, 1953 - NLRB announced ILA Independent won the representation election

Throughout 1954 the jurisdictional fight between the ILA Ind. and the ILA (AFL) prevented negotiations or settlement. On December 31, 1954 a 2-year settlement was reached which was ratified by the union on January 5, 1955 retroactive to October 1, 1954.

3. November 16, 1956 - Coastwise work stoppage
November 21, 1956 - Temporary restraining order against the ILA petitioned for by the NLRB to restrain the ILA from demanding Coastwise contract
November 22, 1956 - Board of Inquiry appointed
November 24, 1956 - 10-day restraining order
November 30, 1956 - 10-day restraining order to full 80-day period
January 23, 1957 - Board reported to President the employer's "last offer"
February 12, 1957 - Work stoppage from Portland, Maine to Hampton Roads
February 13, 1957 - 80 day injunction formally discharged
February 17, 1957 - Agreement reached for a 3 year master contract
February 17th to
February 22nd, 1957 - Outports continue negotiations on local issues
February 23, 1957 - Longshoremen return to work

4. October 1, 1959 - East Coast longshoremen's strike
October 6, 1959 - Board of Inquiry appointed by the President
October 8, 1959 - Temporary restraining order issued
October 15, 1959 - Temporary restraining order extended for full period
December 2, 1959 - Memorandum of Settlement signed
5. October 1, 1962 - East Coast longshore strike
October 1, 1962 - Board of Inquiry appointed by President
October 4, 1962 - 10 day temporary restraining order issued 4:25 p.m.
October 6, 1962 - Longshoremen returned to work
October 10, 1962 - Original 10 day restraining order extended to full 80 day period
December 23, 1962 - 80 day injunction expired - East and Gulf Coasts longshoremen strike
January 22, 1963 - NYSA accepts Board's recommendations for settlement
January 26, 1963 - Longshoremen returned to work in Port of New York. Normal operations were resumed along the Coast by January 28, 1963
6. September 30, 1964 - Board of Inquiry appointed by the President. (6 hours before the Midnight strike deadline. The union had walked out of negotiations.)
October 1, 1964 - 10 day temporary restraining order issued at 8:00 p.m.
October 3, 1964 - Longshoremen returned to work. (Saturday - actual employment lower than a normal Saturday)
October 10, 1964 - Original 10 day restraining order extended to full 80 day period
December 20, 1964 - 8:00 p.m. 80 day injunction expires. ILA extends work period to Jan. 11, 1965. Then strikes all ports.
February 13, 1964 - Men return in North Atlantic after Federal Court order. Virginia ports return 6 days later. South Atlantic and Gulf ports return March 6, 1965.
7. See detailed account attached taken from Bulletin 1633, U.S. Department of Labor "National Emergency Disputes".

29. Stevedoring Industry Dispute, Atlantic and Gulf Coasts, 1968-69—International Longshoremen's Association (AFL-CIO) v. Shipping and Stevedoring Companies

July 10, 1968 -----	Negotiations to replace the 4-year contract expiring September 30, 1968, were opened by the International Longshoremen's Association (ILA) and the New York Shipping Association (NYSA). The ILA proposed a 2-year agreement with provisions to apply uniformly to the 5 major North Atlantic Coast Ports. ¹ The uniform demands would eliminate the practice of simultaneous loading and unloading of containerships, grant exclusive rights to pack and unpack containers loaded away from the piers, except those with a "manufacturers label," ² and establish a standard work gang of 17 men. ³ The demands also included a \$2.38 per hour wage increase, a 6-hour workday, an increase of \$125 in the monthly pension benefits, a guaranteed annual income equivalent to 2,040 hours' work at straight-time rates, ⁴ and liberalized welfare, vacation, and holiday benefits.
August 7 -----	The NYSA offered a 48 cents per hour, 4-year contract package, stating that it was authorized to negotiate only on the provisions in the "master agreement" for the North Atlantic District and for a container provision for Baltimore. (Philadelphia and Boston were not on the sailing schedules of containerships.)
August 22 -----	A 1-year extension of the contract, including a 35-cent-an-hour package to be allocated by the ILA, was proposed by the NYSA to provide additional time to study the problems of worker security. In addition, employers in New York, Baltimore, and Hampton Roads offered a new container clause that would permit ILA members to strip and load containers that had been consolidated in the port area from less than full-load lots.
August 27 -----	ILA negotiators rejected the proposal to extend the contract and suggested a 38-cent-an-hour-wage increase for a 6-hour day. Union demands concerning containers were not changed.
August 29 -----	Negotiators agreed to refer the matter of pensions to a special committee. The union had proposed \$300 a month pension, payable at age 50, after 20 years in the industry. In addition, the union requested that past service for pension benefits be fully funded within 10 years.
August 31 -----	The ILA announced at a bargaining strategy meeting in Miami that conventional cargo ships, but not containerships, would be worked should the parties fail to reach agreement by September 30.
September 4 -----	On resumption of negotiations in New York, the NYSA proposed, and the union rejected, a \$275 a month pension at age 62 after 25 years' service.
September 9 -----	Employers presented a new offer: a 2-year package with a 33-cent wage increase and 25-cent-an-hour pension and welfare contribution that would have permitted a \$300 a month pension at age 62.

See footnotes at end of table.

29. Stevedoring Industry Dispute, Atlantic and Gulf Coasts, 1968-69 -- International Longshoremen's Association (AFL-CIO) v. Shipping and Stevedoring Companies -- Continued

September 9-- Continued -----	A stoppage began in Boston over employer demands that union furnish full-sized gangs.
September 15 -----	The NYSA tentatively proposed a guarantee of 2,080 hours' work in exchange for the freedom to automate operations and to assign longshoremen to jobs. The 2 hours of travel time paid in moving from one area of the port to another was eliminated. The union rejected the offer, and negotiations were discontinued until September 25.
September 20 -----	The executive board of the ILA voted to strike October 1, if no contract was concluded. Agreement was reached to end the Boston port stoppage.
September 24 -----	President Lyndon B. Johnson assigned James Reynolds, Under Secretary of Labor, to assist in mediating the dispute. At this stage, only wages, pensions, and the guaranteed annual income had been discussed. The problems of establishing an industrywide containerization provision had not been approached.
September 26 -----	Thomas W. Gleason, International President of the ILA, stated that the employers represented by the NYSA must either let the ILA load and unload containers, or pay a royalty that was adequate to finance a pension and welfare plan the union considered satisfactory. Payments to these funds had been based on hours worked. Because of considerable savings in man-hours possible with containerships, the union maintained that hourly pension and welfare contributions would have to be much higher to finance these benefits at current levels. The NYSA had proposed that the ILA load and unload containers consolidated within the immediate port area. Fearing that container consolidating operations would be opened outside the port area, the ILA rejected this proposal.
September 30 -----	The President stated that a stoppage would imperil the national health and safety and, pursuant to Section 206 of the Labor-Management Relations Act, appointed a Board of Inquiry. ⁵ David L. Cole, former Director of the Federal Mediation and Conciliation Service, was designated chairman. The other two members were Peter Seitz and the Rt. Rev. Msgr. George Higgins. In New York, negotiators met without success in a final effort to avoid a strike. Dock workers in New York began leaving their jobs before the midnight deadline.
October 1 -----	About 46,000 workers were involved directly in the strike. The Board of Inquiry met in New York with employer and union representatives. Later, the Board reported to the President that

See footnote at end of table.

29. Stevedoring Industry Dispute, Atlantic and Gulf Coasts, 1968-69—International Longshoremen's Association (AFL-CIO) v. Shipping and Stevedoring Companies—Continued

October 1— Continued -----	there were "two overriding issues, and the failure to resolve these has prevented the parties from reaching agreement on other items." These were unionwide collective bargaining ⁶ and the problems of containerization. The President requested the Attorney General to seek an end to the strike. Shortly after 7 p.m., Judge Sylvester Ryan of the U.S. District Court for the Southern District for New York issued a temporary restraining order and set October 9 as the date for hearings on a 60-day injunction. Thomas W. Gleason, President of the ILA, indicated that due to the lateness of the order, ending the stoppage the next day would be impossible.
October 3 -----	Work was resumed at all ports.
October 9 -----	A ruling on the request for an injunction was put off to October 15. The restraining order continued in effect.
October 16-----	Judge Ryan issued a 60-day injunction prohibiting a strike by longshoremen until 7:05 p.m. December 20.
October 30-----	Formal negotiations resumed for the first time since September 30; the ILA demanded that the basic containerization and job security provisions apply equally to all Atlantic and Gulf ports. The NYSA's offer of a 2,080-hour guaranteed annual wage was also a problem. In New York, the offer was contingent on the imposition of penalties on workers who refused to work beyond their normal work area; in other ports, employers felt that they could not afford the guarantee.
October 31-----	New Jersey dockworkers struck, primarily at container loading sites. They demanded that the container royalty payments be divided among the workers as a bonus.
November 1 -----	The NYSA proposed a 3-year, \$1.01-an-hour contract, including wage increases up to 63 cents per hour; and 38 cents for pension and welfare funds, thereby allowing a \$300 monthly pension at 62. Detailed hiring and income guarantee contract clauses also were presented. The union announced that it would reply November 6.
November 4 -----	The U.S. Attorney's Office in New York ordered an investigation to determine if the wildcat strike in New Jersey was in violation of the injunction obtained under the Taft-Hartley Act. The workers returned to their jobs the next day.
November 6 -----	Dissatisfied by the failure to negotiate a single North Atlantic District agreement, by the size of the money package, and by the retirement provisions, the International Longshoremen's Association rejected the NYSA offer of November 1.

See footnote at end of table.

29. Stevedoring Industry Dispute, Atlantic and Gulf Coasts, 1968-69—International Longshoremen's Association (AFL-CIO) v. Shipping and Stevedoring Companies—Continued

November 30-----	The Board of Inquiry reported to the President that the positions of the parties had not changed since the first report, and that none of the issues had been resolved.
December 2-----	Thomas Gleason recommended that workers reject the offers submitted by the employer associations for the North Atlantic District.
December 5-----	Workers in South Atlantic Coast ports began 2 days of voting on the employer's last offer.
December 10-----	Longshoremen in the North Atlantic District (from Hampton Roads, Va., to Searsport, Maine) voted on the employer's last offers.
December 11-----	The NLRB announced that longshoremen had voted approximately 15 to 1 to reject the final employer offer.
December 12-----	Bargaining resumed for the first time since November 6 amid reports that the leaders of the October 31-November 5 wildcat strike in New Jersey were calling for a slowdown. All ports were reporting working at "full employment."
December 16-----	A tentative oral 3-year agreement was reported to have been reached for the North Atlantic District. The contract provided for the right to open and repack all containers bearing consolidated cargoes loaded within fifty miles of New York. It also included a guaranteed annual wage of 2,080 hours. The offer included a \$1.60 increase in wages and supplemental benefits over 3 years; these changes would raise hourly rates to \$4.60 and provide a \$250 monthly pension at 55 after 20 years, or \$300 a month at 62 after 25 years of service. Changes in the work rules were to be negotiated.
December 17-----	The union bargaining committee for the North Atlantic District rejected the tentative offer, primarily because of the inability to achieve an agreement for the entire North Atlantic District. Although the container provision protected New York dockworkers, it did not prevent freight forwarders in other ports from shipping through New York, causing a decrease in employment in these ports. Philadelphia and Boston longshoremen representatives also attacked the provision that stated: "the men will work in any port which has an agreement on the master contract and local conditions, and that the union policy of 'one port down, all ports down' shall not be applied."
December 18-----	Bargaining continued over the issues of containerization and supplementary benefits. Employers in the ports of Philadelphia and Boston, which did not have container facilities, were unwilling to

29. Stevedoring Industry Dispute, Atlantic and Gulf Coasts, 1968-69—International Longshoremen's Association (AFL-CIO) v. Shipping and Stevedoring Companies—Continued

December 18— Continued -----	offer the same provisions as New York, Hampton Roads, and Baltimore. They contended that the improved supplementary benefits were to be paid for by increased productivity attributable to automation.
December 20 -----	Negotiations ended in the afternoon without agreement, and the stoppage of 46,000 men was resumed at 7:05 p.m. when the injunction expired. ⁷
December 21 -----	The Philadelphia Marine Trade Association and the Boston Shipping Association issued a statement charging the NYSA and the ILA with an attempt to "usurp" the rights of local ports because the New York bargaining authority for them covered only the "basic wage increase and contributions to welfare and pension funds but not the benefits to be derived therefrom, basic working day, and term of the agreement." The two employer associations objected to NYSA offers on vacation and holiday pay, the guaranteed annual wage, and container restrictions. They indicated that the NYSA could commit them for only \$1.44 of the offer, and that the remaining 16 cents, representing vacation and holiday pay, had to be negotiated locally. The Baltimore Steamship Trade Association indicated that if any other employer associations rejected the contract, it would be forced to do so also.
December 23-----	Negotiations resumed in New York. The ILA demanded that the "master contract" specify that a reasonable guaranteed annual income be negotiated in the other ports. Efforts to start local negotiations in Philadelphia, Baltimore, and Hampton Roads failed, in part, because union leaders were in New York. In Boston, the parties agreed to meet in an attempt to produce the first signed agreement in 10 years.
December 24 -----	At the meeting in Boston, the Shipping Association notified mediators that it would participate only to negotiate a local contract.
January 3, 1969 -----	New York longshoremen and shippers met in an attempt to resolve two major local issues: the jurisdiction of the ILA in stripping and loading containers, and the hiring practices under the guaranteed annual income plan. The negotiations ended in disagreement and were recessed indefinitely, subject to recall by the mediator.
January 7-----	Reportedly, at a full meeting of the New York Shipping Association, the members authorized the labor policy committee to withdraw the entire offer and seek Washington intervention. The next day the NYSA appealed to the President to refer the dock strike to Congress, as provided under Sec. 210 of the Taft-Hartley Act.
January 9-----	A meeting of top union and management officials continued to January 10. Agreement was reached on the container clause and on hiring practices under the guaranteed annual income plan.

See footnote at end of table.

29. Stevedoring Industry Dispute, Atlantic and Gulf Coasts, 1968-69--International Longshoremen's Association (AFL-CIO) v. Shipping and Stevedoring Companies--Continued

January 12-----	The full union and management bargaining committees met to review the written contract, including the provisions agreed to the previous day. The union committee unanimously accepted the new container clause, which protected local ports from the threat of losing work to New York, ⁸ and returned to their home ports.
January 14-----	A tentative agreement was reached for the Port of New York, but ratification by the membership was deferred pending settlement in other ports. Besides the container clause accepted January 12, the \$1.60 wage-supplementary benefit package, and the pension plan offered December 16, the agreement included the annual guarantee of 2,080 hours' pay at straight-time rates. Travel pay would not be paid to workers hired after the agreement went into effect (October 1, 1968).
	Negotiations resumed in Boston, Baltimore, and Hampton Roads. In Philadelphia, the union demanded the entire New York contract. The shippers agreed to the same wage rates and supplementary benefit contributions as New York, but maintained that they would not pay the increased vacation costs. They also rejected the increased guaranteed annual income plan.
January 16-----	Negotiations began in Miami for South Atlantic ports from Morehead, N.C., to Key West, Fla. In Galveston, where bargaining resumed for a contract covering West Gulf Ports, talks broke off when the employers did not make a money offer.
January 22-----	Talks in New Orleans were discontinued after the shippers offered a \$1.07 package and demanded a decrease in the size of crews loading grain ships.
January 23-----	The ILA was warned by the NYSA that it might be in violation of the Taft-Hartley Act if it refused to place the contract before its members for ratification.
	Management in Philadelphia offered three contract options: (1) the \$1.60 package, including \$1.44 for wages, pensions and welfare, and the remaining 16 cents for "whatever it would buy" in the way of additional vacations and holidays; (2) the same benefits as in New York, but changes in the work rules designed to reduce labor costs; or (3) subsequent negotiations on the vacation plan. The union declined all three options.
	Negotiators for South Atlantic ports reached tentative settlement on local issues and agreed that wages, supplementary benefits, annual wage guarantees, and the container clause would follow the New Orleans pattern.

See footnote at end of table.

29. Stevedoring Industry Dispute, Atlantic and Gulf Coasts, 1968-69--International Longshoremen's Association (AFL-CIO) v. Shipping and Stevedoring Companies--Continued

January 23-- Continued -----	Talks resumed in Galveston for West Gulf ports. Employers were reluctant to discuss money until some agreement was reached on changing work rules.
January 26-----	Negotiators in Baltimore reached agreement on holiday and vacation benefits, but the union rejected the employers' offer of a guaranteed 1,800-hours' work.
January 29-----	Because of problems in Philadelphia and New Orleans, the executive council of the ILA met in New Orleans in an attempt to coordinate bargaining and concluded by requesting the President to "insist" that the Gulf employer associations increase their offer from \$1.07 to \$1.60.
February 1 -----	Negotiators in Hampton Roads reached agreement on a guaranteed annual income of \$6,800 for qualifying workers in 1969-70 and \$7,820 in 1970-71 contract years.
February 2-----	A tentative agreement, providing for pay increases of \$1.60 an hour over the life of the contract, was reached in New Orleans. It required that negotiations on a guaranteed annual income begin 90 days after ratification, and that the size of the work gang not be reduced during that period. The container provisions eliminated two clauses of the New York agreement, thus permitting containers consolidated in other ports to move through New Orleans without repacking, and also requiring arbitration of disagreements over the handling of containers. (These changes reflect the different practices in the two ports before negotiations began in July. See footnote 2.)
February 3-----	David L. Cole was asked by Secretary of Labor George P. Shultz to resume over-all direction of the mediation activity. Mr. Cole had not been involved since the agreement was reached in New York.
	Thomas Gleason indicated that the New Orleans container clause was unacceptable to the International. ILA South Atlantic and Gulf District officials refused to reopen negotiations.
	From Miami, the executive board of the Teamsters telegraphed ILA and the port employer associations that the new agreement would not be allowed to remove work from the Teamster jurisdiction. ⁹
February 4-----	New York Shipping Association members agreed to withdraw the unratified contract of January 14 if workers did not return shortly.
	Negotiators in Philadelphia reached agreement on the wage and supplementary package, and container provisions and became the fourth major port to do so. However, eligibility for a fifth and sixth week of vacation and union demands to eliminate the "set-back" ¹⁰ clause prevented agreement.

See footnotes at end of table.

29. Stevedoring Industry Dispute, Atlantic and Gulf Coasts, 1968-69—International Longshoremen's Association (AFL-CIO) v. Shipping and Stevedoring Companies—Continued

February 4— Continued	Negotiations resumed in Galveston; the shippers matched the New Orleans' money offer, but the longshoremen demanded the New York container provision.
February 7	Seeking a ratification vote, ¹¹ the New York Shipping Association filed an unfair labor practice suit against the ILA.
February 8	At a meeting of the executive council of the ILA in Houston, New Orleans' union officials promised to attempt to reopen negotiations on the container clause.
February 11	The NLRB petitioned the U.S. District Court for the Southern District of New York to order the longshoremen to return to work in the Port of New York. Judge F. X. McGohey, denying the request, ordered the ILA to hold an election by February 14, but allowed the NLRB to return to the court if work was not resumed.
February 14	Longshoremen in New York ratified the agreement 9,328 to 3,213.
February 15	Work was resumed in New York.
February 17	The NLRB petitioned the Federal District Court in New Orleans to order longshoremen in New Orleans to return to work.
February 18	Tentative agreement was reached for Miami. Most other South Atlantic ports also reached agreement.
February 19	Judge Frederick J. R. Heebe ordered five ILA locals in New Orleans to vote on the contract February 21. A checkers and clerks local had not reached agreement on a container clause.
	Shippers and union officials in Baltimore announced tentative agreement, also to be submitted for ratification on February 21. The contract included a guaranteed annual income of 1,800 hours.
February 20	Agreement was reached in Philadelphia, providing for a fifth and sixth week of vacation for longshoremen who worked 1,600 hours in 10 of the past 12 years. The contract eliminated the "set-back" provision, and the container provision allowed packing and unpacking of consolidated containers that were local in origin or destination. The guaranteed annual wage was increased to 1,800 hours. Ratification was set for the 23d.
	Workers in Miami and Port Everglades ratified their contract.

See footnote at end of table.

29. Stevedoring Industry Dispute, Atlantic and Gulf Coasts, 1968-69--International Longshoremen's Association (AFL-CIO) v. Shipping and Stevedoring Companies--Continued

February 21-----	Longshoremen in New Orleans, Hampton Roads, and Baltimore ratified contracts and returned to work the next day. Following the conclusion of these settlements, longshoremen in South Atlantic and Gulf ports were expected to return to work shortly. ¹²
February 23-----	Philadelphia longshoremen ratified their agreement and resumed work February 25.
April 12-----	The last port agreement was concluded. ¹³

¹ The New York Shipping Association is authorized to bargain for New York, Baltimore, Boston, Hampton Roads, and Philadelphia with respect to wages, hours, employer contributions to the welfare and pension funds, and the term of the agreement. Settlements on these issues, generally referred to as the "master contract," are then incorporated into local agreements in these ports. Negotiations on working conditions, holidays, vacations, and other matters are conducted on the local level. Boston, however, had not had a signed agreement since 1959. The agreements for the remainder of the North Atlantic District and the South Atlantic and Gulf Districts follow the general North Atlantic Coast pattern.

² New York, Baltimore, and Philadelphia ports had royalty clauses on containers since 1960, 1961, and 1967, respectively. The royalties were 35 cents per gross ton for conventional ships, 70 cents for partially automated ships, and \$1 for automated or containerized ships. Establishment of a container fund in Boston was delayed because of jurisdictional problems between the ILA and the Teamsters.

Although containers had been stripped in North Atlantic ports when the ILA found more than 1 bill-of-lading on a container, no such action had occurred in South Atlantic and Gulf ports.

³ New York had 17-man gangs under the current agreement.

⁴ New York had a 1,600-hour, and Philadelphia a 1,500-hour guarantee.

⁵ This stoppage marked the seventh time that Atlantic Coast longshoremen were involved in a "national emergency" dispute.

⁶ During the 1956 contract renegotiations, the ILA was enjoined from insisting on industrywide bargaining. In appeals to the courts during the next year, the injunction was upheld, and a trial examiner of the NLRB ruled that the insistence upon industrywide bargaining was an unfair labor practice.

⁷ This stoppage marked the sixth time that an East Coast stevedoring industry strike had occurred or had been resumed after an 80-day "cooling-off" period.

⁸ The new master clause read: "Containers owned or leased by employer-members (including containers on wheels) containing LTL (less than truckload) loads or consolidated full-container loads, which are destined for or come from, any person (including a consolidator who stuffs containers of outbound cargo or a distributor who strips containers of inbound cargo and including a forwarder, who is either a consolidator of outcargo or a distributor of inbound cargo) who is not the beneficial owner of the cargo, and which either comes from or is destined to any point within a 50-mile radius of any North Atlantic District port shall be stuffed and stripped by ILA labor at longshore rates on a waterfront under the terms and conditions of the General Cargo Agreement." *The New York Times*, January 13, 1969, p. 93. In addition, disagreement over the handling of a container was not arbitrable.

⁹ The ILA and the Teamsters had met occasionally to discuss jurisdiction, but no agreement had been announced.

¹⁰ When a ship failed to arrive on time, longshoremen's work schedules were changed from 7:30 a.m. to 1:00 p.m. under the "set-back" clause, which also provided pay for 1 hour in the morning and a 4-hour guarantee in the afternoon. In this situation, other port agreements provided 4 hours' reporting pay and permitted longshoremen to take another job in the afternoon. Philadelphia dockworkers struck over this issue in 1967.

¹¹ In the 1964-65 negotiations, the contract was ratified in New York and New Orleans shortly after agreement was reached, but the longshoremen did not return to work. The NYSA and New Orleans Steamship Association successfully filed suits to require the groups to return to work.

¹² Longshoremen at Jacksonville, Fla., Mobile, Ala., and Baton Rouge, La., and West Gulf ports did not return to work at that time. However, work was resumed in Mobile on February 25 and at Jacksonville on March 1. The West Gulf ports and Baton Rouge, where dockworkers demanded the New York container clause rather than the one for New Orleans, did not return to work until April 2 and March 14, respectively. Operations were resumed in Beaumont, Orange, and Port Arthur, April 13.

¹³ Work was not resumed in New England ports until March. At Boston, where employers demanded concessions in work rules in exchange for higher wages, benefits, container clause, and guaranteed annual wage, work was resumed April 2.

NO. E-5

URGING THE ADOPTION OF LEGISLATION BY THE CONGRESS DESIGNED TO AFFORD A MEANS OF AMICABLE SETTLEMENT OF LABOR DISPUTES AND TO PREVENT STOPPAGES IN THE MARITIME INDUSTRY

WHEREAS, The United States Corporate membership of The American Association of Port Authorities is composed of public and governmental departments, boards, commissions, agencies, authorities, organizations and bodies engaged in the planning, development or operation of ports and harbors, and by reason of their public character are charged with the duty of serving the public interest in the foreign and domestic waterborne commerce of the United States; and

WHEREAS, such members collectively have a multi-billion dollar investment in port and harbor facilities dedicated to the needs and furtherance of such commerce; and

WHEREAS, such Corporate members of The American Association of Port Authorities have been deeply concerned for many years with the frequent labor disputes and work stoppages which have affected and halted from time to time the vital flow of essential foreign and domestic waterborne commerce; and

WHEREAS, from time to time there have been waterfront strikes which have resulted in the closing of a major portion of the ports and harbors of the United States; and

WHEREAS, such a paralysis and disruption has included (1) the immediate and in many ways permanent damage to the National Export Expansion Program through loss of overseas markets, (2) a crippling backup in relief foreign cargoes with the consequent setback to various aid programs, (3) unrecoupable setbacks in the Balance of Payments program, (4) serious immediate, and often permanent financial effects on industry, manufacturing concerns, and labor through (a) inability of manufacturers to channel larger orders into production by reason of not receiving imported raw materials, such as jute, wool, paper, etc. leading to a widespread spectrum of employee layoffs, and in many cases, to bankruptcy in industry itself; (b) unemployment on the waterfront and ever-growing unemployment in inland firms and industry forced to lay off portions of their employees as a direct result of the stoppage of maritime commerce, and (c) the halting of normal agriculture marketing procedures vital to the economy of the nation, with product marketing and outlets for surplus commodities closed off, together with the concomitant result of product spoilages and downgrading when held up in the process of transportation; and

WHEREAS, such strikes and work stoppages in the maritime industry, existing before and often continuing after the use of the injunctive machinery provided for in the Taft-Hartley Act, demonstrate the need for improved and possibly specialized laws applicable to and governing strikes, work stoppages, contract bargaining procedures and grievance machinery in the maritime industry because the procedures and provisions of existing laws are inadequate and ineffectual to meet national labor emergencies in the maritime industry to prevent or avoid irreparable and incalculable damage resulting therefrom to the national economy;

NOW, THEREFORE, BE IT RESOLVED by The American Association of Port Authorities:

(1) That existing and past strikes and work stoppages in the maritime industry have so affected the public welfare, the national defense and the national economy of the United States and its citizens, despite the use of available laws, that it is essential and imperative that new federal legislation be enacted providing for improved collective bargaining machinery and for sound grievance and dispute settlement;

(2) That such legislation should provide for more effective procedures for the fair, impartial and speedy settlement of labor disputes, grievances and contract negotiations in the maritime industry without strikes, lockouts or work stoppages; and

(3) That Committee V on Port Operations be and it is hereby authorized and instructed to take such steps forthwith as in the judgment of the Board of Directors shall be deemed desirable and expedient to cause such legislation as will generally effectuate, so far as possible, the objectives and purposes set forth in this Resolution to be introduced in the Congress and to urge and seek its adoption.

(Unanimously passed - United States Members
only voting)

The CHAIRMAN. In your prepared statement you say that the strike has become built-in to the bargaining process insofar as the labor contracts of the Atlantic and Gulf coasts are concerned. The deep-seated reasons for this are well known throughout the trade.

Would you spell out for the record just what these well-known, deep-seated reasons are? Is that in any of the material here?

Mr. AMUNDSEN. No; it is not. I would be glad to comment on it. I have been following it for some years. What we have is a strong, highly organized union and a very fractionalized management. What the union is asking is either nebulous or not stated prior to the negotiations. In some cases it has been and in some cases not.

In some cases it is some type of far-out figure, so you don't really know whether it is serious or not. You don't have a management that is equipped to bargain in a unified fashion.

So what develops is that nothing really happens until the strike starts. Now, this is applied in everyone of these instances.

The CHAIRMAN. Well, on the Atlantic coast and Gulf coast the contract, while it covers many employers, ends at the same time for all employers?

Mr. AMUNDSEN. Yes. September 30 in this instance.

The CHAIRMAN. How many bargaining groups are there, as far as the employers are concerned? There is one union?

Mr. AMUNDSEN. Yes, sir.

The CHAIRMAN. How many bargaining sessions are there with how many employers?

Mr. AMUNDSEN. As I have been following it, in this instance, there have been two groups of employers involved, one representing the steamship folks and another group representing the stevedoring management people on the New York issues.

Typically, when those issues are resolved, the bargaining then takes place among the different outport centers on the Atlantic and Gulf coasts. Bargaining takes place in Savannah, Baltimore, and Jacksonville and New Orleans, the west Gulf Texas ports.

The CHAIRMAN. There are regional differences in the contract?

Mr. AMUNDSEN. Yes, sir. There are regional differences and practices which cannot be bargained until the basic wage package is bargained in New York. As I understand it, you don't begin to bargain in those until you know what you are bargaining with, what has been approved in New York.

The CHAIRMAN. What is the fractionalization you speak of, and is it regional?

Mr. AMUNDSEN. It is basically regional, yes, sir. Our seaports are competitive, each one.

The CHAIRMAN. I thought the union in this case suggested in August that they continue the status quo, that they continue under the contract they had been working under on the east coast?

Mr. AMUNDSEN. In New York possibly; yes, sir. That had to do, I think, with the guaranteed minimum wage practice.

The CHAIRMAN. And then, because of the national economic crisis, as I understand it, they were willing to live with what they had been working under and continue without change. Is that accurate, or isn't it?

Mr. AMUNDSEN. I think they were willing to continue with the guaranteed minimum annual hours agreement that applied to New York.

The CHAIRMAN. Was that only in New York?

Mr. AMUNDSEN. Yes, sir, I believe so. Now, there were at various times announcements about hourly wages, for example, early in the proceedings.

The CHAIRMAN. When you say early, you mean what?

Mr. AMUNDSEN. Before the freeze.

The CHAIRMAN. Before the freeze and before the union offer?

Mr. AMUNDSEN. Yes, sir.

The CHAIRMAN. But after the freeze the offer was status quo?

Mr. AMUNDSEN. I believe so, on the money; yes.

The CHAIRMAN. Now, how long a contract was this? Is that a 3-year contract that they were operating under?

Mr. AMUNDSEN. It was on this occasion, sir.

The CHAIRMAN. Had that been arrived at after a strike?

Mr. AMUNDSEN. Yes, sir, of 113 days.

The CHAIRMAN. And that was the solution, following that long and expensive dispute?

Mr. AMUNDSEN. Yes, sir.

The CHAIRMAN. In which the Taft-Hartley Act was or was not used?

Mr. AMUNDSEN. It was used.

The CHAIRMAN. And that agreement then that was in existence for 3 years, is that the agreement that was the offer to continue during this national freeze?

Mr. AMUNDSEN. Yes, sir.

The CHAIRMAN. In your statement, the round figures you recite that describe the economic losses, does your backup material here indicate how you arrive at these figures?

Mr. AMUNDSEN. It does not. I would be glad to explain this.

When a ton of general cargo is handled in an American port, it requires various services, including those of labor. When you total up all of these services, including what was done for the ship and the cargo, including insurance and various other items, you can reach a figure of about \$30 a ton. So you have a common denominator there.

You can apply that same technique to bulk cargo, such as coal or oil, and that comes out at a much less value per ton—I believe it is \$8 or \$9—because this stuff is pumped or handled automatically.

Now, when you close the ports, you stop those tons and you simply have to multiply the tons that aren't moving in that period and come out with the daily loss to the community in terms of payroll and so forth.

I might add, if I may, that the Bureau of International Commerce has just come out with some figures on unrecoverable exports. They say that since October 21 export loss ran about \$33 million a day of unrecoverable export until, of course, the injunction went on.

The CHAIRMAN. Senator Packwood.

Senator PACKWOOD. I have no questions.

The CHAIRMAN. I was unclear why the Taft-Hartley Act was not used earlier than it was. How long did the west coast strike continue before it was invoked?

Mr. AMUNDSEN. For 100 days.

The CHAIRMAN. The President evidently thought or, rather, his advice was that the national health and safety had not been impaired under the standard of the law?

Mr. AMUNDSEN. That was our understanding, yes, sir.

The CHAIRMAN. Whereas on the east coast it was different.

Mr. AMUNDSEN. Yes, sir.

Senator PACKWOOD. Let me ask this: We in the State of Oregon are faced with this disaster right after Christmas. What is the status of negotiations on the Pacific coast?

Mr. AMUNDSEN. It is lying there unresolved.

Senator PACKWOOD. I will be placing in the record today, Mr. Chairman, my letter to you and one from the Governor of the State of Oregon to you asking for some kind of legislation. The situation is intolerable in Oregon, and I have equal concern over the east coast. We should not have to wait until we have a national emergency until something can be done. A Pacific coast strike is as significant to Oregon as a national emergency, a total strike in the dock industry or a total nationwide strike.

The CHAIRMAN. Mr. Amundsen, you indicated that the bill S. 560 is the bill you feel should be enacted into law. You are talking from the industry you work with, the shipping industry.

Could I ask whether the Governor will, in his letter, indicate which of these many bills would best meet his objectives?

Senator PACKWOOD. It was a letter to you with a carbon copy to me. He does not endorse any specific bills, but seems to look favorably on the procedures provided in S. 560.

The CHAIRMAN. Senator Hughes?

Senator HUGHES. No questions.

The CHAIRMAN. Thank you very much.

Mr. AMUNDSEN. Thank you, Mr. Chairman.

The CHAIRMAN. Our next witness is Mr. Gerald Smetana, Labor Relations Counsel of Sears, Roebuck & Co., representing the American Retail Federation.

I am looking forward to your statement for our hearing record.

Mr. SMETANA. Thank you very much. I have with me this morning Mr. Lawrence D. Ehrlich of the Chicago law firm of Borovsky, Ehrlich & Kronenberg, who will be sitting with me.

The CHAIRMAN. Fine.

STATEMENT OF GERALD SMETANA, LABOR RELATIONS COUNSEL OF SEARS, ROEBUCK & CO., REPRESENTING THE AMERICAN RETAIL FEDERATION, ACCOMPANIED BY LAWRENCE D. EHRLICH

Mr. SMETANA. I am appearing this morning on behalf of the American Retail Federation. As the chairman knows, I am chairman of a subcommittee of the Employer Relations Committee of the federation, which has been considering the problem of national strikes in the transportation industry.

The federation represents the 50 States and 29 national retail associations. The membership of these associations consists of a wide variety of retail businesses, ranging in size from the small local store to the large national chains, representative of all aspects of the retail industry and totaling in excess of 1 million retailers throughout the country.

The American Retail Federation has considered this to be a very significant problem, and although it might first appear it might not be one with which retailers should be so intimately concerned, as it happens, retailing in its totality and the membership of the federation are the largest users of the transportation services in this country. Therefore, we are very much concerned as to what solutions will be made by the Congress with respect to the problems of national emergency strikes in the transportation industry.

We have studied the problem and considered the various alternatives that have been presented in the various bills, and have attempted to do as Secretary Hodgson has suggested, that this be a time for innovative thinking.

What we have attempted to do is to consider the various proposals and then comment upon them. In the process of these considerations, internally within the retail federation a number of things became clear to us. It became clear to us, first of all, that there is a special problem insofar as the Railway Labor Act is concerned, but we don't necessarily have to address ourselves to that entire problem. But insofar as the collective bargaining under the Railway Labor Act, we have learned one lesson, and it appears to us that, although we are not intimately involved but perhaps just observers, that the process of the Railway Labor Act is a process of postponement rather than a process of confrontation.

If the principle of collective bargaining is to work, it requires that the parties be face to face and face up to the issue at the time of impact. Therefore, anything that can be done to make collective bargaining work better, it is our desire to do so.

Of course, in the extreme, collective bargaining does entail a balance of pain when you have a strike. We appreciate this.

However, certain situations, such as national strikes in the transportation industry, have severe side effects, particularly to the extent that they affect the national health and safety.

While there is a critical problem, in terms of when you determine that there is in fact a national emergency, this is, of course, for the President to decide and then for the courts to agree with him as to this national emergency in a particular situation.

But having come that far—in other words, having determined that there is a national emergency in transportation—the question then is what happens after that.

Presently under Taft-Hartley we have an 80-day cooling-off period. We would suggest that in view of the problems with rails and airlines being subject to the Railway Labor Act, that for purposes of national emergencies there would be a unity of treatment. We think that the treatment under Taft-Hartley Act has perhaps functioned best and, therefore, we would suggest that railroads and airlines, for purposes of national emergency strikes, be treated together with maritime and trucking as one industry.

We would then turn, however, to what has been the experience. Experience has shown that in the railroad industry where there has been a breakdown in the collective bargaining and where, after a year, the parties have finally still not reached agreement and there is a strike or pending strike—and it is usually after the strike has been actually called—that the Congress has stepped in. So we have, essentially, a legislative solution.

We think a legislative solution is perhaps not the best solution, mainly because of the ad hoc nature of such solutions. Really, there should be a better way of solving these problems.

Moreover, by having a legislative solution, it really results in a breakdown of collective bargaining, because the parties simply know that someone else will make the decisions for them, which they should really make themselves.

We look at the administration's suggestion, Senator Griffin's bill, and that has a great deal of appeal, but we find certain problems with that approach. We basically think that the idea of the final offer selection is, indeed, an innovative one and one that deserves serious consideration.

In the proposals we suggest for this committee, we have incorporated many proposals of the administration bill, except that we make certain modifications which we think are necessary for it to function effectively.

Under the administration's proposed bill, there are essentially three options given to the President. The President, under the Griffin proposal, must choose one of those and then is precluded from using any other options.

We find fault with the first two options. We think they do not add very much to a solution of the problem. The first is simply an extension of the 80-day cooling-off period for an additional 30 days. So far as we are concerned, this simply postpones the day of reckoning. If the parties have not been able to work it out in 80 days, it is doubtful that an additional 30 days under the same circumstances will be of much help.

We feel partial operation of the affected industry is not feasible. Our opposition parallels that articulated by the American Bar Association, and we adopt the position of the American Bar Association special committee which has studied this problem. The parties will be spending most of their time, should that be the option the President will select, in trying to decide how to engage in partial operation rather than sitting down and bargaining.

Apart from that, it just appears that partial operation is a poor choice because it is so difficult to partially operate an industry.

We finally come to the problems of final offer selection. We see certain problems with the administration's approach, but they can be certainly corrected. One such problem is that there are no parameters in terms of the areas that must be or could be included in the final offer. Should a union, for example, choose to have three nonvoting directors on the board, this could be one of their demands. It could be that they are totally reasonable in their economic demands.

In fact, they could, perhaps, be more reasonable to a casual observer. They could for example ask for no increase or ask for an increase consistent with industry or area patterns and yet want this type of control of the management function. Therefore, one of the points we would urge is that only the mandatory subjects of bargaining as defined under the National Labor Relations Act be those that could be included in any selection process.

The CHAIRMAN. Be included or only be included?

Mr. SMETANA. It should only be mandatory subjects of bargaining. Mandatory subjects of bargaining should be the only ones that would be included in the bargaining process.

We then come to the question of the choosing of the selectors. There are really three possibilities: the legislative, executive, and judicial. We would submit that perhaps a judicial solution under these circumstances might work best.

Now, we are mindful that any incursion here into free collective bargaining could be a step toward compulsory arbitration. We are very concerned that this not be the case, and we are certainly against compulsory arbitration. What we would hope would be, as I think is the administration's hope in this regard, that the final offer selection process would make collective bargaining work in an area where it has not worked and, therefore, we would not be going toward compulsory arbitration, which we think cannot be a workable system.

Senator PACKWOOD. May I ask a question? You don't regard this as a question of anything more than compulsory legislation?

Mr. SMETANA. Should that be the ultimate choice, we would, of course, hope that the threat of the tribunal, whichever the tribunal it is that is making the choice, will get the parties to be close together. If the tribunal must choose that which is the most reasonable—then the chances are that each party will make every effort to be more reasonable and hopefully you will never get to that selection.

But if the selection is made, there is no question that this is a form of compulsory arbitration. It is different than compulsory arbitration in that the arbiter or tribunal cannot fashion its own remedy. In other words, they cannot cut the pie. To that extent a contract is not being written for the parties.

So, as happens frequently in collective bargaining, one party accepts the proposal of the other. Here there is an additional force factor other than the marketplace forces which have not seemed to work so well in this particular area.

Now, the reason we came to the idea of the court approach is from a plan which Mayor LaGuardia proposed to this very committee at the time it was considering the national emergency strike provisions in Taft-Hartley. At that time there were problems very similar to those we faced today. Although Mayor LaGuardia did suggest a proposal for compulsory arbitration—which is where we part company with him—he also suggested that a three-judge court would be the best way to resolve these problems. He thought the reason a court would be helpful is because you would get the highest caliber of persons to resolve these matters and they would be free of politics in this situation. Particularly, he thought that such a court should contain persons that would not go back into their area of practice later and would not even have law clerks, so the person selected would actually make the decision.

We think the idea is basically a sound one, except that we hope that it would not have sufficient business for such a court and that, therefore it should not be a permanent body.

Therefore, the idea that we propose is one whereby the President be given only one option. After the 80 days he should be given another 10 days in which to knock heads. If he can't get the parties to agree, at that point the parties final offer is submitted.

The President would then call upon the Chief Justice of the United State, and the Chief Justice would immediately convene at the request of the President a three-judge court which would be com-

posed from sitting Court of Appeals judges. There would be three judges.

Senator PACKWOOD. You still leave as an Executive decision, the matter of deciding to take it to court, if he chooses or does not choose to invoke that procedure?

Mr. SMETANA. He has no children. He must invoke that procedure. In other words, if he cannot within the 10 days resolve the matter, then he shall call upon—I think I have some of the language drafted somewhere—

Senator PACKWOOD. In other words, once starting the cooling-off period it is not reversible. The President would have no choice and it would be mandated to send this on to the judicial tribunal if the parties refuse to settle themselves.

Mr. SMETANA. I agree. I think within the last 10 days that would be the parties last chance to resolve it themselves. Of course, they could resolve it within the 30-day period when it is before the court by agreement between the parties.

Again, we are very careful that the court which is selected, while they can continue the injunctive process to the extent that the court would deem advisable, the court could not make the contract for the parties. It would be the final offer of each of the parties which would go into the process and within 30 days that court then must decide which is the most reasonable of the offers.

Mr. EHRLICH. Placing that kind of compulsion at that juncture on the parties, we feel, will act as a catalyst or a spur to their finding their own solution before the 80-day period becomes necessary.

Any imposed solution is obviously the strongest club available. We want to make certain that the parties understand that that club will be used at the earliest possible time so they will resolve their own controversy among themselves and not place the public in this kind of jeopardy.

Mr. SMETANA. We also provide that there be direct appeal from the decision of the three-judge court to the U.S. Supreme Court. Again, this is principally for two reasons: One, that there would be the greatest acceptance of what is done. We fear that perhaps with the selection process outside of the court there may be some problems of acceptance. In fact, even built into the Griffin bill is the provision that should the parties not be satisfied with the reasonable offer they can take the matter back to a court and have the court determine whether it was arbitrary and capricious.

Senator PACKWOOD. I am intrigued with your thought: that the only thing that can be in the final offer are those things subject to collective bargaining under the National Labor Relations Act. Who makes that decision in your schema? Ultimately, it is a court decision, of course.

Mr. SMETANA. This is a problem faced both by the Congress, by the combatants, so to speak, and the court. Presently the Supreme Court has before it the *Pittsburgh Plate Glass* case where, hopefully, they will give some further guidelines as to what the mandatory subjects of bargaining are.

Senator PACKWOOD. There is no problem if you don't put in the bill the requirement that only those things which are mandatory subjects may be included in the offer.

Mr. SMETANA. The reason we provide for the court approach is that ultimately the court will have to decide whether it is a mandatory subject of bargaining. First of all, it is the court of appeals that initially makes these decisions. About 60 percent of Labor Board cases wind up in the court of appeals. So these are the judges that are most sophisticated in dealing with these questions. Ultimately the Supreme Court in that *Pittsburgh Plate Glass* case, would make this decision.

So we would simply say, rather than have the parties wrangle and fuss to get into the court, because they will try to do it anyway, that in the process there will be a great deal of dissatisfaction because of not having an orderly process to get there. In this way, there is a way in which the court could determine it. We would hope this would not occur but once in 5 or 10 years, but certainly the court can mobilize its forces quickly, as we saw recently in both the Amchitka situation as well as in the case of the New York Times and other labor problems.

Senator PACKWOOD. But all the way along the bargaining process until your judicial final offer selection, where the NLRB determines initially whether or not something is a matter of collective bargaining, I assume they would continue this function during the cooling-off period, but once at your final judicial offer selection, henceforth you are saying let us not worry about going back and initiating this again before the Board?

Mr. SMETANA. I would not, because that would delay the process. I would hope there would not be a collateral Board proceeding to make this determination. I think the parties read the law and know what is a mandatory subject of bargaining. If it should not be, that would be reviewable by the three-judge court.

There is one other thing that we could suggest that is not provided for in the administration's bill; that is, that the court or the selectors give the reasons why they have made a particular choice, and those reasons are what would be reviewed. In fact, this very process has been adopted or suggested—I am not sure that the law has passed—in the phase II legislation.

I would submit that at the time we made the suggestion in the House committee there was some concern as to the constitutionality of the approach which we suggest. Therefore we have attached attachment A to this statement to show there is no constitutional impediment but that our recommendation is constitutionally sound.

Senator PACKWOOD. How is this three-judge court selected?

Mr. SMETANA. The three-judge court is selected by the Chief Justice from among the sitting court of appeals judges. They function as an ad hoc court of appeals, essentially. It is really a court of primary jurisdiction having all of the equity powers or injunctive powers and all of the powers but for compulsory arbitration. They can't fashion their own remedy. Any decision of that court, whether it is in the injunctive area or in the merits of making a selection is immediately appealable to the full U.S. Supreme Court.

Senator PACKWOOD. But you assume that the finding of fact by the court of appeals would have the same presumptive validity as administrative findings of fact?

Mr. SMETANA. I would think they would, yes. They would have to make findings to determine whether a particular offer is reasonable or not. There may be some mechanical problems as to time, but they, I think, could be resolved.

Mr. EHRlich. Just in answer to one of the questions you are raising, Senator Packwood. Assuming there was some controversy among the parties as to what was a mandatory subject of bargaining and there was as a collateral action before the Labor Board. Experience has shown that a resolution of that type before the Labor Board would well exceed the 80 days of the cooling off period and the subsequent time necessary for the court to resolve the issue. Therefore, the charged matter before the Board, in point of fact, would be null and void.

Mr. SMETANA. There are certain mechanics of this function. Once the President has asked the Chief Justice to convene the court, the Attorney General would then file a complaint under the previous determination that there is a national emergency. This would then simply be a question of remedy that the court would be resolving. In other words, the question of the national emergency having already been determined, there would then simply be a question of remedy as to how you resolve it.

This question of remedy would be resolved through this court process with the Attorney General being the moving party and the others being the parties in the action. Should the Attorney General not take appeal, one of the other parties could do so. So you place it in the context of a full adversary proceeding.

The CHAIRMAN. Why are you choosing judges for final offer selection? Why not people whose whole professional focus is on issues and questions that arise in the labor management situation, people who have been arbitrators?

Mr. SMETANA. This was our fear, and I thought the most political way of addressing ourselves to it was to look to the testimony of Mayor La Guardia in 1947. It was his position with which we heartily concur.

But to get the greatest acceptability of the decisions that come out of the tribunal, it is best to have judges on an ad hoc basis, because the lay arbitrators will each go back to the area from which they came. To that extent, there may be some questions raised, even though they may be totally fair and there may be no political influence.

The acceptability of the decision that would be rendered would result in labor peace rather than further litigation.

We would think that under the arbitration approach, under the final offer selection approach, for example, as suggested by the administration, the dissatisfied party, should there be one—and it is not unlikely there would be one—would seek some legal recourse.

Since the courts would be involved anyway, we think it would be most orderly for them to be involved right from the start and not have the added confusion of private arbitrators on the scene.

Mr. EHRlich. Might I add this, Senator Williams: Your assumption is—and if it is wrong correct me—that there would be some appeal mechanisms. We also assume there would be an appeal mechanism.

The CHAIRMAN. Why do you make that assumption?

Mr. EHRlich. If there would be no appeal mechanism, then a constituted body of essentially arbitrators; for example, persons from the private sector, would be given ultimate authority to impose a remedy without ever a place to question the reasonability or the standards applied, and it would not have, in terms of subsequent disputes, any force of law behind it.

It would have been a body of individuals composed on an ad hoc basis that found a solution in a given situation applying standards which may or may not be used in the subsequent situation. Whereas if you have a judicially composed body of men whose qualifications in this area really can no longer be doubted—they deal in these questions all of the time—it seems to me with the review mechanisms in the Supreme Court you are building a body of law predicated upon the reasonableness of the various types of matters contained in the final offers that begin to allow the parties to subsequently structure voluntary solutions because they know what precedent value the prior determinations in the judicial progress have had.

The CHAIRMAN. That is very interesting. Gene Mittelman in his professional career has been in this business. Are there any principles comparable to stare decisis arbitration?

Mr. MITTELMAN. The answer to that is "Yes," Mr. Chairman. In the case of emergency boards under the Railway Labor Act, you frequently find one report referring to what a previous emergency board recommended.

The CHAIRMAN. Isn't that contrary to what Mr. Ehrlich is saying? There is a difference of view on the continuity or building of, can I say, principles through arbitration that can be relied on to some extent.

Mr. EHRLICH. I have had the opportunity to be an arbitrator for a number of years myself. It is quite true that arbitrators will cite other arbitration rules. But it has been the position of various groups of arbitrators that they think stare decisis is not a profitable thing, not a profitable concept in the area of labor arbitration.

Mr. MITTELMAN. In grievance arbitration or economic arbitration?

Mr. EHRLICH. In grievance arbitration.

Mr. MITTELMAN. This principle we are talking about is not customary in grievance arbitration. It is economic arbitration we are talking about here. Almost by definition stare decisis has less of a role to play in grievance arbitration. It is more a question of contract interpretation.

Turning to something else, looking to the experience we have had, we have had two arbitration boards in the last 10 years, the board created to deal with the firemen's disputes and the board which settled the shop craft dispute in 1967. Both of those were ad hoc boards of lay arbiters. Were there any problems that those boards created because they consisted of experienced men and did not include anybody from the judiciary? There was litigation. But do you think the problem that was created was because they were not composed of judges?

Mr. SMETANA. I must confess that I don't have that familiarity with the railway labor law to comment. But as a more casual observation—and I may be in error—it would seem to me that the problems were recurring in the shop craft area, and to the extent that in most recent events they are still striking because of the historical work rules, it would seem to me that there has been no permanent solution.

We would hope that the use of a court, and certainly the Supreme Court, would result in a higher level of acceptance by the parties of the judgments that would be rendered. Certainly that has been the experience with other decisions rendered by the U.S. Supreme Court.

Mr. MITTELMAN. When you say acceptance, do you mean obedience? Are you saying that the fireman or shopcraft didn't obey the laws? What do you mean by acceptance?

Mr. SMETANA. Public acceptance. I am speaking of public acceptance, and that, presumably, would work itself down to those who must live under the contract to happily accept or unhappily accept, as the case may be, the result that is reached.

If the Supreme Court or the three-judge court would decide that a particular contract was the most reasonable, then everyone would walk away and the next time not leave it to that court if they were unhappy. But certainly they would have learned that is the law of the land.

Mr. MITTELMAN. Let us go back to the firemen's dispute, the firemen, by their rights, took quite a beating under that. They lost a great many jobs through attrition, and they were very, very unhappy with the award because the award, I think, basically sustained a large part of the railroad's claim that they had a right to eliminate the firemen from the diesels. That would be a substantive decision which the firemen did not like and have been, and in fact still are, trying to change through collective bargaining.

I just cannot see that the firemen would have been any happier or unhappier had that same rule been handed down by a three-judge court. It still cost them jobs, and they probably would still have tried to do something about it through collective bargaining.

But, more to the point, I don't think that is what your worry is. They have a right to do anything they want.

Mr. SMETANA. How many years did it take for this process to go on, though? I am not that familiar with it, but it would seem to me from reading the newspapers it was a long period of deliberation.

We would anticipate here that the process from its inception will be 30 days before the three-judge court and then will be an expedited appeal before the Supreme Court and you could have a fair decision in fairly short order. I don't know. I am not going to disagree as to the result of that particular group, but certainly the experience in national emergency strikes has been that the Congress has stepped in. I would submit that it would appear to be a better system for the court to be involved rather than the Congress.

Mr. MITTELMAN. Just to make the record complete, in the 1967 case the board was chaired by Senator Wayne Morse in the shopcraft dispute, the reports indicated that it was the carriers who were more unhappy with the award than the unions, because they felt it gave the employees too high a wage increase. But the carriers complied with the rules, and I don't see anything in our experience that would indicate that the parties have any less disposition to accept a reasoned award of experienced men than they would have to accept the award of a special judicial court.

In fact, I think we can almost take official notice of the fact that the labor movement, for historical reasons, has been very much against involving the judiciary in labor. They had a terrible experience with the judiciary. For their own reasons whether they are right at the present time, I don't want to argue about—but for their own reasons they are very, very hostile to any specific involvement of the judiciary in matters of labor.

It seems to me, based on that kind of history, I would be disposed to assume that at least one side of the bargaining table would be less disposed to accepting the award of judges than they would of experienced arbitrators with whom they have had day-to-day experience.

MR. SMETANA. I think that if the only argument is an historical one, I do believe that the labor movement would change its mind, given perhaps the right quid pro quo.

I think the fears were well-founded at the time of La Guardia, and I think the fears were still, perhaps well-founded in fashioning some of the Taft-Hartley remedies that were passed, but I think since that time the labor movement has found there is really no basis for those fears.

The courts have acted responsibly, and the courts have no longer deprived parties of their individual rights. I think that the courts have provided the only stabilizing factor.

I think in the National Labor Relations Board area, we have heard in many hearings the dissatisfaction of both labor and management, depending on which Board happens to be sitting there.

The very problems that La Guardia was talking about would apply equally to a labor board as they would to a group of lay arbitrators. It is somehow dependent on the citizenry. When you go to a Federal district court, or when there is a headline in the newspaper that a Federal district court has said something that has an acceptance among the citizenry, that board or arbitration panel do not have even this where they can in fact render the same judgments.

I think that in terms of the Congress fashioning the remedies in the rail situations, if you had men who were removed from the political scene, it would seem that there would be better acceptance, even though the decisions that would ultimately be reached would be the same ones.

MR. MITELMAN. I would say I really don't agree with you. I think that experience teaches that we have an institution, a really remarkable institution, this institution of labor arbitration that has developed in this country. Great Britain doesn't have it. This has been pointed to as a great cause of some of the problems they have in controlling wild-cat strikes.

You have quite a group of experienced arbitrators who have the confidence of the parties and the parties are used to dealing with.

I would certainly hesitate before I would strike out on a new course and overthrow experience and the confidence that has been built up through the years in labor arbitrations, especially since the only experience we have had recently with arbitration boards that have been appointed within the last 10 years indicates that arbitration did not destroy the acceptability per se of the award. Sure, the parties weren't happy, but that doesn't mean they wouldn't be just as unhappy with the award had it been rendered by a group of judges rather than arbitrators.

Let me say I am slightly prejudiced in this matter. I am an arbitrator, also.

MR. SMETANA. My comment would be that it is not a question of prejudice, but I think arbitration has flourished. Not that I want to take any business or work away from arbitrators, but I think people enjoy talking to arbitrators just as they enjoy going to the National Labor Relations Board. That doesn't solve any problems. I think there are too many cases where it is a matter of grievances or people taking a chance on violating the law because the penalties aren't that severe and the deterrent isn't there.

What we are trying to do here is to build in a system which is going to make collective bargaining work and not have people postpone the day of reckoning and having arbitrators simply again postpone the problem. I think if you have the courts the parties will accept the award, and this will expedite the situation. Any feelings of inequity that may occur in that selection process will be cured by the full Supreme Court reviewing the matter. This creates the kind of fairness which should deter the parties from even using the process. Then collective bargaining can begin to work in the transportation industry.

The CHAIRMAN. Would you want to reserve judgment on this?

Mr. MITTELMAN. Yes, sir.

The CHAIRMAN. You didn't fully persuade him.

Would you want to try your hand at Senator Stevenson?

Senator STEVENSON. I am sorry that I came in a little late and missed much of what you said.

If I understood you earlier, you said, in effect, that the judiciary gets involved anyway and we might as well get it in early rather than late. Is that the case? In the ordinary case wouldn't the judiciary get involved to review not substantive decisions but jurisdictional questions in compliance with procedural standards and safeguards against arbitrary agency action? Isn't that the way in which the judiciary would, in the ordinary case, get involved?

Mr. SMETANA. It would depend on the case you speak of, Senator Stevenson. It is true that in areas where there is no judicial review provided, the only kind of extraordinary relief in terms of abuse of discretion would be in the procedures and the due process involved.

But we would suggest that a better way of making the initial determination would be through the judiciary rather than through the lay arbiters.

Senator STEVENSON. That is what I don't understand. I don't see why on the initial substantive question the decision shouldn't be made by the experts, the lay panel, with the judicial function confined to a review of the procedural and jurisdictional questions. What is wrong with that?

Mr. SMETANA. There are a number of things. First, what we are trying to do is accomplish speed. We are trying to get this matter resolved as quickly as possible. The 80-day cooling-off period has now expired and the question is: Should the stoppage continue?

Presumably, there is going to have to be some kind of extension of that court order which had been issued before or the parties can agree to go back to work.

So you are going to be before a court anyway. It is our idea that the same court essentially that would be deciding the questions of continuing the injunction would also be the selectors.

We would submit that the persons who are the selectors, the three judges chosen by the Chief Justice, would be persons who have as much expertise in dealing with these questions as the arbitrators, because they, in fact, the court of appeals judges, in fact, deal with these cases every day.

Among the subjects that would come before the three lay arbitrators would be the question of what is a mandatory subject of bargaining. In other words, if the union in its selection process—and the example I used was the three nonvoting members on the companies' boards of

directors—in assuming the union's position is reasonable and more reasonable than the employer position, could the arbitrators make that selection?

Judges are experienced with determining whether or not a matter is subject to the mandatory subject of bargaining. Since these are in the nature of judicial decisions anyway, it would be the judges who should be making this determination.

Moreover, in terms of giving the reasons, there is no provision in any of the bills presently that the arbitrators give the reasons why they believe a particular offer is the best. Again, should they give those reasons, then under the Griffin bill there is a provision that they can be reviewed if their decisions are arbitrary and capricious. So, again, there is an avenue for going to the courts.

But the most orderly process is for the courts initially, or for this emergency court, because presumably they would have to act within 30 days, to make a decision which would set forth findings, the basis for their having made a particular selection, and which would also be consistent with the mandatory subjects of bargaining. And perhaps the parties would have resolved the matter in the interim. But absent that, they would then make a selection and choice. That choice would be immediately appealable to the U.S. Supreme Court.

Senator STEVENSON. You say these decisions are in the nature of judicial decisions. Do you think the judiciary would be of that opinion?

Mr. SMETANA. In terms of whether they would want this kind of jurisdiction?

Senator STEVENSON. Yes.

Mr. SMETANA. I am not sure what the answer would be.

Senator STEVENSON. I have a hunch.

Mr. SMETANA. I am sure one answer is that they are very busy and they would not want to be involved. But if it could be shown that by virtue of taking this at the outset they would save themselves much grief later on, then in the long run their time would not be misspent.

Take the recent dock strike. As a result, the courts were involved in countless efforts by the parties to go to the court to try to get interim relief of one sort or another.

I think the desire to get into the courts is a legitimate one, because I think they have shown to be the best tribunal for resolving the most difficult conflicts, and this is in the nature of a difficult conflict capable of judicial resolution.

Senator STEVENSON. How would you feel about changing the administration proposal to permit the panel to reject both final offers if it found both unreasonable?

Mr. SMETANA. I would think that would be self-defeating. I think if we went that direction, then we would be going further in the direction of compulsory arbitration. I agreed with Senator Packwood that there is some element of compulsion here, but the element is limited by virtue of the fact that the selectors must choose one of the final offers of the parties.

If they are able to pick and choose, it would be no different than in the court process, should the court be able to do this. Then the arbitrators or the court could essentially say that if you did such and so, if you came in with this kind of an offer, I would buy that.

That would be compulsory arbitration, but simply doing it through pressuring the parties to come up with a proposal that would be acceptable and that the court would approve.

Senator STEVENSON. If I understand that correctly, the court will have that power in your proposal.

Mr. SMETANA. The parties at the outset within this 30-day period must submit to the court their last final offer. The court can then only choose between the last offer of either of the parties. It cannot cut the pie.

Senator STEVENSON. In all of these proposals it would apply in cases of national emergency?

Mr. SMETANA. In the transportation industry in which the national emergency has been specified by the President and concurred in by the court.

Senator STEVENSON. This is digressing, but what if anything would you suggest we do about local emergencies? Take, for example, a work stoppage in the trucking industry in Chicago. It may not create a national emergency, but it may create a local emergency. It might even set unreasonable patterns which would influence future national settlements.

Do we do anything about such situations?

Mr. SMETANA. Let me first say that our principal position is that we would prefer to do nothing. In other words, the best position is to let collective bargaining work, which in the end results in a balance of pain to the parties. That is the way it should work.

If that were the way it could work, we would say fine, do nothing. But, unfortunately, the President and the Congress have not let that happen, because in the transportation area, as in the rail strikes, for example, when that does happen, rather than let the economic warfare take place, the fear of spillover in the economy, which would certainly have an effect, has resulted in Congress stepping in and making the decision. It is because doing nothing results in a decision by Congress that we would prefer to work out a solution that will make collective bargaining work and not have the Congress required to step in.

In answer to the local emergency question, I don't think Congress would step in. They would let collective bargaining work. Of course, there are many problems in the imbalance of bargaining today.

Secretary Hodgson, in testifying before this committee, suggested that in the rail area the problem of railroad employees getting unemployment compensation contributes to the length of the strikes. In the New York Times editorial of December 3, the New York Times was critical of paying unemployment compensation to telephone workers because there is still a telephone strike in New York.

It is this kind of imbalance that contributes to the long strike. When these strikes are supported, and the Congress does this, that creates the imbalance. That is why you have such a situation in New York where the telephone company is on strike and the workers are able, through public assistance, to get the same as their present wages, or virtually the same as their present wages. If that were cured, or part of that problem—and there are many problems—then collective bargaining could work.

All I am really saying in this example is that if we make collective bargaining work, if we look at the root of the problem, the imbalance of power that exists, then collective bargaining could work on a re-

gional emergency. I think the Supreme Court has said many times that in the last analysis a strike is a balance of pain and it must be painful for it to work.

If we alleviate that pain with subsidies, then it doesn't work. If we have Congress stepping in it doesn't work. If we alleviate it with someone else stepping in, it doesn't work.

Senator PACKWOOD. What you are saying is that for the purposes of this legislation, it is not all right to have a painful national strike. The Oregon situation is just as painful but as a regional strike, it is all right under this bill.

Mr. SMETANA. I think what we are saying is that in the pristine state, if a strike should go on, whether it is national or local, it should go on without interference. But then we have this transportation situation where Congress has stepped in. If they don't, collective bargaining can work. It would be a helpful mechanism where collective bargaining can work.

Senator STEVENSON. You are providing a mechanism for Government intervention which you want to see at the national level but not at the local level.

Mr. SMETANA. I think the difference is that these parties would not resort to seeking a mechanism as readily as they resort to Congress. The union feels that they have lots of friends here which they perhaps certainly do.

Senator STEVENSON. You are saying that this threat at the national level may bring them together, but you don't see the need for the same threat at the local level to bring them together. That is an inconsistency I don't think you have resolved.

Mr. SMETANA. I think we are only addressing ourselves to the area where there is a specific problem. Certainly the Federation has studied this, and I have read Senator Javits bill which deals with the problem of regional emergencies. We have studied this, and we don't believe it is the same magnitude of problem. It is not the same degree of magnitude as when the railroads are not running and there is no food being delivered, and so forth.

Senator PACKWOOD. It is the same degree of magnitude in the regions involved. Oregon feels no greater pain from a national longshoremen strike than a Pacific longshoremen strike. The pain is the same. When we had the railway strike, the principals went down. It didn't make any difference, did it?

Mr. EHRLICH. It is true anytime there is a strike. What we are talking about, in essence, is taking away by court intervention, by a panel or whatever, the right of working men to strike. It is not something in the history of this country that anyone takes away lightly.

We are saying that the only permissible application at this juncture is on the national level where there is a national emergency in this industry, which has been, to my knowledge, a most troublesome of industries.

Certainly a regional strike, a local strike, an individual strike of an employer has fallout for individuals who are not involved in the controversy. There are always secondary effects. There are always impacts upon the community. There are always economic disadvantages to innocent people, not just to the parties involved.

What we are talking about is balancing the rights of the people collectively to withhold their labor against the admittedly dreadful inconvenience to innocent people.

Senator PACKWOOD. Let us put aside for a moment the national strike. We are talking about the transportation industry. We are not talking about the auto industry, only the transportation industry.

What you are saying is that the severity must be felt totally and nationwide. If the impact is only two-thirds or one-third, it is no-go. It has to be national.

Mr. EHRLICH. We are saying there has to be an effect upon the national welfare.

Mr. SMETANA. The President has determined, I think, in this situation—and I don't think it was this President—and the courts agreed that a regional emergency can have a national effect and can have painful human and economic impact on the health and safety of the country.

If the President so recommends and the courts so determine, then, yes, I would agree with you. That could occur if a particular region of the country is in fact experiencing economic hardship.

But perhaps it is not that severe. Although it is very severe, it may not be quite at the level that the courts or the President would agree with them that it is a national emergency.

Mr. EHRLICH. But this is a judicial determination that has to be made by the determination of the President and the judicial process.

Senator PACKWOOD. What you are saying is that one-third of the country must suffer because it is not national.

Mr. EHRLICH. We are not saying what is a national strike as a definitional matter. We are suggesting a mechanism which should be imposed by Congress to enable a resolution of these disputes.

Senator PACKWOOD. I understand what you are saying. I think we just have a disagreement. Frankly, I don't like the concept, the definition of national health and welfare which excludes regional emergencies.

Mr. SMETANA. I think that is true, and I think we can all work out a better definition of national health and welfare.

But the beauty of having one that is so difficult to apply is that maybe we can have collective bargaining work. The whole exercise, I would hope, is that collective bargaining is the mechanism we are trying to save here and not just trying to impose solutions. There is no question about it. Australia at one point indicated that compulsory arbitration was the best way to go. Today it is not working and they are going back to free collective bargaining. I would hope that we can make free collective bargaining work.

Senator PACKWOOD. I have no further questions.

Senator STEVENSON. Under your proposal wouldn't the losing side appeal and, therefore, would not the process get dragged out even longer under the administration suggestion?

Mr. SMETANA. I would hope the first time this process would be used would be the last time if it became the law. I think no party wants to be on the losing end of something he had no say in. Therefore, it seems to me that the first time a selection is made, whether it be in favor of management or union, that is not their selection. I would hope that that would be the lesson that will encourage the others not to resort to the process and, rather, work the problems out themselves. There is

no reason that the parties cannot work the problems out. If we know it must be worked out, it can be done. The only reason it is not done is because there is always someone else who can do it and from whom the parties feel they can get a better deal.

If we stop believing we will get a better deal from the next tribunal, we will sit down and reach agreement. That is the aim of bargaining.

Mr. EHRLICH. Senator, as I understand your question, it makes the assumption that the threat of imposition of the resolution through final offer selection will not act as a catalyst. Then there is the question of the time consumed in the judicial process.

The proposal that the ARF has made here is that the specially convened court will render a decision within 30 days. That decision, of course, subject to what happens on appeal, is the solution, and the effect upon the national health and welfare is at that juncture terminated, subject to what happens on appeal. We assume the appeal procedure would be expeditiously undertaken by the Supreme Court.

In any event, I think it would be faster than the board of arbitration which was convened in either of the two instances that Mr. Mittelman refers to, the firemen's dispute or the other dispute. Those were resolutions which the parties complied with, but I don't think they were particularly expeditious resolutions, if my memory serves me correctly.

Mr. SMETANA. Isn't this the example of why an orderly process would be preferred? Under the system that the ARF suggests, when it gets to the Supreme Court, that would be the last time. In other words, there would be a two-step judicial decision. The very reason for that is the fear that we have articulated in our statement; that the labor lawyers on both sides are extremely imaginative and they will find ways of getting to court in one way or another and there will be many appeals.

Under this proposal the appeal will not just be a declaratory decision or declaratory judgment, but the appeal will result in a contract. Once the court speaks finally the parties will be bound, unless they choose to disobey the court.

Mr. MITTELMAN. It seems to me you could have the same thing within the one or two stages with the kind of scheme you are suggesting. I think it is true that your proposal does short cut a few of the usual stages of litigation, but I think you have to balance that against what I would consider the better acceptability and greater experience which awards of lay arbitrators would bring to bear.

Mr. SMETANA. I think this answers Senator Stevenson's question. This would be the most expeditious way of resolving the matter, although it would not provide all of the normal means of doing so.

Mr. MITTELMAN. If you just look at the litigation part of it, I think there is some probability that yours might be shorter, just in terms of litigation.

Mr. EHRLICH. I think one other avenue should be considered; that is, what kinds of resolutions are being made.

There are certain resolutions that are clearly judicial and they are what are the questions which are included within the framework of mandatory bargaining as a matter of law under Taft-Hartley, whether or not this constitutes a national emergency affecting the health and welfare. Then there is the body of expertise which is essentially an economic expertise.

That, I believe, is what Mr. Mittelman is addressing himself to with respect to lay arbitrators. That last point.

I think some consideration should be given to what the nature of that kind of economic expertise is and its impacts upon the national economy and whether that kind of expertise is uniquely confined to arbitrators in the private sector or whether in fact it is not found on a comparable basis in the Federal judiciary.

Our view is that the latter body of expertise is at least comparable, has a higher degree of acceptability and provides a more rapid mechanism for the resolution of this.

Certainly the parties will abide by any decision, no matter what tribunal renders it. The question is whether or not it provides a future mechanism for voluntary resolutions, for example, and assists in fostering free collective bargaining between the parties without an imposed settlement and whether the public whose rights are being affected, because it does not affect their national health and safety, have a body of men rendering decisions in whom they place the greatest reliance. That is essentially what we are saying, gentlemen.

Senator STEVENSON. I have no further questions, Mr. Chairman.

The CHAIRMAN. We have had a good thorough discussion, Senator Taft.

Senator TAFT. Mr. Chairman, let me make a brief statement, if I may. Last week, as members of the committee know, I offered an amendment to the Economic Stabilization Act which would have given the Secretary of Labor additional tools with which to attempt to combat territorial and national emergency-type strikes. Yesterday, I introduced a revised version of this bill essentially patterned on that amendment.

Because I was chairing a hearing this morning on the Select Committee on Nutrition and Human Needs, I regret I was not able to participate up to this point. I look forward to a continuation of these hearings on Thursday when the Secretary of Labor will testify; I was happy to join in the personal invitation to him which the chairman proffered after our discussion on the floor.

It is my judgment that we have waited too long in trying to develop some better way to handle these national and territorial emergency strikes. I am hopeful that the committee will bring out some type of legislation to try to correct this situation. It was pointed out last week on the floor that not only are millions of dollars being lost, but also the public is suffering to a great extent.

I don't believe we can just give up because the problem is difficult and complex. I think it is one that can be improved upon and on which we ought to be moving. I have no further questions, Mr. Chairman.

The CHAIRMAN. I appreciate that. I didn't realize another bill had been introduced by the Senator from Ohio. This is further evidence of the complexity. This is the third bill he has introduced.

Senator TAFT. It is basically the same bill, but the chairman is certainly correct that there are very difficult and technical problems involved, especially with the last offer procedure. We came upon some ideas which we thought were improvements in this and incorporated them in the new bill, S. 2959. Otherwise the bills are almost identical.

The CHAIRMAN. We did have a discussion of another approach to final offer here through a three-man court as set out in the statement.

If you could review that while we have our next witness and if you gentlemen could stay here, perhaps you might want to inquire as to it later. While you didn't read your entire testimony, it is all in the testimony, is it not?

Mr. SMETANA. Yes.

(The prepared statement of Mr. Smetana follows:)

Our view is that the latter body of experts is at least comparable to the former body of experts in the field of monetary and economic policy. It is a matter of degree of responsibility and provides a more responsible basis for the resolution of the problem.

It is my judgment that we can't wait too long in trying to develop some better way to handle the national and financial emergency. I am hopeful that the committee will bring out some type of legislation to try to correct this situation. It was pointed out last week on the floor that not only are millions of dollars being lost but also the production of goods is being curtailed.

I don't believe we can make any progress because the problem is difficult and complex. I think it is one that can be handled only by the Government. I have no further questions, Mr. Chairman.

The Chairman: I appreciate it. I think I will have a number of questions introduced by the Senator from Ohio. This is further evidence of the complexity of this problem and will be introduced.

Senator Tamm: It is especially the responsibility of the committee to correct the situation and to solve the national and financial problems. I am sure that the committee will bring out some type of legislation to try to correct this situation. It was pointed out last week on the floor that not only are millions of dollars being lost but also the production of goods is being curtailed.

The Chairman: We did have a discussion of another approach to the problem through a bill and about as set out in the statement.

STATEMENT OF GERARD C. SMETANA
ON BEHALF OF THE AMERICAN RETAIL FEDERATION
BEFORE THE
SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE
SUBCOMMITTEE ON LABOR
(December 7, 1971)

My name is Gerard C. Smetana. I am Labor Relations Counsel of Sears, Roebuck and Co. I appear here today on behalf of the American Retail Federation. I have had the opportunity to focus on the continuing problems of labor management relations as a contributing editor to "The Developing Labor Law" published this year by the Labor Law Section of the American Bar Association; in a statement I presented to the Senate Subcommittee on Separation of Powers, Committee on the Judiciary of the United States, during the hearings on Congressional Oversight of Administrative Agencies; as a lecturer at the University of Chicago, Graduate School of Business Administration; and as a speaker at the Northwestern University School of Law Seventh Annual Corporate Counsel Institute; and, most recently, in testimony which I presented to this Subcommittee during its hearings on proposed Equal Employment Opportunity Commission enforcement legislation.

The American Retail Federation, upon whose behalf I appear today, is an organization comprised of fifty state and twenty-nine national retail associations. The membership of these associations consists of a wide variety of retail businesses ranging in size from a small local store to large national chains, representative of all aspects of the retail industry and totalling in excess of one million retailers throughout the country. The Employee Relations Committee of the American Retail Federation is drawn from the various retail associations which make up the Federation and from individual companies, both large and small, which are individual members of the Federation.

I am Chairman of a subcommittee of the Employer Relations Committee which has made a detailed inquiry into the wisdom of legislation dealing with strikes in the transportation industry which cause national emergencies. The product of my subcommittee's work was the development of a recommendation which was submitted to the full membership of the Federation. The membership overwhelmingly approved this recommendation which then became the official policy of the Federation. It is thus the position of a large segment of American employers that I present for your consideration today.

INTRODUCTION

The impact upon retailers of national emergency strikes in the transportation industry cannot be overstated. We are among the largest users of transportation services in the country. Nearly every item of every nature purchased by an ultimate consumer is purchased from a retailer. The vast majority of the goods we sell are brought to our places of business by public transportation. Therefore, any interruption in transportation services has an immediate adverse impact upon all retailers, and through them, all members of the public who shop at retail facilities.

Certainly the effect of a strike in the transportation industry which would be of sufficient magnitude to be considered a national emergency would, of necessity, have a crippling effect upon all members of the Federation and in some instances would preclude our members from staying in business. Notwithstanding this potential peril, the Federation has an abiding commitment to the concept of free collective bargaining and any mechanism which threatens the operation and effectiveness of that institution is a matter of utmost concern.

Therefore, as employers who stand imperilled by the effects of national transportation strikes, and as citizens who have a deep and continuing concern for the formulation and administration of national labor policy, we wish to advance our views with respect to the legislation endorsed by the President and offer some alternatives for consideration by this Committee.

THE NATURE OF THE PROBLEM

The devastating impact of national strikes in the transportation industry is generally acknowledged and there is a continuing concern that such a crisis will from time to time again confront the country. The current legislation which attempts to avoid such catastrophic economic upheavals simply does not work. The effect of such breakdowns in the administration and operation of our labor laws has required Congress on an ad hoc basis to pass emergency legislation to quell the chaos which results from nationwide transportation stoppages. While it is clear that a mechanism must be devised which will relieve Congress from this periodic burden and effectively preclude national transportation strikes, it must be recognized that the problems of the transportation industry are representative of the type of problems which create an imbalance in power in day-to-day labor relations.

As example, no one can deny that one of the major issues which has repeatedly caused disruptions in the railroad industry is the area of "work preservation". This problem, however, is not unique to the railroad industry. In the National Woodwork case,^{1/} a divided Supreme Court affirmed the Labor Board's decision which, in effect, repealed Section 8(e) of the Taft-Hartley Act, which sought to bar contracts which would prohibit any employer "...from handling...any of the products of any other employer...". The National Woodwork decision upheld the legality of a clause which the Carpenters Union had obtained in an agreement with a Philadelphia contractors association which provided that the contractors could not use pre-cut and pre-fitted doors. The effect of that specific decision in that particular case was that the savings which the building contractors could have achieved by purchasing prefabricated doors could not be realized by the contractor and through him, presumably, the customer. The end result, of course, is that the economy may not prosper as a result of improved technology whenever a labor organization is strong enough to negotiate a clause which prohibits increased productivity through the utilization of new

^{1/} 386 U.S. 612 (1967).

or better technology. The ensuing frustration of the incentive for achievement, hindrance of economic development, and ultimate disservice to both labor and management emanate directly from an application and interpretation of the National Labor Relations Act.

Time and again both management and labor have voiced frustration and anger with the various problems in the administration of the National Labor Relations Act. Congress has not been unmindful of these complaints and has from time to time made inquiry into the operations of the National Labor Relations Board. However, this committee of the Senate, which offers the only opportunity for realistic legislative change, has failed to act in this vital area. We therefore urge this committee to continue these hearings or convene special hearings to deal with the wider problem of imbalance of power under the National Labor Relations Act.

Let us now return to the problem before us today. The American Retail Federation has undertaken an in-depth study of the President's proposed Emergency Strike Legislation and we take this opportunity to present our analysis for your consideration. Since our analysis compels rejection of certain of the Administration's proposals, we have undertaken to suggest

affirmative proposals which, we believe, will best facilitate the objectives sought by the Administration. However, before presenting these proposals, it is only proper to place the specific problem of national transportation strikes in proper perspective.

It must be borne in mind that national strikes in the transportation industry are noteworthy for their severity rather than their frequency and therefore legislation predicated upon realistic concern cannot, with propriety, exceed the scope of the problem to which it is addressed. Legislative intervention which by its nature circumscribes the rights of the parties to formulate their own solutions through the collective bargaining process must be carefully drawn so as to insure that the rights of the parties are infringed upon no more than is absolutely necessary to the preservation of the public interest.

By so stating, we wish to underscore our belief that any legislative extension which infringes upon the rights of the parties in other than the transportation industry would not be an acceptable alternative to current collective bargaining practices. Similarly, we find insupportable legislative proposals which would extend emergency strike legislation to regional disputes. Historical precedent does not support a conclusion

that such intervention is warranted to protect the public health and safety. Likewise, no philosophic rationale has come to our attention which would invite an abandonment of collective bargaining which has been for so many years in the past, and is today, the cornerstone of industrial relations in the United States.

An alternative which has been suggested in some quarters to deal with national emergency strikes is compulsory arbitration. We strenuously oppose any such approach. With whatever trapping such a proposal may be advanced, the end result is always that a third party substitutes his wisdom for that of the parties who must live under the conditions specified in the arbitrator's edict. Such a procedure makes a mockery of the bargaining which precedes the compulsory arbitration. It would require workers to give up the right to strike and employers the right to manage.

Notwithstanding our fundamental opposition to variances in the free collective bargaining process such as those suggested in all schemes of compulsory arbitration and those which would extend emergency strike legislation to industries other than transportation, we are not unmindful of, or in disagreement with,

the current need for innovative thought addressing itself to the problems of the transportation industry. Let us now turn to the President's proposal and specific recommendations which the Federation feels can more fully solve potential problems in that industry.

THE PROBLEMS WITH THE PRESIDENT'S PROPOSAL AND THE FEDERATION'S AFFIRMATIVE ANSWER

A. The President's Proposal

The mechanics of the President's proposal are relatively simple. The Act would grant to the President new authority to deal with national emergency disputes in the railroad, airline, maritime, longshore, and trucking industries. It would operate in the following fashion:

1. The Bill would abolish the emergency strike provisions of the Railway Labor Act (which now govern railway and airline disputes) and make all transportation industries subject to the "national emergency" provisions of the Taft-Hartley Act.
2. The Bill would amend the Taft-Hartley Act to give the President the following three new options in the case of any national emergency dispute in the transportation industry

which is not settled in the 80-day "cooling-off" period.

- (a) The President could extend the "cooling-off" period for an additional 30 days.
- (b) The President could empanel a special Board to determine if partial operation of the industry is feasible, and if so, to set out the boundaries for such an operation. The effect of such a determination, which would, of course, result in a partial strike or lockout, could not extend beyond one hundred and eighty (180) days.
- (c) The President could invoke a "final offer selection" alternative. This alternative would operate to provide that if the parties have not reached agreement after expiration of the "cooling-off" period, they be directed to submit their final proposals for a contract to the Secretary of Labor. After the submission of these offers, a mandatory five day period of bargaining would take place during which the services of the Secretary of Labor would be available for purposes of mediation.

If, at the end of this five day period no agreement had been reached, the parties would be given two additional days to select, by mutual agreement, a three member Final Offer Selection Board. If, within the two days the parties were unable to reach accord on the composition of the Board, then it would be selected and empaneled by the President. The sole function of the Board would be to select, without modification or attempts at mediation, one of the previously submitted offers. This choice must be made within thirty days from the President's initial direction to the parties to submit their final offers. The offer thus selected would then represent the terms of the collective bargaining agreement governing the parties.

B. The Federation's Analysis of the Presidential Proposal

1. Abolition of the Emergency Strike Provisions of the Railway Act.

The Federation agrees with the Presidential recommendation seeking to abolish the emergency strike provisions of the

Railway Labor Act. We further agree that the railways and airlines which are presently subject to that provision of the Railway Labor Act should be placed under the national emergency provisions of the Taft-Hartley Act. The affect of such legislation would be to insure a uniformity in the treatment of national emergencies in all aspects of the transportation industry. Further, railroads, the most troublesome industry from the standpoint of national emergency disputes, would thereby be regulated under the provisions of the Act which has historically proven to be most effective in coping with such situations.

2. Extension of the "Cooling-Off" Period

The President's proposal would allow for the extension of the "cooling-off" period for an additional thirty days. Although, in the manner and for the reasons hereinafter specified, we agree to the continued utilization of a "cooling-off" period, it must be recognized that at best such a procedure has met with limited success and that a substantial body of thought concludes that, by and large, any "cooling-off" period accomplishes no good whatever.

Exemplary of this view is the expression found in the November 27, 1971 edition of the New York Times where the

editorial writer, speaking to the issues created by the dock strikes on the Atlantic and Gulf Coasts stated that,

"Ever since passage of the Taft-Hartley Act in 1947, a court order to end strikes has been almost automatic accompaniment of the expirations of agreements between the International Longshoremen's Association and the dock employers. And, with only slightly less regularity, the strike resumed as soon as the eighty-day "cooling-off" period ran out."

The editorial went on to point out that in this instance, unlike the circumstances of prior dock strikes, the Administration had let the strike run for nearly two months before deciding that its impact on the economy necessitated injunctive relief. Thus, the normal collective bargaining process of allowing the parties to mutually suffer the impact of the strike also failed. This state of affairs, the New York Times concluded,

"...indicates anew the need for fundamental overhaul of the nation's statutory curbs on crisis strikes. On the West Coast, where a similar Taft-Hartley injunction is already in effect, two-thirds of the "cooling-off" period has gone by and no glimmering of a settlement is reported. Some form of binding arbitration is needed to bring final resolution of such disputes, in which the public eventually and inevitably becomes the prime victim."

Our view of the potential good to be realized from the utilization of a "cooling-Off" period is less bleak than that expressed by the New York Times. However, we do find ourselves in substantial agreement with the position asserted by the American Bar Association Special Committee On National Strikes in the Transportation Industry, which opposed any extension of the "cooling-off" period on the grounds that "...the extension of the 'cooling-off' period is likely to be unnecessary or, if used, to be ineffective." As the American Bar Association Committee pointed out, if the parties are close to agreement, they would probably agree to extend the no-stoppage period. On the other hand, if they are far apart at the end of the 80-day "cooling-off" period, it is unlikely that an additional thirty days at that stage would produce an agreement. However, as specifically set forth in the Federation's proposal hereinafter, we do agree that a 10-day "cooling-off" period should be provided to the President prior to convening of the Final Offer Selection Tribunal.

3. Partial Operation of an Industry

Similarly, we oppose the alternative recommended by the President for the empancling of a special board to determine

if partial operation of the affected industry is feasible. Again, our opposition parallels that articulated by the American Bar Association. These oppositions may be summarized as follows:

- (a) If the special Presidentially-appointed board determines that partial operation is not feasible, then the President is not authorized to invoke any other procedure to handle the dispute. This lack of alternative could well subject the nation to an actual stoppage which is the very result which the invocation of the procedure sought to avoid.
- (b) The relatively short period of time granted to the special board for determination of the feasibility of partial operation necessarily entails the risk of either a determination to employ that procedure without adequate consideration of the difficulties involved or rejection of the procedure because of inadequate time to identify and deal with such difficulties.
- (c) The invocation of such a procedure would, in all probability, restrict the parties

who will spend the thirty days arguing the merits, demerits, and procedures for partial operation while they could be bargaining.

4. Final Offer Selection

The other alternative proposed by the President involves "final offer selection". Conceptually, this alternative has significant appeal. There are, however, three basic areas in which the Administration's recommendation for utilization of the "final offer selection" process can and should be materially strengthened:

- (a) The Administration's proposal establishes no parameters governing what matters could and could not be included in a final offer. Therefore, for example, a union might make an offer which in every other regard was fair and reasonable, but which included a provision requiring that three of its members be seated as non-voting members of the board of directors of the company with which it was bargaining. If, in this example, the company's offer were less fair

and reasonable, then presumably the union's final offer would be selected and would become the contract between the parties. Such a result is not consistent with what the union could obtain at the bargaining table. A failing in the Administration's proposal is to limit matters which become subject to final offer selection to mandatory subjects of collective bargaining.

- (b) The President's recommendation for "final offer selection" would transfer solution of national emergency strike problems from the Legislative Branch of the Government to the Executive Branch. We would suggest consideration of the Judicial Branch to fulfill this responsibility. Fiorella LaGuardia, in testimony before this Committee on March 18, 1947, when the problem of national emergency strikes was then being considered, raised some words of caution in the use of lay arbitrators to resolve these problems which are very pertinent today. His suggestion at that time was the creation of

a three-man lifetime labor court designed to have the stature of the Supreme Court. It was his position in reviewing the idea of lay arbitrators that the judges not only be appointed for long terms, but be prohibited from returning to their previous prior endeavors or in any way involving themselves for a long period of years in the labor-management equation. We essentially agree with this analysis of Mayor LaGuardia. While we do not agree either that a lifetime court is required or that it should have the power of compulsory arbitration, we fully subscribe to his view that some use of the Judiciary to overcome the problem of the acceptability of the decision of three laymen in resolving a national emergency dispute must be entertained. We see no need to create a special Judiciary. We would suggest that we may simply turn to the existing Courts of Appeal judges who in their day-to-day lifetime work consider, by way of appeal, a vast number of labor matters arising from the

Railway Labor Act, the National Labor Relations Act and collective bargaining agreements.

- (c) The Administration's proposal does not provide for a statement of reasons as to why the chosen final offer was selected or provide review of the panel's decision. Even if the Administration's proposal were amended to require that the lay arbitrators limit the area of inquiry to the mandatory subjects of bargaining and give reason why the last best offer they selected was the most reasonable, the dissatisfied party would very likely seek some legal avenue of review not only of the judgment but also of whether or not what the arbitrator considered to be outside the scope of mandatory bargaining was correct. To achieve the stature and respect of final solutions in matters of national emergencies, we believe that utilization of the United States Supreme Court as a last resort is imperative. We would

anticipate that the circumstances under which the court will be compelled to act would be extremely rare. A further failing in the Administration's proposal is that no provision is made for appropriate Judiciary relief to the parties during the period when the various final offers are being considered by the selectors. While the propriety of the parties' position are being considered, some avenue for maintaining the status quo after the 80-day "cooling-off" period must be provided.

- (d) We agree with the innovative concept of final offer selection and that the selection must occur within a fixed period of time. We would also agree that thirty days is a reasonable period.

C. The Federation's Proposal: Final Offer Selection by the Judiciary

The foregoing analysis has led us to the following affirmative recommendation which we submit for your consideration.

If the parties are still in disagreement at the conclusion of the 80-day "cooling-off" period, the President should be given the option of a short-term extension of the "cooling-off" period not to exceed ten days during which he could use the persuasive powers to aid the parties in reaching agreement.

During this period, the only other option the President will have is to call upon the Chief Justice of the United States Supreme Court, who in turn shall promptly select and convene a three judge court composed of three active judges of the Courts of Appeal of the United States. This three judge court should sit as a court of original jurisdiction. It should have general equity powers enabling it to assist the parties in mediating the dispute and with the power to issue whatever injunctive relief is necessary and consistent with sound jurisprudence. ^{2/}

^{2/} On September 14, 1971, the American Retail Federation presented testimony before the House Transportation and Aeronautics Subcommittee in the hearings which that body was then conducting relative to proposed legislation dealing with the emergency strikes in the transportation industry. The position taken by the Federation at that time parallels the testimony presented here today. During the course of our testimony before the House Subcommittee, we were asked whether the plan which we proposed for resolution of national emergency strikes in the transportation industry was Constitutionally permissible. In response to that inquiry we presented a Memorandum, which we have attached hereto as Exhibit A.

This court should be imbued with further limited power, if the parties are not able to agree, to render a judgment that will impose upon the parties the last offer of either of the parties. Such a judgment should be rendered within thirty (30) days from the date upon which the court is convened. In making such a judgment, it should be incumbent upon the court to choose whichever offer is most reasonable under all of the circumstances. In choosing the most reasonable offer, a court should be specifically limited to the consideration of only mandatory subjects of collective bargaining under the National Labor Relations Act.

It should be further provided that the court must issue findings of fact and conclusions of law upon which it has based its judgment on selecting the particular final offer. All decisions of this three man court shall be immediately appealable to the Supreme Court of the United States.

The utilization of a specially created three judge court to be designated by the Chief Justice of the United States Supreme Court from members of the Federal Judiciary has most recently found favor in S. 2891 which addressed itself to the extension, strengthening and implementation of the Economic Stabilization Act of 1970. The enforcement mechanism created by S. 2891 to implement Phase II of the President's economic policy conceptually parallels the proposals we have made for the resolution of national emergency strikes in the transportation

industry. Although S. 2891 places initial adjudicatory responsibility in federal district courts with appeal rights to the specially constituted three judge court, our view is that the limited number of instances in which the special three judge federal court would be required to make final offer selection and the need for both speedy decisional and appeal process in emergency strike resolutions require that these matters be heard, in the first instance, by the specially convened three judge court.

CONCLUSION

On behalf of one of the largest transportation users in the United States, we wish to thank the Committee for this opportunity to participate in your deliberations seeking to find a solution to the problem of national transportation strikes. We believe that our plan for final offer selection by the Judiciary can form the basis for a lasting solution to this problem which confronts us all.

EXHIBIT A

MEMORANDUM OF OPINION

IN RESPONSE TO INQUIRIES OF THE HOUSE COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE, SUBCOMMITTEE ON
TRANSPORTATION AND AERONAUTICS
CONCERNING

THE LEGAL AND CONSTITUTIONAL SUFFICIENCY OF THE
PROPOSED LEGISLATION FOR RESOLUTION OF NATIONAL
EMERGENCY DISPUTES IN THE TRANSPORTATION INDUSTRY

PRESENTED BY GERARD C. SMETANA
ON BEHALF OF
THE AMERICAN RETAIL FEDERATION

I. INTRODUCTORY

On September 14, 1971, Gerard C. Smetana appeared before the House Committee on Interstate and Foreign Commerce, Subcommittee on Transportation and Aeronautics, on behalf of the American Retail Federation, to present testimony concerning the President's proposed legislation for dealing with national emergency disputes in the railroad, airline, maritime, longshore and trucking industries, and as a part of that testimony presented the American Retail Federation's proposal for "final offer selection" by the judiciary rather than by the executive branch as proposed by the President. During the course of that testimony Congressman John Dingell raised questions concerning the existence of any constitutional impediments to implementation of the proposed legislation, and inquired particularly as to whether or not an action brought pursuant to the provisions of the proposed legislation would satisfy the "case or controversy" requirement of the Constitution of the United States for actions brought before the federal judiciary. This memorandum is submitted pursuant to the request of the Subcommittee and in response to those questions.

By way of summary, the Federation's proposal provides that at the conclusion of the Taft-Hartley eighty day "cooling-off"

period, the President can extend said "cooling-off" period for a maximum additional period of ten days, during which time the President could use his persuasive powers to aid the parties in reaching agreement. Thereafter, in the event the parties fail to voluntarily settle the dispute, the President, either during the 10-day extension or immediately upon its conclusion, shall call upon the Chief Justice of the United States Supreme Court, and request the Chief Justice to promptly select and convene a three judge court composed of three active judges from any of the existing Circuit Courts of Appeals of the United States. Upon the convening of such court, the Attorney General of the United States shall file a complaint with the three judge court with notice and service of process of the complaint made upon the parties to the dispute. The complaint shall allege that the actual or threatened strike or lockout gives rise to a national emergency which, if permitted to occur or continue, would imperil the national health, welfare, safety or interest. This three judge court would sit as a court of original jurisdiction with general equity powers, enabling it to assist the parties in mediating the dispute and to issue necessary injunctive relief to prevent either party to the dispute from resorting to self-help. Moreover, the court shall have the power to compel the parties to the dispute to submit to the court, in writing, their final proposals for a contract

concerning the rates of pay, wages, hours of employment and other conditions of employment, the totality of which shall serve as if it were the collective bargaining agreement between the parties. If, however, the court is unable to successfully mediate a voluntary resolution of the dispute, it shall have the further power to render a judgement within a period of time not to exceed thirty days from the date it is initially convened, imposing upon the parties the "final offer" of either of the parties. The decision and order of this three judge court shall be directly reviewable in the Supreme Court of the United States by appeal.

A. Issues

Three legal questions are suggested as a consequence of the proposed "final offer selection" by the Judiciary, none of which present any legal or constitutional impediment to the implementation of the proposed legislation:

- (1) Whether Congress can constitutionally constitute a three judge court in the manner proposed and invest said court with original jurisdiction to hear the matter and resolve the dispute by the court's selection of one of the "final offers" submitted by the parties;

- (2) Whether the dispute before the three judge court so constituted is properly within the jurisdiction of the United States judiciary pursuant to Article III of the United States Constitution;
- (3) Whether the Chief Justice of the United States can be invested with the authority to select the three circuit court judges to sit on the court.

II. CONGRESS HAS THE POWER TO ESTABLISH INFERIOR FEDERAL COURTS - EITHER CONSTITUTIONAL OR LEGISLATIVE

Article III, Section 1 of the Constitution of the United States provides:

"The judicial power of the United States shall be vested in one supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish."

Other than the creation of the Supreme Court of the United States, the Constitution does not itself establish any inferior federal courts. Specifically, the Constitution provides that it is the function of Congress to create all other federal courts deemed necessary. In the exercise of this function, Congress has the authority and has exercised its authority to create "inferior federal courts." The most common example of courts created pursuant to the constitutional authority granted Congress are the 93 presently existing

United States District Courts and the United States Circuit Courts of Appeals. Such courts derive their powers directly from Article III of the Constitution and are alternatively designated as "constitutional" or "Article III" courts.

The judicial power of these courts is limited by Article III, Section 2, Clause 1 of the Constitution to consideration only of "cases" or "controversies".^{1/} Provided the constitutional requirement of "case" or "controversy" is met, the Constitution presents no obstacle to (1) the creation by Congress of any inferior federal courts, or (2) the investing of courts so created with whatever jurisdiction it deems necessary and appropriate, Lackey v. Phillips, 319 U.S. 182 (1943). In addition, Congress may grant, withhold, restrict, modify, or withdraw entirely such jurisdiction in its discretion and may vest exclusive, concurrent and/or original jurisdiction in any federal court over causes arising under a federal statute.

Taylor v. Brown, 137 F.2d 654 (Em. App. 1943).

However, judicial interpretation of Congress' authority to create courts have upheld the power of Congress to create and establish courts whose considerations do not conform to the constitutional requirement of "case" or "controversy". Such courts are commonly designated as

^{1/} The constitutional requirement restricting jurisdiction of the federal judiciary system to adjudication of "cases" or "controversies" is discussed, infra, at pp. 14-24.

"Legislative courts" and neither derive their authority from, nor are restricted by, the provisions of Article III, Section 2, Clause 1, of the Constitution.

Constitutional courts differ from Legislative courts in two major respects. First, judges of Constitutional courts receive the protections afforded by Article III in that they hold their offices during good behavior and their compensation cannot be diminished during their continuance in office. Judges of Legislative courts do not enjoy this constitutional protection and Congress can, in its discretion, grant judges of Legislative courts whatever tenure and remuneration it deems appropriate and necessary in aid of the purposes for which the court was established and similarly, can reduce such tenure and remuneration in like manner. Williams v. United States, 289 U.S. 553 (1953); McAllister v. United States, 141 U.S. 174 (1891).

The second fundamental distinction between the two courts is that Constitutional courts, unlike Legislative courts, can be invested with and exercise only judicial power invoked in a justiciable case or controversy. They cannot render advisory opinions or consider cases which, by their nature, are moot or present only hypothetical questions for determination. Muskrat v. United States, 219 U.S. 346 (1911); In re Summers, 325 U.S. 561 (1945); United States v. I.C.C., 337 U.S. 426 (1949).

A further derivative distinction exists between the two types of courts flowing from the constitutional restriction placed on constitutional courts to hear only justiciable cases or controversies. The judgments of constitutional courts are not subject to legislative or executive revision. See, Hayburn's Case, 2 Dall. 409 (1792) and Old Colony Trust v. Commissioner, 279 U.S. 716 (1929). This rule, though not directly expressed in the Constitution, has ancient antecedents and was implemented in order to preserve the constitutionally mandated separation of governmental functions. Its effect is to forbid the imposition by any other branch of government of non-judicial functions on constitutional judges, Hayburn's Case, supra. However, since, as described, Legislative courts are not restricted to adjudication of only justiciable cases or controversies, there exists no similar restriction upon them from performing whatever functions Congress legislatively provides. Williams v. United States.

The dichotomy created between these two distinct types of courts originated in American Insurance Co. v. Canter, 1 Pet. 511, 7 L. Ed. 242 (1828) over the question of the status and jurisdiction to be granted to the congressionally created courts for the then territory of Florida. The United States Supreme Court was presented with a practical problem of how to uphold the jurisdiction of the courts in the territory

in view of the congressional restriction imposed upon the judges of the territorial courts that they hold office for only four (4) years and not for life as provided in the Constitution. The Supreme Court could not establish them as Constitutional courts without violating the express Constitutional mandate that justices retain permanent tenure and protection from diminution of salary. Nor could the court sua sponte override Congressional intent and grant them these protections.

In resolving this dilemma, the court referred to Article IV, Section 3, Clause 2, of the Constitution, which relates to the powers of general sovereignty and Chief Justice Marshall declared:

"These (territorial) Courts, then, are not constitutional courts, in which the judicial power conferred by the Constitution on the general government can be deposited. They are incapable of receiving it. They are Legislative Courts, created in virtue of the general right of sovereignty which exists in the government, or in virtue of that clause which enables Congress to make all needful rules and regulations, respecting the territory belonging to the United States. The jurisdiction with which they are invested, is not a part of that judicial power which is defined in the 3rd Article of the Constitution, but is conferred by Congress, in the execution of those general powers which that body possesses over the territories of the United States..." 2/

Although Legislative courts were initially created to provide a judicial system to be utilized in the territories of

2/ American Ins. Co. v. Canter, 1 Pet. 511, 546, 7 L.Ed. 242 (1828).

the United States, the uses to which Legislative courts were subsequently put were not so restricted. In Ex parte Bakelite Co., 279 U.S. 438, 451 (1929), the Supreme Court held that,

"Legislative courts also may be created as special tribunals to examine and determine various matters, arising between the government and others, which from their nature do not require judicial determination and are not susceptible of it. The mode of determining matters of this class is completely within congressional control. Congress may reserve to itself the power to decide, may delegate that power to executive officers, or may commit it to judicial tribunals."
(Emphasis supplied)

Subsequent to the Supreme Court's decision in the Canter Case, Congress has exercised its authority to create legislative courts. For example, in response to legislative agitation which followed the creation of the Interstate Commerce Commission in 1887, in 1910 Congress created the Commerce Court ^{3/} and invested it with original jurisdiction to determine the validity of most orders issued by the Interstate Commerce Commission. In creating the Commerce Court, a Legislative court, Congress withdrew and thus diminished the jurisdiction over such matters previously invested in the United States Circuit Courts of Appeals, Constitutional courts, and provided that appeal from the decisions of the Commerce Court could be taken directly to the United States Supreme Court.

^{3/} Act of June 18, 1910, Ch. 309, 36 Stat. 539.

Another example of congressional exercise of its powers to create Legislative courts can be found in its creation of Consular courts in which Congress invested American ministers and consuls with extensive jurisdiction over American citizens abroad in matters of criminal and civil jurisdiction.

Since the distinction between Legislative and Constitutional courts primarily involves only the types of matters allowed to be heard and the tenure and salary of judges sitting on each respective type of court, as opposed to the required qualifications of such judges, the assignability of judges from Constitutional courts to Legislative courts and vice versa has been held valid. In Glidden Co. v. Zdanok, 370 U.S. 530 (1962), the Court held that active and retired judges of the Court of Claims and the Court of Custom and Patent Appeals ^{4/} could validly be assigned to sit as members of the Federal District Courts and United States Circuit Courts of Appeals. In Irish v. United States, 225 F.2d 3 (CA 9, 1955) the court upheld the assignment of a judge from the territorial district court of Hawaii - a Legislative court - to sit as a justice on the United States Circuit Court of Appeals for the Ninth Circuit - a Constitutional court.

^{4/} In 1956 and 1958, respectively, Congress declared both these courts, which had formerly been adjudged as legislative courts by the Supreme Court, to be constitutional courts. Glidden held that there was not impediment to the appointment of judges of these courts to constitutional courts notwithstanding the fact that they had formerly sat as legislative justices.

Thus, within the framework of the proposed legislation, there is no impediment to the utilization of active judges from among the existing Circuit Courts of Appeals to sit as judges on the three judge court provided in the legislation. This conclusion is valid regardless of whether the court so created is deemed Legislative or Constitutional.

With particular regard to Constitutional courts, as described, Article III, Section 1, grants Congress the authority to create inferior federal courts. However, Congress cannot confer upon these courts any jurisdiction beyond the cases to which the judicial power of the United States extends pursuant to Article III, Section 1 and Article III, Section 2, Clause 1 of the Constitution. International Brotherhood of Teamsters, Local 25 v. W. L. Mead, Inc., 230 F.2d 576 (CA 1, 1956).

Therefore, provided that the constitutional requirement of "case" or "controversy" is met, there is no restriction on the type of Constitutional court Congress can create, the life of such court, the composition, or the jurisdiction granted such courts.^{5/} While we have become accustomed to a particular type of court created by Congress with particularly defined jurisdiction and composition, Congress is not legally or constitutionally restricted to establishment of these "historically standard" courts. For example, Congress deviated from this historical

^{5/} Flast v. Cohen, 392 U.S. 83 (1968).

standard when it created the Emergency Court of Appeals.

As a result of World War II, Congress passed the Emergency Price Control Act of 1942^{6/} which, inter alia, created a new Constitutional court entitled the Emergency Court of Appeals.^{7/} Pursuant to the terms of the enabling act, the Chief Justice of the United States Supreme Court was required to appoint three (3) or more judges from among the then constituted Federal District Courts or United States Circuit Courts of Appeals to compose the Emergency Court of Appeals. The court so constituted was granted exclusive equity jurisdiction to determine the validity of regulations, orders and price schedules issued pursuant to the Emergency Price Control Act, subject to review by certiorari in the Supreme Court. The Emergency Court of Appeals had no powers except as specifically granted by Congress and its jurisdiction to hear and decide cases was strictly limited by Congress. See, In re Recommendation of Local Advisory Board for Miami Defense - Rental Area for Decontrol of Miami Beach, 172 F.2d, 726 (Em. App., 1949).

Notwithstanding the limitations placed by Congress on the court's exercise of its jurisdiction, the constitutionality of the Emergency Court of Appeals and the Act which created it

^{6/} Act of January 30, 1942, 56 Stat. 23.

^{7/} 56 Stat. 32, 50 U.S.C. App. Section 924

(including the requirement that the Chief Justice of the United States select the judges to sit thereon) was upheld. In Yakus v. United States, 321 U.S. 414 (1944) the Court in passing on its constitutionality, stated,

"This (exclusive equity jurisdiction) was accomplished by the exercise of the constitutional power of Congress to prescribe the jurisdiction of inferior federal courts and the jurisdiction of all state courts to determine federal questions and to vest that jurisdiction in a single court, the Emergency Court of Appeals."

Therefore, consistent with its constitutional prerogatives under Article III, Section 1, Congress can expand or withdraw the current jurisdiction of the existing Circuit Courts of Appeals, create new Circuit Courts in any and all the states and Congress' power to "ordain and establish" also carries with it the power to prescribe and regulate the modes of proceedings in such courts, Livingston v. Story, 34 U.S. 632 (1835).

Further, consistent with this power, Congress can enact legislation providing that in any given class of cases or case of special character (such as that involved in the proposed national emergency strike legislation) any existing Circuit Court, or newly created Circuit Court, can be given the authority, upon valid notice and service of process, to compel all necessary parties to appear before it. United States v. Union Pacific Ry. Co., 98 U.S. 569 (1879).

Thus, based on the foregoing, a Congressional determination to create a three judge court selected by the Chief Justice of the United States from among the active judges of the existing United States Courts of Appeals, and to invest the court with original equity jurisdiction to hear and resolve national disputes in the transportation industry in the manner provided in the proposed national emergency strike legislation, is a valid exercise of Congressional power and within its constitutional powers to perform.

Having determined that the power of Congress to create the court is not impaired by applicable legal or constitutional principles, the only question now presented is whether such court shall be designated as a Constitutional or a Legislative court. Apart from considerations of policy, the resolution of this question is dependant upon an examination of the matters with which the court will be presented and a determination of whether or not such matters present the court with a justiciable case or controversy and thereby satisfy the constitutional requirement for creation of Constitutional courts.

III. ACTIONS BROUGHT BEFORE THE THREE JUDGE COURT, CREATED PURSUANT TO THE PROVISIONS OF THE PROPOSED LEGISLATION SATISFY THE CONSTITUTIONAL REQUIREMENT OF CASE OR CONTROVERSY

At the outset, it should be noted that the following discussion concerning whether action brought in the courts

pursuant to the provisions of the proposed legislation satisfies the constitutional requirement of a case or controversy is rendered solely in support of the proposition that the three judge court provided for in the legislation can be a "constitutional" court capable of adjudicating disputes arising as a result of national disputes between labor and management in the transportation industry and resolving such disputes in conformance with the provisions of the proposed legislation. Since there is no constitutional restriction placed on the jurisdiction of "legislative courts" similar to that placed on "constitutional courts", Congress is free to establish the proposed court as a Legislative court irrespective of whether the disputes before it satisfy the constitutional case or controversy standards.

Article III, Section 2, Clause 1 of the United States Constitution restricts the jurisdiction of the federal judiciary system, including the Supreme Court, to adjudication only of "cases" or "controversies".

"The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; - to all Cases affecting Ambassadors, other public Ministers and Consuls; - to all Cases of admiralty and maritime Jurisdiction; - to Controversies to which the United States shall be a Party; - to Controversies between two or more States; - between a State and Citizens of another State; - between Citizens of different States; - between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."

By the terms of the above-quoted section, the judicial power of the courts created pursuant to Article III, Section 1 of the Constitution (Constitutional courts) extends to nine classes of cases and controversies which fall into two general groups. The first group is comprised of causes (1) arising under the Constitution of the United States and the laws and treaties of the United States as determined and established by Congress; (2) in which ambassadors and other public ministers and consuls are parties; and (3) involving admiralty and maritime jurisdiction. The second group is comprised of the six (6) enumerated types of causes, categorized as "controversies".

The fundamental distinction between the two was enunciated in 1821 by Chief Justice Marshall in Cohens v. Virginia, 6 Wheat 264 (1821), wherein he stated:

In the first, their jurisdiction depends on the character of the cause, whoever may be the parties. This class comprehends 'all cases in law and equity arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority.' This cause extends the jurisdiction of the Court to all the cases described, without making in its terms any exception whatever, and without any regard to the condition of the party. If there be any exception, it is to be implied, against the express words of the article. In the second class, the jurisdiction depends entirely on the character of the parties. In this are comprehended 'controversies between two or more States, between a State and citizens of another State,' and 'between a State and foreign States, citizens or subjects.' If these

be the parties, it is entirely unimportant, what may be the subject of controversy. Be it what it may, these parties have a constitutional right to come into the courts of the Union."

Thus, within the meaning of Clause 1, a "case" arises when any question respecting the Constitution, treaties or laws of the United States has assumed "such a form that the judicial power is capable of acting on it."^{8/} While the form of the proceeding is not significant, in order for the judicial power to be exercised, there nevertheless must be an actual dispute between adverse parties wherein the court is called upon to resolve a disputed issue between parties having adverse interests allowing of specific relief. Since judicial power is "the power of a court to decide and pronounce a judgment and carry it into effect between persons and parties who bring a case before it for decision"^{9/} the court will not act when the parties are merely seeking advice or an abstract declaration of the law. However, when any such actual dispute is presented for adjudication to the courts and the subject matter of the dispute arises from a question concerning either the Constitution, a law or a treaty of the United States, a "case" is presented within the meaning of Article III of the Constitution.

^{8/} In re Summers, 325 U.S. 561 (1945).

^{9/} Miller, Constitution, 314, quoted in Muskrat v. United States, 219 U.S. 346, 356 (1911).

Thus, a case consists of the disputed rights of adverse parties arising under the Constitution or a law or a treaty of the United States whenever the decision concerning those rights depends upon the construction by the court of either the Constitution, a law or a treaty of the United States.

With respect to the term "controversy", the Supreme Court, in Aetna Life Insurance Co. v. Haworth, 300 U.S. 227 (1937) defined it as arising,

"Where this is a concrete case admitting of an immediate and definitive determination of the legal rights of the parties in an adversary proceeding upon the facts alleged..."

Thus, as used in the Constitution, a "controversy" is less comprehensive than a "case" in that it includes only suits of a civil nature. As described, the fundamental distinction is that in one class of actions ("cases") the jurisdiction of the Federal courts depends on the nature of the cause, irrespective of the identity of the disputing parties, and in the other ("controversies") jurisdiction depends on the nature of the parties before the court, regardless of the nature of the action. United States v. Texas, 143 U.S. 621, 642 (1891). In either situation the action brought must be ripe for judicial determination and in that regard the requirements of controversy enunciated in Haworth are equally necessary of fulfillment with respect to cases. However, for purposes of the proposed legislation, the technical distinction between the terms "case" or "controversy" is not relevant since suits

brought under the proposed legislation would fall in each class. For, any action so brought would be one arising under the laws of the United States and also one in which the United States is a party. Therefore, in either situation, the central inquiry reduces to a determination of whether or not the action brought is one to which the judicial power of the United States extends regardless of whether or not such action is designated for purposes of form as a "case" or a "controversy".

In Smith v. Adams, 130 U.S. 167, 173-174, the Supreme Court held that where the judicial article of the Constitution restricting the limits of the judicial power of the United States refers to "case and controversy" it refers to "...the claims or contentions of litigants brought before the courts for adjudication by regular proceedings established for the protection or enforcement of rights, or the prevention, redress or punishment of wrongs. Whenever the claim or contention of a party takes such form that the judicial power is capable of action upon it, then it has become a case or controversy".^{10/}

^{10/} See also, LaAbra Silver Mining Co. v. United States, 175 U.S. 423 (1899) where the Court stated that if a proceeding involves a right which in its nature is susceptible of judicial determination and if the determination of such rights is not simply ancillary or advisory, but is the final and indisputable basis of action by the parties, it is a "case".

Apart from the distinction that a "case arises under the Constitution, laws or treaties of the United States, and a "controversy" arises out of any "legal" dispute arising between adverse parties, the requirements for a dispute to be appropriate for judicial determination pursuant to the terms of Article III are common to both classes of actions. These requirements are that: (1) an actual controversy exists over a disputed issue. In re Summers, 325 U.S. 561 (1945); (2) the dispute must involve real and substantial rights which are in dispute, Little v. Bowers, 134 U.S. 547 (1890); (3) the action in the courts seeks a judicial determination of these disputed rights, Swift & Co. v. Hocking Valley Ry Co., 243 U.S. 281 (1917); (4) the dispute between the parties is definite and concrete and touches the legal relations of the parties who have adverse legal interests, and (5) the rights of the complainant are being imminently threatened by the defendants and such rights will be lost, destroyed or impaired in the absence of judicial determination, Aetna Life Insurance Co. v. Haworth, supra.

When these requirements are satisfied, the judicial function may be appropriately exercised. Aetna Life Insurance Co. v. Haworth, supra.

It must, therefore, be determined whether or not actions brought in conformance with and pursuant to the provisions of the proposed legislation satisfy the above-enumerated requirements. Under the terms of the proposed legislation,

whenever in the opinion of the President of the United States a threatened or actual national strike or lockout involving the transportation industry or any part thereof, would if permitted to occur or continue, imperil the national health, welfare or safety and thereby, in the opinion of the President, create an actual or threatened national emergency, he may invoke the provisions of the proposed legislation. The question of whether an existing or threatened strike or lockout invades the rights of the public to be protected from the dangers inherent in such activity or threatened activity has in a related context been found to present a justiciable "case" appropriate for judicial determination within the constitutional requirement. In United States v. United Steel Workers of America, CIO, 202 F.2d 132 (CA 2, 1953), a case arising under the current provisions of the Labor Management Relations Act dealing with National Emergency Disputes (29 U.S.C.A., Sec. 178, et seq.) the court was confronted with the question of whether an action brought by the United States on behalf of the general public to protect the public from an actual or threatened strike which created the possibility of a national emergency as determined by Congress satisfied the constitutional requirement of "case" or "controversy" and was appropriate for judicial consideration. In affirmatively answering this question, the court held that such threatened

or actual conduct equalled an invasion of the rights of the public and, therefore, protection of those rights was properly a judicial function.

The court, in arriving at this conclusion, drew support for its decision from the decision of the United States Supreme Court in the Debs Case, (158 U.S. 564) wherein, in language equally applicable herein, the Court stated:

"Every government, entrusted, by the very terms of its being, with powers and duties to be exercised and discharged for the general welfare, has a right to apply to its own courts for any proper assistance in the exercise of the one and the discharge of the other, and it is no sufficient answer to its appeal that it has no pecuniary interest in the matter.

"The obligations which it is under to promote the interest of all, and to prevent the wrong-doing of one resulting in injury to the general welfare, is often of itself sufficient to give it standing in court. ...whenever the wrongs complained of are such as affect the public at large, and are in respect to matters which by the Constitution are entrusted to the care of the Nation, and concerning which the Nation owes the duty to all of the citizens of securing to them their common rights, then the mere fact that the government has no pecuniary interest in the controversy is not sufficient to exclude it from the courts, or prevent it from taking measures therein to fully discharge those Constitutional duties...Constitutional provisions do not change, but their operation extends to new matters as the modes of business and the habits of life of the people vary with each succeeding generation."

Therefore, the court in the Steelworkers case, found that an action brought by the United States to protect the general public from the adverse effects, either actual or threatened, of strikes which in the determination of Congress created the threat of a national emergency, constitutes a justiciable "controversy" within the meaning of the Constitution and as such is appropriate for judicial determination.

Although the Steelworkers case involved an action in the Federal District Court seeking an injunction against a work stoppage engaged in by the union, it made clear that it was the nature of the rights being violated and not the nature of the remedy being sought that created the necessary controversy.

As provided in the proposed legislation, the proceeding instituted by the Attorney General is an action brought to protect the rights of the general public by means of the "final offer selection" remedy therein provided. The fact that the legislation prescribes the remedies available to the court in affording protection to the public interest serves as no impediment to its implementation. For, Congress has the power to provide a remedy in cases where none existed at common law and particularly, where, as here, Congress establishes a new course of action and a new remedy therefor, the remedy so provided is exclusive, mandatory upon the court and must be

complied with in all respects. Sun Theatre Corp. v. RKO Radio Pictures, 213 F.2d 284 (CA 7, 1954).

Further, although the Steelworkers case dealt with jurisdiction granted by Congress to the Federal District Courts, it has previously been demonstrated that once an action satisfies the constitutional case or controversy standard, Congress can expand the jurisdiction of and invest original jurisdiction to adjudicate such actions in any Court it deems necessary or appropriate.^{11/} While the jurisdiction of the Circuit Courts as now constituted is exclusively appellate, no constitutional impediment exists to establishing areas of, and investing Circuit Courts with, original jurisdiction.^{12/}

^{11/} The power of Congress to initially invest, withdraw, enlarge or diminish the original jurisdiction of the federal courts is applicable only to the inferior federal courts, either Constitutional or Legislative. Article III, Section 2, Clause 2, of the United States Constitution specifically enumerates those matters over which the United States Supreme Court shall exercise original jurisdiction and such enumerated original jurisdiction cannot be either added to or restricted. There is, however, no concomitant prohibition regarding congressional ability to delineate the appellate jurisdiction of the Supreme Court and in conformance with the constitutional mandate of case and controversy, Congress, pursuant to its constitutional authority, can determine the areas and exercise of such appellate jurisdiction in all the federal courts.

^{12/} The Emergency Court of Appeals, discussed supra, provides an example in which Congress did, in fact, exercise this power.

IV. THE CHIEF JUSTICE OF THE UNITED STATES SUPREME COURT CAN BE INVESTED WITH THE AUTHORITY TO SELECT AND EMPANEL THE THREE JUDGE COURT PROVIDED FOR IN THE PROPOSED LEGISLATION

The question of whether or not Congress can enact legislation providing for the selection by the Chief Justice of the Supreme Court of the United States of justices to sit on the proposed three judge court can be and has been answered affirmatively by the courts, notwithstanding the contentions raised that such legislation and resulting appointments impose non-judicial functions of the Chief Justice and usurp the constitutionally expressed powers of appointment and confirmation residing in the President and the Senate.

While, as a general rule the judiciary may not on its own authority exercise non-judicial powers, Congress may enact legislation granting or requiring the performance of functions which, while not strictly either judicial or non judicial, are as here, reasonably incidental to the fulfillment of judicial duties, Pope v. United States, 323 U.S. 1 (Ct. Cl., 1944); United States v. Mayton, 335 F.2d 153 (CA 6, 1964). The courts have upheld legislation enacted pursuant to this congressional authority and have stated that the constitutional power of appointment and confirmation of federal judges vested in the President and the Senate of the United States, respectively, is not thereby usurped. In Lamar v. United States, 241 U.S. 103

(1914) the United States Supreme Court upheld, as a constitutional delegation of power, the authority granted one federal judge to assign another federal judge to sit in a district, other than that to which he was initially appointed and confirmed.

Moreover, specific statutory authority has been granted to the Chief Justice of the United States Supreme Court to make appointments and transfers of federal judges from one United States Circuit Court of Appeals to another^{13/} and to assign retired justice of the Supreme Court to perform judicial duties on any Circuit Court at the discretion of the Chief Justice.^{14/} United States v. Moore, 101 F.2d 56 (CA 2, 1939).

Finally, legislative and judicial precedent exist supporting the grant of authority by Congress to the Chief Justice of the United States Supreme Court to appoint justices to sit on newly constituted courts. As stated above, Congress, in creating and establishing the Emergency Court of Appeals, there specifically provided that the selection of the judges to sit thereon was to be made by the Chief Justice and the constitutionality of such legislation was subsequently upheld by the Supreme Court. See, Yakus v. United States, supra.

^{13/} 28 U.S.C.A., Section 291(a).

^{14/} 28 U.S.C.A., Section 294.

V. CONCLUSION

Therefore, on the basis of the discussion herein presented and on the basis of the applicable cases herein cited, it is the conclusion of the undersigned that the proposed legislation for dealing with national emergency strikes in the transportation industry and particularly those provisions therein providing for the creation of a three judge court selected by the Chief Justice of the United States Supreme Court from among the active judges now residing in the existing United States Circuit Courts of Appeals are consistent with sound principles of constitutional law.

Respectfully submitted,

Gerard C. Smetana
Gerard C. Smetana

The CHAIRMAN. Our next witness is Gary Green who will be representing J. J. O'Donnell, president of the Air Line Pilots Association. I think it should be noted that he is accompanied by a great friend of this committee and whose official title we had better enter in the record, too.

STATEMENT OF CAPT. JOHN J. O'DONNELL, PRESIDENT, AIR LINE PILOTS ASSOCIATION INTERNATIONAL, PRESENTED BY GARY GREEN, DIRECTOR, LEGAL DEPARTMENT, ALPA, ACCOMPANIED BY JAMES F. GARTLAND

Mr. GREEN. Mr. Chairman and members of this committee, my name is Gary Green, and I am director of the legal department at the Air Line Pilots Association.

The association is a labor organization representing over 30,000 airline pilots of about 39 commercial airlines. It represents most of the national's airline pilots and, in addition, some 14,000 stewards and stewardesses of about 23 commercial airlines.

We, the association, very much appreciate the opportunity to appear before you today and set forth our views on a subject which so vitally concerns the public, the employees, and the airline industry in general. I am personally delighted and honored to be here.

The proposed alteration of the Railway Labor Act is a subject of special concern to ALPA members, and it is one in which they have a very special interest and very special experience. We have been the collective bargaining representative for most scheduled American carriers' pilots since 1933, and, indeed, it was ALPA which was largely responsible for the 1936 amendments to the Railway Labor Act which extended its coverage to airlines.

It is my main purpose this morning to oppose S. 560, the current administration's proposal for revision of the Railway Labor Act. There are a number of other legislative proposals now before this subcommittee. However, the major focus of my concern can best be illustrated by confining my remarks to S. 560. This bill and related proposals have been proffered as remedies for a variety of ailments perceived in the transportation industry's labor relations. But it can be demonstrated that the proponents of this bill have not properly diagnosed the patient's ailment, and have written instead a radical prescription which includes some very strong, costly, and dangerous medicine.

The proponents of S. 560 and its various counterparts advance several assertions in support of their claim that Congress should provide new and special treatment of labor relations in the transportation industries. One theme, which they often repeated, is that the public has been subjected to much essential damage as a result of too many transportation strikes.

But no statistical evidence has been forthcoming to support this charge. And no substantial effort has been made to compare the incidence, duration, or public impact of recent transportation strikes to strikes in other industries. Recent labor disputes in the railroad industry have captured national headlines and attracted national attention repeatedly in recent years. But this subcommittee and the House committee have already been advised that, even in the rail-

road industry, serious disruptions of service have been quite infrequent.

James E. Yost, president of the AFL-CIO Railway Employees Department, recently explained in his testimony that "there have been only three nationwide rail strikes, each lasting but a few days" in the entire 45-year history of the Railway Labor Act. According to the same source, there has been only one major airline strike during this same period, and the Secretary of Labor has admitted that these are the facts, and that this one major strike was the result of the airline industry's desire for industrywide bargaining.

The Department of Labor's Bureau of Labor Statistics has just completed a study of airline experience under the Railway Labor Act, which further undermines the claims of S. 560 sponsors. Since 1936, when the act was amended to cover airlines, only 33 emergency boards have been created; in only 9 years were there over 100,000 man-days lost due to strikes; and only 10 strikes have occurred involving 10,000 employees or more. In fact, the BLS study showed that most airline work stoppages involved fewer than 500 employees, and that only seven strikes lasted for more than 90 days.

It is conceivable, I suppose, that short work stoppages involving few employees could still create a problem warranting special legislation. But it seems obvious to me that those who seek such legislation have an obligation to show how and why. It also seems quite clear that they have not even attempted such a showing.

In a nation where voluntary collective bargaining is a cherished tradition and the right to strike has long enjoyed statutory protection, the Congress and the public are entitled to a clear demonstration that these institutions have been abused, to the detriment of the public interest, if new restrictions are to be imposed. In my own view, this demonstration has not yet been made and it cannot be made.

Because airline pilots are highly paid professional employees and because of their essential operating role in maintaining air carrier operations, pilots are often the focus of discussions about bargaining power and wage settlements in the industry. When such discussions are responsibly conducted, and real historical data are considered, it becomes perfectly clear that pilots have seldom resorted to strikes, that free collective bargaining works effectively in establishing their wages and working conditions, and that voluntary private agreements with management are typically negotiated without either undue reliance upon Government intervention or any disruption of service. All of this can be said—and proven, as the following statistics will show—despite the fact that pilots and their employers have operated almost continually through an era of extraordinary growth and dynamic technological change. Such growth and change has had profound impact upon all aspects of professional pilots' worklife, and created labor relations problems as serious and pervasive as those in any other industry.

Nonetheless, the record shows that over 500 collective bargaining agreements—excluding very numerous amendments and "side letters"—were negotiated with pilots during the period since 1933. Throughout this same 38-year period, there have been only 14 pilot strikes, including two partial work stoppages lasting less than 3 weeks. Indeed, of the 14 strikes, nine of them lasted 30 days or less, and only in one instance was more than one carrier affected.

In light of these circumstances, we cannot easily sympathize with those who would characterize either the practice of collective bargaining or the Railway Labor Act as a failure. The fact is that the Air Line Pilots Association has been able to make the collective bargaining process work, under stressful conditions of rapid technological change and industrial growth, without disruption to airline transportation.

I do not mean to suggest that collective bargaining has achieved all that it might, or that the process needs no improvement. Indeed, later in this statement, I will suggest some concrete proposals. But ALPA's experience with the Railway Labor Act does provide a dramatic refutation of the chief arguments of the proponents of S. 560.

We have also studied the incidence and duration of strikes by other airline unions, and would share these findings, too, with the subcommittee. Here, too, it is clear, evidence of disproportionate strike activity is lacking, and justification for antilabor legislation is nonexistent. However, we do find a disturbing recent trend toward longer strikes; for this, we believe, the record will show that the airlines have themselves to blame.

In a case now pending before the Civil Aeronautics Board, docket No. 9977, the Board is considering whether the airlines mutual aid pact—a "strike insurance" program to which many of the Nation's air carriers now subscribe—is consistent with the public interest. Stanley H. Ruttenberg, an eminent labor economist and former U.S. Assistant Secretary of Labor, has testified before the Board in this proceeding that "the mutual aid pact is at the root of this (recent) instability (in major segments of the airline industry). Conceived by the airlines as a means of serving the public interest by reducing strikes and the service disruptions they cause, the pact has instead led to an increase in strikes and to an increase in service disruptions."

After explaining the dynamics of the pact's effect on collective bargaining, Mr. Ruttenberg demonstrated his thesis by reference to a statistical analysis using the very data supplied by the air carriers themselves, or by the Bureau of Labor Statistics. His demonstration revealed that the average duration of all strikes against air carriers since 1950 has changed from 15.1 days before the pact to 35.5 days after the pact. He also showed that the average duration of strikes among carriers party to the pact changed from 12.4 days when they were not in the pact to 36.4 days—an increase of 200 percent—when they joined the pact.

Finally, he showed that this trend toward longer strikes is accelerating as the pact is successively amended by the carriers in the direction of wider coverage and higher benefits. Since October 31, 1969, there have been seven strikes against air carriers. Three of these involved nonpact carriers and had an average duration of 19 days. The other four were against pact carriers, and the average duration was 108 days.

In short, therefore, we see no convincing indication that the practice of collective bargaining in the airline industry is bankrupt, or that the public is being subjected to excessive disruption of service. And, to the extent that strikes have become more prolonged of late, we find this problem amenable to direct and simple treatment—a ban on the mutual aid pact—without any wholesale revision of the basic governing statute.

We suspect, moreover, that the "excessive-strike" allegation is not even the real reason for these bills. In all of the statements supporting S. 560, the proponents sooner or later reveal that their real objective is not simply to reduce strikes but, rather, to reduce wages. President Tipton of the ATA, who is the major spokesman for most of the airline carriers, is explicit in his claim that there is an "imbalance at the bargaining table" which "results in public harm." But he does not buttress his claim of public harm by reference to strikes—a subject, we have already indicated, which would not produce his desired analysis. Instead, the ATA's concept of "public harm" always seems, eventually, to be linked to the rate of increase in airline wage settlements.

This Congress has seen dramatic and recent evidence that inflationary wage settlements are a separate and discrete problem, susceptible to direct governmental action without amendment of the basic labor relations statute. Furthermore, such governmental action—because it necessarily impinges upon prices and profits, as well—must necessarily be formed as a coordinated economic program.

At a later point in these remarks, I will provide further detail illustrating the adverse consequences of the Railway Labor Act amendments here being considered. At this point, it seems enough to note that all of this foreseeable damage is gratuitous and unnecessary if it flows from employer complaints regarding the level of recent wage settlements.

Neither the Railway Labor Act nor the National Labor Relations Act are designed to produce any specific levels of wages. Indeed, it is clearly and uniformly understood that both statutes reflect the same governmental philosophy: labor and management are legally obligated to meet and negotiate in good faith but the law does not compel them to agree to any specified terms or levels of compensation. It would constitute nothing less than a revolution in American labor relations to change this philosophy and to revise the Railway Labor Act in order to assist the carriers in negotiating lower wage settlements. Federal labor legislation traditionally is aimed at establishing the mechanics and procedures of collective bargaining, not at determining the substance or the nature of the bargains themselves. To depart from this tradition would threaten some of our most basic freedoms. Management's responsibility to bargain should not be assumed by Congress.

Besides, recent efforts to blame recent airline wage settlements for the rising passenger fares cannot withstand careful scrutiny. The facts are that higher fares and lower carrier profits these days derive from other considerations. Airlines employees' wage settlements have not been increasing out of proportion to productivity increases.

Thus, staff studies by the Civil Aeronautics Board show that from 1961 through 1967, the increases in employment cost per employer were totally eclipsed by the increases in real productivity per employee. Beginning in 1967, however, the scheduled airlines invested over \$2 billion each year in new equipment. With the benefit of hindsight, most airlines executives and many economists have been explaining their current economic problems, these days, by reference to the industry's ill-fated commitment to heavy investment in larger aircraft at the very time when the growth of passenger traffic was inexplicably beginning to decline. The Civil Aeronautics Board itself

has itself attributed the recent economic distress of the industry to these considerations.

In a free economy, owners and management pay the price for such miscalculations, through reduced profits and dividends. Even in a controlled economy, it seems grossly inequitable to penalize the employees—by legislating for lower wages—because capital has been committed unwisely or unfortunately.

Yet that is precisely the ATA objective as stated by Mr. Tipton. He refers to the annual earnings (including fringe benefits) of the “top 600 airlines pilots”—and I don’t know why he chose the top 600—and asserts that they have increased from \$39,700 in 1965 to \$58,400 in 1970, an increase of 47 percent over the 5-year period, or about 9.4 percent per year.

Mr. Tipton, however, does not advert to the fact that the carriers’ executive compensation level increased, from 1969 to 1970, by an annual rate of 12.5 percent—an increase that was obtained without any of the “coercion” of collective bargaining. Plainly, some of the bill’s proponents here simply want the best of all management worlds.

Before turning to an analysis of the provisions of S. 560 itself, one last asserted objective of its sponsors deserves comment. In addition to their interest in restricting strikes, and lowering wages, the proponents have also expressed an interest in limiting the Government’s role in collective bargaining. Minimum Federal interference is one of the explicit objectives here asserted. At least that is what is asserted. As we review the mechanics of the proposed new legislation, I would ask the subcommittee to keep this objective in mind, for it will become painfully obvious that enactment of S. 560 will have precisely the opposite effect.

Thus, not only does this bill misconceive the ailments in the transportation industry today; indeed, it would intensify an unhealthy condition all of us seek to avoid: an enlargement in the Government’s role in settling labor disputes.

Turning to the bill itself, we examine first its most widely publicized feature: the addition of new presidential power. Under the Railway Labor Act, the President currently has no recourse after the 60-day emergency board period expires, except to request special congressional legislation or let the imminent strike or lockout occur.

His options are now the same under Taft-Hartley, after the 80-day cooling-off period has elapsed. Under the administration bill, the President would have three new options. According to the new bill, he would have to act within 10 days after the expiration of the cooling-off period and he could invoke one, but only one, of the following procedures.

First, he may decide to extend the cooling-off period, to compel further private bargaining, for another period of time not to exceed 30 days. During this additional cooling-off period, the parties would again be prevented from changing working conditions or engaging in strike, and the Taft-Hartley inquiry board would have authority to mediate. According to the President’s own message to Congress, this option would appear appropriate only when the parties were already very close to a settlement.

The second new option is much more significant: It allows a strike or lockout after the cooling-off period expires, within a described

portion of the company's operations. To exercise this option, the President selects a special board of three impartial members whose task is first to determine whether a partial strike or lockout would have sufficient economic impact to pressure the parties toward a settlement without imperiling national health or safety. If the board so finds, it may then issue an order which specifies the extent and conditions of partial operations which must be maintained—presumably by describing essential routes, or critical segments of passengers or cargo—and then would allow a strike or lockout only in the remainder.

There are detailed procedural rules for the board's second option detailed in the bill, including provision for a formal trial-type hearing. The parties are forbidden to change working conditions during the board's consideration of the issues and during the period of any partial operation order. However, the board must issue such order not later than 30 days after its appointment, and the board's order cannot run for a period in excess of 180 days. Such orders are conclusive, unless the district court finds it to be "arbitrary and capricious"—which is an extremely difficult finding to reach.

This proposal would inject a new and untested concept into national labor policy: our Government has little or no experience in establishing boundary lines for strikes which will permit economic pressures to generate in regulated, "socially acceptable" amount and area. Until now, a particular strike has either been lawful and, therefore, all the public burdens that flow from it must be accepted, or unlawful and, therefore, enjoined in court no matter how tolerable or acceptable its economic impact.

In ALPA's view, the criteria listed in the bill for determining whether a partial strike is appropriate will pose extremely complex and virtually unanswerable questions. How will the experts know within how wide a scope to allow a strike? In order to predict whether a partial strike will cause enough economic pressure, they will be compelled to predict such unpredictables as the volume of future traffic on specified routes, the availability of potential fare increases, the capacity of competing carriers to absorb and retain diverted passengers, and the effect of unspecified losses by the carrier on its existing capital structure? Will a trial-type hearing of less than 30 days duration be able to inquire sufficiently into such matters?

Full-time, well-trained and professional airline executives have themselves experienced notorious and serious difficulties in attempting these kinds of prophecies, even in the absence of the stress and haste an emergency labor dispute would create. ALPA has no confidence that the part-time ad hoc experts will fare better when the pressure is on.

Furthermore, there are opportunities for lucrative intracarrier diversions of traffic that will defeat the legitimate intentions of the Government panel and the striking employees. Many carriers today are party to a strike insurance program, the mutual aid pact. By careful selection of routes and frequencies to be operated during a partial strike, and augmented by strike insurance payments, a carrier can actually increase its profitability at such times. In fact, this year and last year, Northwest Airlines already has enjoyed this windfall at the expense of the public during the recent BRAC strike. There is little or no equity in a Government scheme to perpetuate such a one-sided game. We find the potential for such windfalls inherent in this second option.

The third Presidential option is the most drastic. If it is invoked, each side has 3 days to submit a final offer designed to resolve all issues in controversy; 5 days are allowed for further bargaining over these final proposals for settlement. If no agreement is reached, the President chooses a three-man board of neutrals, called "selectors," whose function it will be to select one of the two final offers—without any compromise or modifications—to be the final and binding settlement.

The selectors have a 30-day period to conduct formal hearings, like those provided for under the second option, and there are statutory criteria articulated to guide their decision of which offer is to be selected. The bill also specifies that the selectors are prohibited from engaging in mediation or any other techniques of resolving the dispute except for selecting one of the final offers. The panel is to choose, according to the bill, that offer which is "the most reasonable." Again, their choice is conclusive unless the district court finds it "arbitrary or capricious."

These are the following criteria which are supposed to guide the panel's judgment: (1) past contracts and negotiations between the parties, (2) comparative wages and working conditions of employees doing comparable work for other employers in the industry, in similar industries, and in industry in general, (3) security of employment, with "consideration to the impact of technology on manning practices," and (4) the public interest. The bill does not clarify further any of these criteria.

According to the bill's proponents, the advantages to this new procedure are that it would not only resolve the underlying labor dispute without a strike, but, also, that it would provide a strong incentive for labor and management to reach their own accommodation at an earlier stage in the bargaining. We are told that "when final offer selection is the ultimate recourse, the disputants will compete with each other to make the most reasonable and most realistic final offer, one which will have the best chance to win the panel's endorsement."

In our view, these advantages are overstated, theoretical and speculative. First of all, there is no real "guarantee" of a conclusive settlement without a work stoppage. When employees have been directed to labor, even by force of Federal law, under conditions they deem extremely onerous or objectionable, work stoppages have occurred in the past. Recent experience with postal workers and other Government employees, who never enjoyed a statutory freedom to strike at all, is instructive here. Government compulsion is no assurance against disruptions of service. Nor will management itself be able to avoid the imposition of alien, uncomfortable or unworkable conditions from which they will feel compelled to escape. Compulsion works two ways.

Second, the assurance that each disputant will make his "most reasonable and realistic final offer, in order to have the best chance at winning the panel's endorsement," is a flimsy one. People being what they are, we suspect the tendency will be for the parties to submit final offers which appear to be reasonable. There is a considerable difference.

When the final offers cover, as will be typical, a vast multiplicity of interrelated and complicated contract terms, it will become increasingly difficult to establish which offer is cheaper, let alone "more reasonable," simply because so many different points of dispute exist.

The selectors who must, under this bill, sort out and evaluate the elements of each side's final offers will face a task which is simply unworkable. For the bill presupposes a much lower level of bargaining sophistication than actually obtains in the airline industry. The selectors will not be called upon to determine whether a \$4 wage increase is "more reasonable" than a \$5 increase. They will, instead, be asked to choose between two complex and intricately subdivided charts, creating new compensation levels for a variety of job and equipment and seniority classifications, changing at different increments and at different times over the contract period. It may be impossible even for the neutral panel to agree on what actuarial assumptions must be used in order to fairly compute the real cost of each final compensation offer to the carrier, let alone to determine which offer is more "reasonable."

We have experienced a most acute example in this regard with respect to the costing of pilots and stewardesses contracts currently being negotiated. Current events before the Pay Board and elsewhere have caused us to put forth renewed efforts toward this economic measurement. I can say from personal experience that economists and employers and employees do not agree as to how one accurately measures a real dollar cost for these complex economic phenomena in the collective bargaining agreement.

And compensation is the simplest part of the contract offer to measure. Pilots and stewardesses bargain long and hard to establish equitable methods for the allocation of work and training assignments; bidding, scheduling and manning requirements are part and parcel of our typical contract negotiations.

Neither cost accounting nor logic nor the principles of economics will provide any mutually agreeable method of weighing or measuring the kinds of proposals with which negotiators deal on these subjects.

These proposals reflect, instead, the consensus of personal employee desires as articulated by the ALPA negotiators and the convenience, facilities, and interests of the carriers as perceived by their negotiators. Apart from these people, there are no "experts" on these subjects. Selection of one offer rather than another can only be an act of arbitrary manipulation. It must be remembered that in many negotiations, both wages and working conditions are at stake. Changes proposed in both areas—monetary and nonmonetary—must be evaluated against each other within each final offer, and then both final offers evaluated against each other. This alone would defy the skill of the experts.

But, more serious, the experts will not know, and they are not permitted to find out, the relative priorities of each of the negotiating parties. A negotiator's proposed terms on wages, for example, may be more flexible and subject to alteration than other items currently open for negotiation. One or two items in a union offer may be matters of vital principle over which the union—although, perhaps, not the company—would be prepared to risk everything. Some people look at collective bargaining as a process of discovering and reordering one's own priorities.

But, the neutral selectors are compelled by the rules of this new game to accept one of the two final offers, without any modifications, and they will be unable to probe for areas of compromise based upon each

side's differing priorities. Therefore, they are subject to manipulation by the negotiator who artfully injects some "reasonable" terms on low-priority items. Where both negotiators play this game—and both of them probably will—the selectors will necessarily choose a contract which contains unwelcome and inappropriate terms in the view of both sides.

Thus, ALPA considers this option to be seriously objectionable on fundamental grounds. It was obviously designed to provide something like compulsory arbitration of new-contract issues without being subject to the label of compulsory arbitration. But, it threatens all the mischief of compulsory settlements plus some additional problems caused by the effort to disguise it.

In a free society, employers and employees retain the power to settle their own economic disputes. ALPA has never supported any past efforts to transfer this vital power to third-party "experts." Instead, solutions for labor disputes, we have always maintained, must be discovered by and acceptable to the parties who must live with them. Anything else is too remote and illusory to last.

Under present law, employer and employee alike must propose and agree to terms which meet their own varying standards and priorities; in a crisis, each side must determine for itself how far its priorities and needs can be altered by economic pressure. This is an uncomfortable, time-consuming process. But it is a task we cannot delegate. Who else can tell us whether our new shoes fit, or if they pinch, just where?

It is true, of course, that there is a "public interest" at stake in transportation work stoppages. But there is a public interest, too, in the institution of free collective bargaining. Where that institution shows as much vitality and effectiveness as it does in the airline industry, the Government's obligations are clearly to support it, not to supplant it with third-party compulsions. And it cannot be gainsaid that the panel's selection of one side's final offer is, in the eyes of the "losing" party, at least, nothing less than a compulsory regulation of wages and working conditions. Accordingly, on this key point, S. 560 seriously weakens the institution of collective bargaining.

I turn now to another feature of the bill: the provision which would eliminate the arbitration boards presently functioning under all ALPA collective bargaining contracts to resolve grievances and interpret ambiguities in the terms of the contract.

Under present law, title I of the Railway Labor Act contains detailed mandatory provisions for the establishment of Adjustment Boards by railroad employers, to hear grievances and other so-called minor disputes—disputes arising out of the "interpretation or application" of working agreements. Title II of this act imposes similar requirements upon airline employers, and ALPA presents about 500 arbitration cases a year before these tribunals.

S. 560 would abolish the adjustment boards, by deleting the relevant language in both title I and title II of the Railway Labor Act. In its place, the bill would provide for the following new procedures for resolution of minor disputes: upon failure of the parties to agree at the last company level of grievance handling, a 5-day period is allowed for mutual agreement upon the selection of a single arbitrator. Failing such agreement, the Federal Mediation and Conciliation

Service submits a list of five arbitrators to the parties, who alternately strike names until one name remains. The remaining arbitrator not only has authority to decide the underlying dispute, but power to make all necessary procedural rules, including determinations as to evidence and costs.

The President's message contains the following justification for these alterations:

"The Railway Labor Act presently calls for final arbitration by *Government boards* of unresolved disputes over minor grievances. . . . (Emphasis added.) Again, the availability of Government arbitration seems to have created the necessity for it; the National Railroad Adjustment Board, for example, has a backlog of several thousand cases to arbitrate."

This is a glaring oversight in the bill. While it is true the Government pays the salary and expenses of Railroad Board neutral parties, the costs of a neutral member of an ALPA system board are shared by the parties. The employer and union split the costs 50-50. ALPA does not bring its grievances to "Government boards."

This White House oversight is significant. In its concern for reforming railroad adjustment boards, where employee complaints of delay are common, the bill erroneously extends its provisions to airline boards without even inquiring whether a different situation and different rules apply. Those who drafted the bill have not apprised themselves of the fact that both airlines and pilots consider it vital to appoint expert partisan members to the adjustment board, in order to share the decisionmaking process with the neutral. In other words, we have a tripartite system of arbitration, and the parties themselves pay for it. We see no good reason to deprive both sides, employer and union, of a system they prefer and to substitute a single neutral instead.

Nor have the bill's draftsmen investigated the extent to which our adjustment boards currently suffer from delays—as compared to railroad boards—or the extent to which a single neutral system could be expected to expedite decisions.

Finally, little thought has been given to the beneficial effects of past precedent in establishing procedural rules for adjustment boards. Where both parties have thrashed out, over the years, modes of procedure for hearing grievances, what benefits are achieved by compelling them to abandon these procedures and adopt new rules imposed ad hoc by a single neutral?

The next area of the bill warranting comment relates to the differences in procedures for terminating collective bargaining agreements. Presently, the duration of a collective bargaining agreement and the techniques for negotiating its change are treated differently in the Railway Labor Act and in Taft-Hartley.

Railroad and airline contracts are unchangeable by either side unless and until the procedures of section 6 are fulfilled: formal notice, conferences, mediation, arbitration (or proffer of arbitration), and release by the National Mediation Board. Because the Board has virtually unreviewable discretion over when to release the parties to engage in self-help, management's freedom to change working conditions and the union's freedom to strike are both subject to inherent uncertainty and delay. Under Taft-Hartley, however, all collective

bargaining agreements have specific expiration dates, after which a union is immediately free to engage in a lawful strike and management is free, after bargaining to an impasse, to change working conditions.

S. 560 would require all contracts to be negotiated in the manner now provided for in Taft-Hartley. Thus, the party seeking a contract change would be required to serve the other side with a formal notice; then, there can be no strike or lockout, and no change of conditions, for a period of 60 days or until the agreement expires, whichever comes later.

According to the President, this would put negotiations on a schedule which depends upon the conduct of the parties themselves, not upon the Mediation Board's decisions and would encourage "earlier, more independent and more earnest bargaining."

In ALPA's view, this proposal warrants serious consideration, and it has some merit. The major advantage, as we see it, is the provision for removing the Mediation Board's power to cause those undue delays in consummation of agreements which have sometimes characterized past negotiations. It is a fact that inordinate delay invariably works to the employee's detriment in negotiations, since many improvements in working conditions are not susceptible to retroactive implementation.

On the other hand, the present system of continuing agreements under the Railway Labor Act, with changes permitted only in specified "open" areas to simplify the negotiations, does serve to reduce the number of potential issues and reduce the likelihood of strikes. Furthermore, there are other ways to approach the problem of undue delay in negotiations besides simply scrapping the Mediation Board. Indeed, once the subject of bargaining delays is approached directly, a number of feasible alternatives suggest themselves.

For one thing, consideration might be given to enhancing the stature of the Mediation Board and improving its effectiveness by increasing the number of staff mediators and their compensation levels, and by allowing mediators not presently on the civil service list to serve. There are pervasive indications that some of the lack of progress in bargaining under Mediation Board auspices is attributable to the case overloads imposed upon Board personnel and consequent repeated distractions which divert them from one dispute to attend a crisis at another.

Thought should also be given to requiring an earlier beginning to negotiations. At present, section 6 of the Railway Labor Act only requires that "at least 30 days written notice" of intended changes in agreements be provided, with negotiations to commence during that period. If negotiations were required, instead, to commence 3 or 4 months before the date of intended change, it seems likely that the negotiating preliminaries necessary for successful bargaining could be completed before the parties find themselves under the pressures of a crisis.

Moreover, the recent history contains numerous examples of Government willingness—especially in the railroad industry—to allow the parties to bypass the Board and induce the Secretary of Labor or the President himself to participate immediately in labor disputes. When the prospect of such intervention seems both real and attractive to either side, the incentive to stall negotiations until that pros-

pect becomes a reality is almost irresistible. If the Government could discourage such high-level access by continued and persistent containment of disputes at the Board level, and simultaneously improve the Mediation Board's manpower resources, enduring benefits and reductions in delays might be achieved.

S. 560 recognizes this reality, but fails to acknowledge that if the mediation and release functions are invested in an agency with an enhanced status and an adequate and adequately compensated staff, there may be sufficient consequent improvement in the timetable of negotiations so that Railway Labor Act rules about when economic action is permissible need not be changed at all.

Several other miscellaneous features of the proposed new legislation warrant brief comment.

Section 301 of the National Labor Relations Act gives Federal courts jurisdiction to hear "suits for violation of contracts between an employer and a labor organization," and forms the basis for much of the machinery through which private arbitration has been recently encouraged and enforced by Federal courts throughout the industries not covered by the Railway Labor Act. S. 560 contains a provision identical to section 301 for applicability to railroad and airline industries. This apparently simple addition raises a host of fundamental and complex legal issues. We do not understand the intent or foreseeable result of this new provision.

First of all, section 301 was deemed an appropriate feature of the National Labor Relations Act for reasons largely inapplicable to labor relations covered by the Railway Labor Act. It provided a forum and a set of rules whereby alleged breaches of the working agreement could be uniformly heard and resolved. But the Railway Labor Act already has such machinery, and it always had it: the adjustment boards always had the power, and it is exclusive power, to hear disputes over the interpretation and application of agreements.

Elsewhere in S. 560, as I have already explained, adjustment boards are abolished and their jurisdiction transferred to arbitrators. Does the contemporaneous establishment of Federal court jurisdiction over contract lawsuits mean that there will be a choice of forums—court or arbitrator—to hear future contract disputes? Or does the bill mean to draw a distinction between minor disputes subject to arbitration and contract violations subject to lawsuits? If the latter is intended, what is this distinction?

Perhaps the creation of two forums means to imply an initial trial before the arbitrator with subsequent appeal to the section 301 court. But there are portions of the Railway Labor Act, which the present bill would not alter or amend, which already provide in detail for court action to enforce or set aside adjustment board arbitration awards. And these provisions authorize a different set of district courts to assert such reviewing jurisdiction than are authorized in section 301.

Lawyers can easily extend the list of problems and puzzles. The point of the matter can be briefly stated, however; when confusion exists over the availability of choice of a forum to hear contract issues, labor relations is bound to suffer.

And, to be sure, this opportunity for more frequent judicial participation is hardly consistent with the proponents' asserted objective of reducing Government intervention in labor disputes.

There is one feature of the bill which seems to warrant unqualified support. S. 560 establishes a National Special Industries Commission, to make a comprehensive study of labor relations in those industries particularly vulnerable to national emergency disputes. It is true, as the President's message accompanying the bill points out, that "such labor crises occur with much greater frequency in some industries than others," and that the Commission, with its 2-year life span, seven expert members, and power of subpoena, could very likely make a real contribution toward explaining why this is so and what can be done about it. This study, in ALPA's view, might be the proper and sole course to follow.

The subject matter here is one which has not recently received thorough and comprehensive study, and—as S. 560 itself demonstrates—hasty legislative action can be productive of more mischief than help where the real facts of life remain unknown.

ALPA would welcome an opportunity to present statistics and viewpoints on the subject such a commission could investigate: the value of a permanent neutral, the real causes of delay in grievance handling, the effectiveness of tripartite arbitration, remedies for bad faith bargaining, the proportion of cases settled at stages of the process prior to arbitration, the role of partisan System Board members, the costs of the System Board process and the needed reforms in our grievance-arbitration procedures. We would also welcome, of course, the opportunity to hear such presentations from the airlines.

A realistic study of such matters is long overdue and, if properly conceived and executed, could provide the basis for enlightened reform by either legislation or mutual consent. We also expect that such study would result in a demonstration of our present suspicions: that, insofar as ALPA-airline relations are concerned, the Railway Labor Act needs only minor therapy and not drastic surgical change. Thank you for your time and attention.

The CHAIRMAN. Thank you very much, Mr. Green. You certainly don't give S. 560 a green light.

Mr. GREEN. No, I don't.

The CHAIRMAN. You end upon a positive note as to the proposal that features a National Industry Commission.

Mr. GREEN. I think your comment goes right to the heart of our position, Senator. We think that labor relations in the airline industry has been generally confused with labor relations elsewhere. We find it has not been the subject of very good, very comprehensive or very expert study. We even find ourselves, as partisans, sometimes unfamiliar with all of the facts we would like to know about to know how this animal works in this industry.

We think legislation at this time is basically premature. We would like to participate in the efforts to get the facts which would lead to appropriate legislation if it is really needed.

The CHAIRMAN. From time to time we hear statistics that give the lost time figures attributable to strikes in an industry. Do you have figures that would reflect the lost time in the airline industry arising out of strikes?

Mr. GREEN. The Bureau of Labor Statistics just completed such a study, and we have condensed it and pulled out the relevant statistics for the statement which is now before this committee.

The CHAIRMAN. What is that?

Mr. GREEN. I have pulled these statistics together in this way: We say that since 1936 there have only been 9 years in which more than 100,000 man-days were lost due to strikes throughout the airline industry. I haven't broken those down in terms of category of employees, but the figures are broken down in the Bureau of Labor Statistics study.

The CHAIRMAN. Why don't you dig that out for us.

Mr. GREEN. I would be glad to, Senator.

The CHAIRMAN. We can then see the strike impact here. Is it generally stated in man-days lost?

Mr. GREEN. Yes.

The CHAIRMAN. That is some measure of the degree of the impact and the degree of crisis presented to the public through airline strikes, is it not?

Mr. GREEN. Right. And I think an effort should be made to compare those statistics on some uniform basis to other industries. It is our position that when those comparisons are made, the people who talk about a breakdown of collective bargaining in the transportation industry are not talking about the facts.

The facts are that by and large through the airline industry, collective bargaining has worked without excessive work stoppages or man-days lost. I would be glad to document that.

Senator TAFT. On that point, Mr. Chairman, the man-days lost applies only to employees working for the airlines. Is that correct? It does not apply to the public loss?

The CHAIRMAN. I don't know how you would get that statistic.

Senator TAFT. I don't either. That is the point I am making. You cannot tell the number of trips cancelled and loss of revenue.

The CHAIRMAN. That would be impossible because of the substitute ways to get from Columbus to Washington. That would be true in any of our situations. We have an alternative.

Senator TAFT. I point out there are a number of other factors besides man-days.

The CHAIRMAN. There is no doubt about it. It is the total economic loss. But this gives us a measure of how great a period historically the industry has been down because of strikes, in its comparison with others. The emphasis has been on transportation here in this legislation, with the exception of the comprehensive bills introduced by Senator Taft and Senator Javits. The others pretty much have focused on transportation.

Well, this has been a great statement that you have delivered for President O'Donnell. Will you express our gratitude to him for his statement and appreciation for both of you being here today to present it. I will turn to Senator Taft now.

Senator TAFT. Thank you very much, Mr. Chairman. Mr. Green, you seem to make a statement that your public losses or losses to the economy generally from airline strikes or transportation strikes have never been computed. That may well be the case.

I don't know of any specific figures on it, but do you consider a dock strike a transportation strike?

Mr. GREEN. Yes; I do.

Senator TAFT. Are you aware of the OEP figures I put in the record last week with regard to the dock strike impact?

Mr. GREEN. No; I haven't seen them, Senator.

Senator TAFT. Let me just give you a general idea of the area in which you are dealing. It was estimated that the coal and dock strike losses averaged between \$280 and \$300 million each week. During the coal strike our balance of payments was adversely affected by \$20 million a week.

In agricultural commodities, for instance, the tobacco, lost \$20 million to recondition tobacco for export.

Fruits and vegetables, in July and August, approximately \$215 million in export loss.

In wheat, the Pacific Northwest, more than \$55 million in export sales lost.

Corn and soybeans, a loss placed at \$75 million a year.

Figures such as this all throughout industry are involved.

Now, admittedly these don't come over and apply directly to the airline industry. There is some loss through air transportation for some of these products, particularly where there are shipments of perishable commodities, which are normally shipped by air, and these are probably never made up again.

But you don't seriously maintain there are not enormous losses involved in any sizable airline strike to the public?

Mr. GREEN. No; I don't. I think the association would acknowledge that the concept of a national emergency as an ultimate boundary on the right to strike probably has to be part of our national scheme.

Senator TAFT. Present law provides no final remedy after the 80-day injunction. Final action is only delayed until Congress acts.

I was on the House Labor Committee in 1963, and the railroads came in then with an impasse which we extended. I forget how many times we have had it up since, at least four or five times and the Congress has not done much.

Frankly, I have never felt, and many Congressmen and Senators haven't felt, that this is an appropriate body to make that kind of a decision at this time. I don't agree the court is an appropriate body to make it either. A review by the courts, yes.

But just to comment in passing on the Retail Federation proposal, I feel that this is an area in which people in the particular industry are charged with a responsibility to the public as well as being fair to labor and to management.

If we have a major transportation strike in this country, we are really coming to compulsory arbitration, because somebody at the end of the line is going to say you have to do this because the public is involved. Why is it not better for management and labor to have a final-offer selection procedure?

The very complexities you complain about in connection with the last-offer procedure seem to me to have considerable merit. The parties can make a settlement before you pull in an independent board to make a determination that may have, perhaps, unrealized disadvantages and technical problems involved in them.

Mr. GREEN. We believe that the availability of the ultimate weapons or ultimate final step of the negotiating process very readily becomes a part of the negotiations process itself.

We think to the extent that this Congress injects itself further by enacting new and different legislative remedies for collecting bargaining impasses, the more Congress does the more those things are going to be used.

There is no easy solution to this problem, but one way out, from a labor relations lawyer's point of view, is to opt for flexibility and to present and to use those remedies which are best adapted for the particular dispute.

It is for that reason that we oppose a general remedy drawn from, presumably, some people's experience in the railroad industry and imposed upon the airline industry where we think conditions are completely different and where we think collective bargaining is functioning now.

Senator TAFT. I don't see why this procedure, if it is general enough and flexible enough, would necessarily impose a pattern upon any other industry. I could envisage using the same mechanism for very different types of solutions and very different alternatives.

Mr. GREEN. I think the best way to answer that is to put yourself in a position of a negotiator who is responsible for getting a contract on certain essential terms. It is a difficult enterprise. It requires determining what the other party will do, what the opposite member will do.

Suppose you find yourself in a position where it looks like you may not be able to bring back to your party the contract they wanted. If you know that Congress will provide final offer selection, for example, at the end of the road, you could make an estimate of the relative pain of going forward to that tribunal as opposed to going backward to your party and asking him to change his position.

It will become, in my view, increasingly attractive to resort to compulsory arbitration when that is a specified politically available remedy.

Senator TAFT. You have said it is compulsory legislation and Secretary Hodgson said it is not. I do not think it is as compulsory as giving it up to the Congress or the President. I think it is a rational way out of a critical situation.

You are really recommending that we do nothing, no matter how serious the national transportation emergency strike situation is. After the initial cooling-off period you are recommending we do nothing. That is not going to happen.

Mr. GREEN. I think the less the Congress does now, the less it will have to impair the freedom of certain institutions in the long run.

I think, in the long run, these institutions function better and will function better with less specificity by Congress about what is going to happen if the parties reach the last step. You know, where the problem has not been acute it may be a step backward to propose new remedies.

Senator TAFT. There has been testimony on the national emergency, but one question I was going to ask you was about territorial emergencies. I don't think you have covered that, have you?

Mr. GREEN. I have not covered that because we have not had any real experience with that problem. I think we just speak as laymen do about the problem. There must be a point, based on actual facts in a specific situation, when a court of law would recognize a significant enough emergency to warrant the imposition of an injunction.

I know I speak for many people, if not the entire association, in saying that we are not content that the Federal courts now are articulating and defining and construing the term "national health and

safety," which is about the best way it can be done, on a case-by-case basis.

Senator TAFT. The 80-day injunction cannot be applied regionally due to a recent court decision.

Mr. GREEN. There may be some territorial situations that rise to the level of a national emergency. I don't think as lawyers we are comfortable in trying to draft a code on this subject. I think we are more comfortable leaving it to a case-by-case injunction.

Senator TAFT. What do you consider to be excessive disruption of the public in the language you used?

Mr. GREEN. I don't know how to measure that. I am just a poor labor relations lawyer, and I think the question of what is excessive ultimately reflects the total impact of every Congressman's emotional reaction to an historical event. I don't think we are dealing with a legal question here. I think it is a political judgment that must be made collectively.

Senator TAFT. Another area, which may not affect your industry directly, but which I have provided in my bill relates to work rules. The legislation takes productivity problems related to work rules out of the bargaining area on the condition that the employer agrees that there will be no job losses except due to the attrition. Have you given that any consideration?

Mr. GREEN. I personally have studied it and put myself again in the position of the poor labor relations lawyer who is representing the airline pilot who is furloughed during the course of the operation of one of these automational or productivity changes. I wondered how in the world I would ever be able to get him his job back, whether I would be able to prove to a neutral arbitrator that this pilot was furloughed solely because of the changes in work rules.

Senator TAFT. We have an attrition reduction clause which requires that an employer exercising this option cannot arbitrarily reduce his work force.

Mr. GREEN. And I worried a little bit, too, about the employer who was not allowed to make any changes in his work force, even for causes unrelated to productivity.

Senator TAFT. He can make the change.

Mr. GREEN. There are remaining substantial problems for an advocate on behalf of affected employees. Airline pilots and stewardesses, I think, genuinely and deep-seatedly view all work rules as health and safety matters.

Senator TAFT. They are closer to being that in the area of the airlines than they are in some other areas. I have to grant you that.

Mr. GREEN. I am simply not wise enough to say that this proposal would provide an appropriate remedy. It puts restrictions on both sides, which they may be better off without. I simply don't know.

Senator TAFT. Mr. Chairman, minority counsel has one or two questions.

Mr. MITTELMAN. Mr. Green, there is a threshold question here which your statement really doesn't get to. That is whether S. 560 would ever have any application to a strike in the airline industry as presently constituted. You will recall in 1966 there was strike by the machinists union against five major airlines. That is the only time recently when as many as five different airlines were closed down at the same time. It was a tremendous dispute at that time as to whether

the criteria for the Taft-Hartley injunction had been made, and the administration then refused to invoke the Taft-Hartley and Congress refused to pass any special legislation concerning the strike.

Now, as I understand it, there is no multiemployer bargaining in the airline industry. The one that you have is one airline striking at a time. So we have, for example, a Northwest Airline strike by the clerks which lasted over 6 months, which didn't seem to create any acute national emergency. You have the National Airlines on strike for a considerable period last year.

The CHAIRMAN. How long was Mohawk out?

Mr. GREEN. I believe about 5 months?

The CHAIRMAN. All of upstate New York was affected.

Mr. MITTLEMAN. Just looking at S. 560, I am trying to understand the import of your testimony. There is a question even if S. 560 were enacted as to whether it would ever have been applicable to a strike against a single airline or even a few airlines at the same time by the pilots or any other group in question.

It is true, it covers all terms. But even the broader bills, Senator Taft's bill and Senator Javits' bill, only cover regional emergencies which affect the health and safety of a substantial part of the Nation or its territories. I am not sure, for example, that even the Mohawk strike, which really did have a severe impact on New York or the places covered by Mohawk, could have claimed that it affected the national health and safety, as that term has been commonly used and developed. Do you have any comments on that?

Mr. GREEN. I would hope that someone of your views and your interpretations of the statutory language were on the bench when the question of the President's power to impose a Federal injunction was raised.

If you will take a conservative lawyer's reading of those terms, I tend to agree with it. If that application and that interpretation remains constant, then many of the aspects of S. 560 would not be applied to airline strikes.

There are other aspects to the bill which would require changes, in our view, even more painful. These changes are not dependent upon definition of "emergency." We cherish our method of arbitrating, for example.

Mr. MITTELMAN. The other question is that you suggested or that you advanced the ban on the mutual aid pact. As I understand it, this pact developed because of various airlines, and they have the same right to assist each other as union members do to have their own strike insurance funds, or indeed, accept contributions from other unions. Their position is essentially what is sauce for the goose is sauce for the gander. Would you have an opinion on that?

Mr. GREEN. Let us talk about this word "whipsawing." It means different things to different people. Suppose ALPA concludes a contract with TWA in January and we are satisfied with the contract. In March when we are down to the final stages of collective bargaining with Pan American, we are surely going to point to the TWA contract. We are surely going to tell Pan American that we want at least as much from them as we got from TWA in January.

After all, they are competitors and they do the same kind of work. It is only fair that they should pay at least as much as we were able to negotiate with TWA. That is our bargaining argument.

I don't see anything wrong with that, and I don't see anything that requires the intervention of Government power or the intervention even of a mutual airline strike insurance program in reprisal.

I think the two things are absolutely unrelated. In one case we are talking about our efforts to engage in good faith bargaining. We argued for more money, and we argued by reference to continuing historical practices.

In the other case we have the airlines, many of which are subsidized, and many of which have vast financial resources, with which we cannot expect to cope, pooling those resources for the purpose of drawing a firm, absolute rigid stop to airline wage settlements at a battleground of their own choosing.

We have had an established industry practice for use of separate collective bargaining with each employer. We now find ourselves faced with the prospect of bargaining against the entire treasury of all of the national commercial airlines on issues which they, as a collective, choose to fight on.

The Mohawk strike is a perfect and clear example. At the end of the road it was bad for Mohawk and it was bad for its pilots, and it was the mutual aid pact by the testimony of the parties themselves which made that strike endure so long. At least it was one of the most significant factors. We were very disturbed about that.

Mr. MITTELMAN. I have no further questions.

The CHAIRMAN. Senator Taft's bill that was introduced yesterday, S. 2959, referred to this committee, will, of course, require hearings, too. I tentatively would hope that we could count on this organization returning at a later date to get your views on that, too. If you would pass that along to President O'Donnell, I would appreciate it.

Senator TAFT. Mr. Chairman, I might just ask another question or two. I thank the gentlemen from the American Retail Federation for staying. I don't have any prolonged questions to ask, but I have just had an opportunity to review their proposal.

The 10-day extension period, is it to be extended whether or not there is a continuation of the national emergency or is that a completely open option?

Mr. SMETANA. That is if the strike is not settled at that time.

Senator TAFT. But the original finding holds over?

Mr. SMETANA. That is correct. The President has an extra 10 days in which to try to resolve this matter, or the Secretary.

Senator TAFT. Again, you are talking about a national emergency. Have you given any consideration to territorial emergencies which affect health or safety?

Mr. SMETANA. Yes, we have, but there are two matters before I come to that. One is, Mr. Chairman, I neglected to request that our statement and appendix be made a part of the record. Even though I did not read the statement, I would like it to be made a part of the record.

The CHAIRMAN. It will be made a part of the record.

Mr. SMETANA. Second, Senator Taft, I believe the statement you made with respect to your not being presently disposed toward a judicial approach, we did say under the other approach the parties themselves submit the final offers. Under what we propose it coincides with the administration bill and your bill to that extent.

We would not permit the court or this special court to consider anything other than that which the parties themselves had submitted.

In fact, it is even more stringent in that we only permit each party to have one final effort.

Senator TAFT. There is no alternate?

Mr. SMETANA. No alternate final offer. To that extent it is perhaps more stringent.

To your question on the matter of regional emergencies, we have considered it. This is one of the instances where not only was it considered by the committees, but it also went to a vote of all of the State associations because basically our principal position had been that we are opposed to any intervention of any sort.

I would agree with the gentlemen from the Air Line Pilots Association that we only addressed ourselves to those areas we had thought there had been a severe problem with where collective bargaining was not working and we felt it did not work in the national emergency strikes in transportation because that is the area where, as you yourself point out, Congress had to intervene.

There has been no evidence of a breakdown in other areas that it has been as severe.

To the extent that there are problems in collective bargaining, we think there are other ways of solving those problems. I think some of the discussion that was had here with the gentlemen from the Air Line Pilots Association goes to the root of that question. It has to do with the balance of power in the bargaining equation. Perhaps in the particular airline situation he alleges, the balance was with the airlines. I don't know whether it was or not.

But the problem is the same. There should be no subsidy to either side. What we had in New York with Mohawk with the employees on strike they enjoyed unemployment benefits. They enjoyed food stamps, and they enjoyed welfare. I am sure that altogether, that being close to their wage, contributed substantially to their being able to stay out.

If we are to come to grips with regional strikes, we must have a balance of bargaining power. That is the essence of collective bargaining. I think to have imposed solutions is a very dangerous step, because I think it is not the kind of thing that will save collective bargaining. I think it will go further toward compulsory arbitration, and that is what you are trying to avoid.

Senator TAFT. Do you have any comments on the work rules suggestions?

Mr. SMETANA. I do, Senator Taft, only to this extent: There is a serious problem in work rules, but it is not related only to the area of national strikes.

Senator TAFT. I recognize that. However, I do think that the reverse of that to a great extent applies. In other words, the national emergency strikes are very often related to work rules.

Mr. SMETANA. I think the danger—again, I must say, in the Federation we have not, obviously, considered your most recent proposals, but we have taken a strong position in favor of free collective bargaining. Unless this whole question of work rules is considered in its totality, we would have great difficulty. In the area of the construction trades, for example, in the *National Woodwork* case, which is still continuing to be the law, is the question of doing work on the site. In other words, you have premachined doors or not. That is the present problem, and it may not be in the interests of that industry to simply phase that out.

It could be that through collective bargaining the parties could resolve this matter today. And the further question is, which I am not sure how to answer, could there be a strike in support of work preservation?

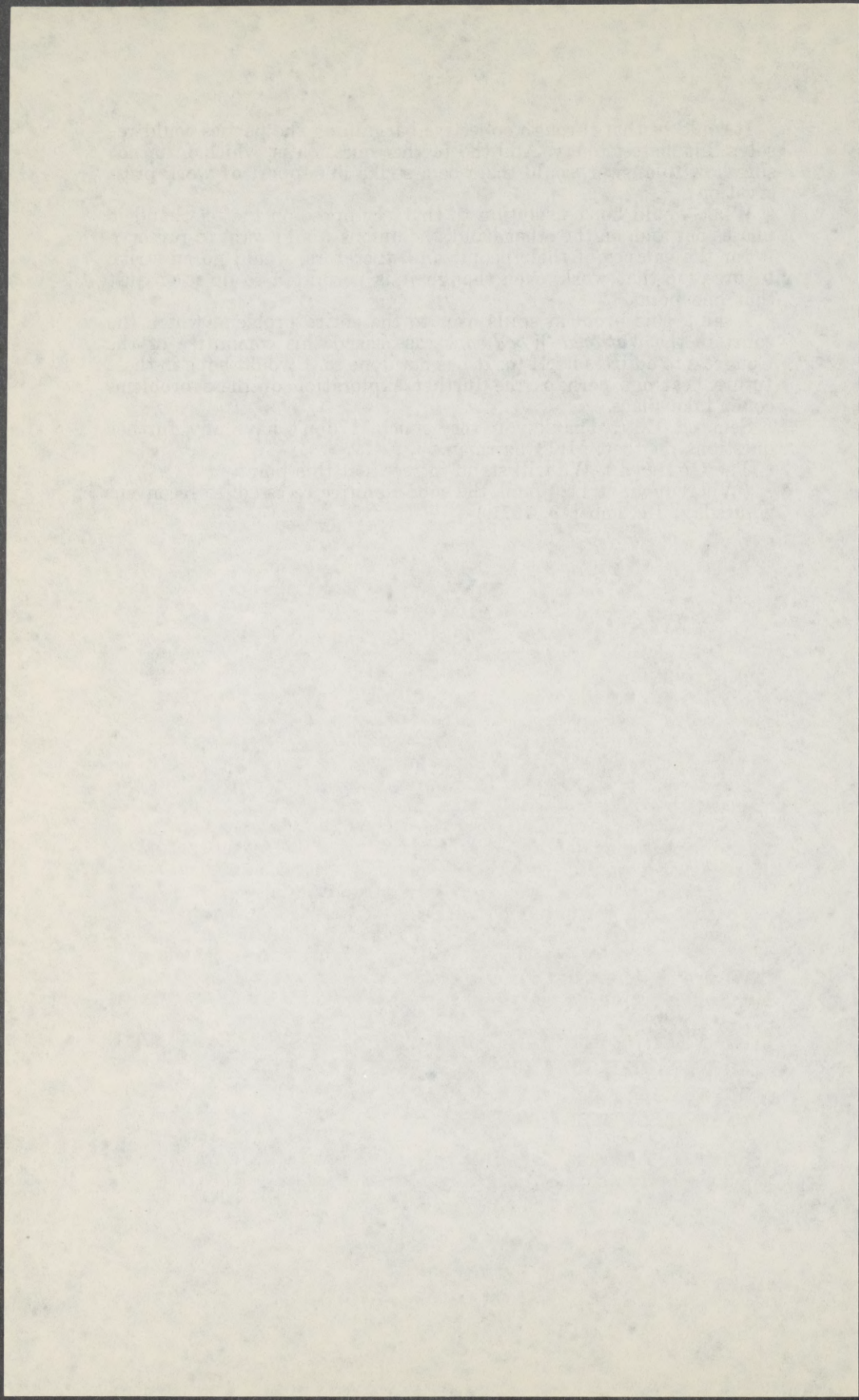
What would be the solution to that? Suppose on the one hand it phases out and, on the other hand, the unions would want to preserve it for the balance of their people and, therefore, would go on strike to preserve that work, even though it is permitted to do it on just that one point.

I think this problem spills over to the entire problem, which the court in the *National Woodwork* case asked this committee of the Congress to address itself to. It has not done so. I would hope in these future hearings perhaps the further exploration of these problems could take place.

Senator TAFT. Thank you very much. I don't have any further questions on that, Mr. Chairman.

The CHAIRMAN. We will stand in recess at this point.

(Whereupon, at 1:20 p.m., the subcommittee recessed, to reconvene Thursday, December 9, 1971.)



NATIONAL EMERGENCY DISPUTES, 1971-72

THURSDAY, DECEMBER 9, 1971

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

The subcommittee met at 10:10 a.m., pursuant to call, in room 4232, New Senate Office Building, Hon. Harrison A. Williams, Jr. (chairman of the subcommittee), presiding.

Present: Senators Williams, Stevenson, Javits, Packwood, and Taft. Committee staff members present: Robert E. Nagle, general counsel; and Eugene Mittelman, minority counsel.

The CHAIRMAN. The Senate Labor Subcommittee will come to order.

This morning the Labor Subcommittee is continuing its hearings on emergency labor disputes legislation.

There are now a total of 11 bills before the subcommittee, offering a great variety of approaches to the very complex issues which this subject presents.

Five of these bills were introduced after our hearings began last June, when the Secretary of Labor appeared as our leadoff witness.

Among these new proposals are bills submitted by Senator Taft and Senator Stafford, both of whom are members of our committee.

Last week, one of Senator Taft's proposals was offered as an amendment to the economic stabilization measure, then being debated on the Senate floor. While the Senate decided not to accept the Taft amendment, the evident interest displayed in it by other Senators indicated that it would be desirable to obtain the administration's thinking regarding Senator Taft's legislative recommendations.

To that end, we have invited Secretary Hodgson to appear this morning and testify on the Taft bill, as well as the other measures which are before us, but which he has not previously commented upon.

We are hopeful that your cooperation with the committee continues, Mr. Secretary; we are very grateful to have you with us.

**STATEMENT OF HON. JAMES D. HODGSON, SECRETARY OF LABOR,
ACCOMPANIED BY RICHARD F. SCHUBERT, SOLICITOR OF THE
DEPARTMENT OF LABOR, AND MITCHELL STRICKLER, ATTORNEY,
DEPARTMENT OF LABOR**

Secretary HODGSON. Thank you, Mr. Chairman.
We certainly welcome the opportunity to be here.

Senator Taft, Senator Javits, and staff members. I have with me today the Solicitor of the Department of Labor, Mr. Richard Schubert, and Mr. Mitchell Strickler, attorney in the Department.

At the outset I would like to say this: Perhaps because of my position at the focal point of Government, it may be easy for me to overestimate the developing public concern on this subject of labor disputes that cause national emergencies and the intensity of that developing concern. After all, it is perhaps easy to overestimate the scope of a storm when one is at its center.

But, on the other hand, nowhere does the accumulated impact of public dissatisfaction come together with greater focus, probably, than in the Secretary of Labor's Office in the Nation's Capital.

I am convinced, for one, that the public concern is fast reaching a floodtide that will require governmental action in the form of legislation in the near future.

Now, this morning I have a brief statement of some 12 minutes that I would like to review with the committee, if I may.

The opportunity to talk to you about the need for a new emergency dispute law in the transportation field is indeed welcome on my part. That need has never been clearer. Within the last several months, the American public has suffered a major rail strike crisis and longshore shutdowns on all coasts.

The price our citizens who are not participants in the bargaining process pay for a system that allows protracted transportation breakdowns is far too high.

Congress narrowly escaped the necessity to enact special legislation to get the trains running last summer. Now Presidential action under the Taft-Hartley Act has temporarily relieved the drastic effects of the maritime shutdown—but on the west coast the first of the Taft-Hartley injunctions expires this month—in fact, on Christmas Day. If a settlement does not occur, there is nowhere to go but Congress.

Last summer, the Nation's economy was severely disrupted by sequential selective strikes in the railway industry. What started on July 16 as a strike against two roads escalated over an 18-day period into a shutdown of some 10 carriers, shutting down about 40 percent of the Nation's railway system.

Shutting down one carrier after another, selective strikes brought a cumulative paralysis to major segments of our economy. Across wide areas industry and agriculture were crippled. Transportation of wheat poultry, feed, and wood products was severely curtailed. Vital products, such as chemicals to purify municipal water systems, were in short supply.

Mines were shut down, plants were closed, and thousands of men and women across the Nation were laid off their jobs. Uncertainty concerning the availability of rail service had effects far beyond actual curtailment.

Because of the nature of our rail transportation system, rail carriers are heavily dependent on one another. Where a struck carrier owned shared switching and interchange facilities, they were denied to other carriers. Thus, a strike of selected rail employees had a drastic effect on a wide range of the economy and the citizens who are dependent on that economy.

For every worker who loses a paycheck because of his participation in such strikes, several workers in affected economic sectors are

out of work or are on shortened workweeks because of them. Such is the effect of our intermeshed economy.

The threat of this type of economic warfare in the transportation sector still hangs over the Nation today, and will continue to do so until a new emergency disputes law is enacted.

The courts have said, within the last few months, that selective strikes are legal, but it has been left to the legislative branch to regulate them. Now Congress must find an effective way to fit this type of economic action into the pattern of American labor relations without excessive public damage.

Selective strikes and lockouts imposed solely at the option of the parties can be an unacceptably destructive force. If they are conducted according to rules that protect the public interest, however, they may well be an acceptable device for use in labor-management conflicts.

Our Nation is still under the gun because of disputes on the docks that have caused widespread economic dislocation. The grim marks of this dispute are almost everywhere. In the Midwest, particularly, far from the struck ports, we hear of mountains of rotting crops that give mute testimony to the loss of planned export sales and of economic suffering among embittered people.

Farmers stand by, helpless, as their chances to harvest a year's work wither away. I have heard—often and at length—from those farmers, gentlemen, and I can assure you they are not happy with the failure to act on emergency disputes legislation. They simply cannot accept the fact that our labor relations system, in which they can play no role, can serve to destroy them.

The dock tieups impede the Nation's economic program in a multitude of ways. Credits from agricultural exports should have bolstered our sagging balance-of-payments accounts; now they are lost. What is more, there is a critical danger that major portions of our export markets for many products may be lost.

Japan, our largest customer for these products, is now questioning the dependability of the United States as supplier of agricultural commodities. The Japanese are sending messages to other supplying countries, urging that they increase their output so as to reduce Japan's dependency on the United States.

What we often think of as transitory emergencies are beginning to have ominous long-term implications, even far beyond our own borders.

For many small businesses closer to the docks, the effect is direct and disastrous. Layoffs, reduced operations, and reports of business failures are commonplace. The U.S. shipping industry, its size diminished and many of its workers unemployed, had scores of ships immobilized in port, measuring the weekly loss to the industry in millions.

The island State of Hawaii was almost defenseless—a sitting duck at the mercy of a process in which it had no part. The results were traumatic. Unemployment hit a 16-year peak. There were shortages in vital supplies, even textbooks for schoolchildren. Food prices rose 8 to 10 percent.

Medium- and large-sized businesses reduced their workweeks. Many smaller businesses had to cut their payrolls drastically or they would simply have gone under.

Substitutes and alternatives are inadequate. Air shipments were impractical or costly for the volumes involved.

In neither of the two main geographical areas of the maritime dispute has the processes of collective bargaining worked successfully. On the west coast, internal union problems have hobbled the ILWU, complicating settlement chances there.

The real sticking point complicating the eastern and gulf coast negotiations was a particular provision on guaranteed annual income in the New York contract. Other ports did not have this problem in anywhere near the same magnitude, yet negotiations broke down and the entire east and gulf coast was immobilized.

Back in the decades of the twenties, thirties, and forties, Congress laid down the foundations of the labor-management structure that exists today. Under the protection of a series of laws, the right to organize, bargain collectively and strike, at least in the private sector, attained new status. These rights are now largely accepted as an integral part of our economic fabric.

Now it is time, however, for the Congress to ask whether these rights it granted were ever meant to be used in such a way that one public emergency after another is created. I think the answer has been made clear.

At some point, the American public demands that its interests must be recognized in law.

Just as the worker in the thirties called on Congress to strengthen his rights, today the American people are asking for protection of their well-being and livelihood from the ravages of work stoppages that have widespread adverse affects on those not directly involved.

In this situation, the choice of Congress is not whether to deal with recurring transportation emergencies, but how to deal with them. If Congress does not wish to provide legislation to deal with these disputes, it must be prepared to settle them one at a time, like some unwieldy 535-man arbitration board. Within a recent 12-month span, Congress had to act three times in labor disputes. If nothing is done, the frequency will likely increase.

This committee has given this problem extensive study. There are many proposals in your files awaiting action. Further delay in enacting a new law for transportation disputes can only mean more uncertainty, more personal misfortune and more disruptions of the Nation's economy.

I suggest that the committee be guided by three key elements in devising a suitable statute to deal with this problem.

1. The outmoded emergency disputes provisions of the Railway Labor Act must be supplanted.

2. Adequate authority to avert stoppages that produce widespread emergencies must be established.

3. Collective bargaining should not be discarded but preserved and enhanced.

All three elements are embodied in the bill proposed by the administration.

In addition to the administration's bill, I realize there are a number of other proposals now pending with regard to emergency disputes legislation. In order to present you with an overall review of these proposals, we have provided the members of the committee with an appendix to my prepared statement. This appendix contains our reaction to these other proposals.

If you have any specific questions with regard to these, I will be happy to answer them.

I urge you to move ahead now on the basis that the American people demand it.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Secretary Hodgson.

Senator JAVITS?

Senator JAVITS. Mr. Chairman, I think since we have done this for our colleague, Senator Taft, I would like to yield to him with the Chair's permission.

Senator TAFT. Thank you very much. I appreciate that.

First of all, may I thank the chairman very much for having these hearings. I also would like to thank the Secretary for his very helpful testimony and the material in the appendix analyzing the legislation before us. It has been very helpful, indeed.

As the chairman has stated, the matter was perhaps precipitated by the amendment I offered to the Economic Stabilization Act on the floor the other day. I would like to make it clear that the legislation which I introduced as an amendment and which is before this committee now as S. 2959, is an omnibus approach to the problem. It is not one in which I have any exclusive pride of authorship. Most of the bill comes from other measures, some of them introduced by the members of the committee here this morning, Senator Javits, Senator Packwood, Senator Williams, and others.

I do think that I share very strongly in the Secretary's feeling that we ought to proceed to try to get some measure moving, especially insofar as it applies to the crucial area of transportation and perhaps some other areas that I want to go into this morning with the Senators.

Before proceeding, I also would like to recognize that Senator Pearson has asked to be added as a cosponsor to S. 2959. Senator Fong is also a cosponsor of S. 2959 as he was a cosponsor of the amendment on the floor.

Mr. Chairman, I have a statement from Senator Pearson which he has asked that I submit for inclusion in the record, if that would be agreeable, and I would like to offer it at this time.

The CHAIRMAN. That will be done.

(The prepared statement of Senator Pearson follows:)

STATEMENT OF SENATOR JAMES B. PEARSON OF KANSAS
BEFORE THE
SUBCOMMITTEE ON LABOR
OF THE
SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE
ON
EMERGENCY LABOR DISPUTE LEGISLATION
DECEMBER 9, 1971

Mr. Chairman and Members of the Subcommittee:

I am pleased to have this opportunity to present my views on legislation before your subcommittee designed to deal with strikes or lockouts which -- if permitted to occur or continue -- would jeopardize essential services or imperil the health and safety of the American people.

On Monday of this week, the distinguished Senator from Ohio (Mr. Taft), introduced S. 2959, a bill to amend the Taft-Hartley Act and the Railway Labor Act to provide for the settlement of certain emergency labor disputes. This legislation, after months of careful drafting and thoughtful reflection, balances the interests of labor, management and the public.

I am pleased to serve as cosponsor of S. 2959, and urge this subcommittee to consider fully its terms. I believe its enactment, after the careful review of the Congress, would represent a landmark achievement in the extremely complex and little understood area of labor-management relations.

Throughout the American economy, a multitude of essential public services is provided by the private sector. The National defense, for example, depends upon private enterprise, and civilian employees of private enterprise, to perform without serious interruption certain

responsibilities undertaken voluntarily and for profit. In some industries, the public interest cannot tolerate an interruption of essential services for a single day.

Mr. Chairman, the Congress has not provided the Executive Branch of Government with the tools it needs to protect the public interest when crippling strikes or lockouts threaten or occur. The Railway Labor Act has proved ineffective: In 1943, President Roosevelt seized the railroads and arbitrated a dispute with railway employees. President Truman seized the railroads in 1946, but a strike occurred anyway. President Truman at that time asked Congress for authority to draft the striking workers. Congress was forced to act three times in 1967 to avert a nationwide rail strike. In December, 1970, Congress halted a nationwide strike involving three nonoperating rail unions, and the United Transportation Union. The airlines have suffered a nationwide strike of more than 40 days because provisions of the Railway Labor Act were ineffective to avert work stoppage.

Experience under the Taft-Hartley Act has been somewhat better, but longshore and maritime strikes over the years have proved this landmark legislation ineffective. After expiration of the 80-day "cooling off period," six longshore strikes and one maritime strike have shut down the foreign commerce of the Nation with disastrous results to farmers, shippers, manufacturers and workingmen throughout the economy.

The legislation introduced by Senator Taft, which I have co-sponsored and support strongly, would provide the Executive Branch of Government with the tools it needs to represent the public interest when serious disruptions in interstate commerce occur as a result of labor disputes.

Provisions of S. 2959

The provisions of S. 2959 would apply to all industries which affect interstate commerce. Thus a threatened strike or lockout in any industry could result in a decision by the President and Secretary of Labor to invoke the powers enumerated in the bill.

Other legislation before this subcommittee would limit the operative provisions to the transportation industry. There is no valid reason, in my judgement, for such a limitation. Recognizing that these bills would apply only to emergency situations which threaten the well-being of the Nation, it would seem that emergency procedures to end strikes, if fair and equitable in the transportation area, should be fair and equitable across the board.

The Administration has announced its support for legislation which would deal with National emergencies. Regional emergencies, such as the disruption of commerce in a State or several States, would not be covered by the Administration bill. The Taft alternative which I cosponsor, on the other hand, would insure that localized strikes or lockouts, constituting an emergency in a particular locality, may be prevented by aggressive action in the Executive Branch of Government.

Under the terms of S. 2959, the President may determine that a threatened or actual strike or lockout jeopardizes essential services throughout the United States, or in a region of the Nation. In such circumstances the President is authorized to create a Board of Inquiry. This Board must report its findings on issues in dispute within a specified time, and a copy of this report is made public. Upon receipt of the report of the Board, the Secretary of Labor is authorized to initiate action to avert or end the work stoppage, if the public interest so requires.

The Secretary would retain great flexibility in dealing with a particular work stoppage. The Secretary would enjoy several alternate courses of action to facilitate uninterrupted service. Under each course of action, it should be observed, the burden would be on the parties to the dispute to bargain collectively.

The Secretary could issue a "back to work" order of up to 30 days, during which period the parties would continue to bargain collectively. The Secretary would be authorized to issue an order restoring partial service for a period of up to 180 days. The Secretary could issue an 80 day injunction to provide a cooling off period. In extreme cases, the Secretary could create a "Final Offer Selection Panel," and the final offers of the parties would be submitted to the panel for consideration.

After appointment the Panel would conduct an informal hearing, and within 30 days select that final offer (submitted by a party to the dispute) which -- in the judgement of the panel -- is most fair and reasonable under the circumstances. The Panel would have no authority to arbitrate differences between the parties. The Panel would have no authority to amend a final offer submitted by a party. The Panel would simply be obligated to choose among those offers before it, and announce a decision. The decision would be binding on the parties, but subject to judicial review if either party considered it capricious or arbitrary.

Clearly the parties to a dispute, if unable to reach accord through collective bargaining, would have strong incentive to submit reasonable offers. Knowing the Panel is limited in its selection to those offers filed by the parties themselves, each disputant would submit a proposed resolution which, by objective standards, could be considered fundamentally fair. And the public would be spared a crippling strike or lockout.

Thus this legislation provides a wide range of remedies in averting or ending work stoppages which constitute a National or regional emergency. These remedies are not mutually exclusive, as would be the case under the terms of the Administration bill. Under the Taft bill, the Secretary may invoke one or more of his powers to insure that no situations develop which jeopardize the National interest.

Impact of Dock Strikes on Agriculture

Mr. Chairman, American agriculture depends upon foreign trade, and orderly access to foreign markets. In the fiscal year ended June 30, 1971, \$7.8 billion of agricultural products were exported by the United States, including about \$6.8 billion of commercial sales. Two-thirds of this total, or \$5.2 billion, were exported through East and Gulf Coast Ports.

The Gulf Ports exported nearly \$1.5 billion worth of agricultural commodities in fiscal year 1971.

West Coast Ports provide access to important agricultural markets, particularly Japan, our largest single dollar market. In the fiscal year ending June 30, 1971, Japan purchased \$1.2 billion of agricultural commodities.

Exports for the last fiscal year accounted for the output of one out of every four acres harvested in the United States. More than 72 million acres of American cropland are devoted to production for export. The foreign market consumed over half of the rice, wheat and soybeans produced; nearly two-fifths of the cattle hides; over one-third of the tallow, tobacco and cotton produced; about one-fifth of total feed grain sales by U. S. farmers.

Longshore strikes jeopardize these markets, so critically important to farmers and the economy of rural America. Longshore strikes depress farm prices, and create uncertainty which results in lost sales opportunities -- perhaps forever.

The United States Department of Agriculture has estimated that the recent longshore strikes cost fruit and vegetable farmers \$215 million in export opportunities. About \$40 million in perishables was spoiled because of the strikes.

More than \$95 million in wheat shipments were lost because of the strikes -- at a time when surplus problems are growing and prices are severely depressed.

The November 23 issue of the Journal of Commerce reported that longshore strikes on all coasts this year cost farmers 1.2 million tons in lost grain export opportunities. These shipments will never be made up, according to USDA's Foreign Agriculture Service.

The lost shipments in corn and soybeans are estimated to total \$75 million, all due to the longshore strikes. The Oregon wood products industry lost invaluable sales. And the list goes on and on.

Dock strikes virtually isolate the Hawaiian Islands, and other overseas United States territory. Clearly these strikes cannot be allowed to resume, should the current Taft-Hartley 80 day cooling off period expire without settlement.

Conclusion

Mr. Chairman, the Taft-Hartley Act must be amended to provide for emergency powers in preventing work stoppages before they jeopardize the health, safety or economy of this country.

The Railway Labor Act must be amended to provide for orderly resolution of disagreements. Because the machinery of the Railway

Labor Act has proved inadequate, the Congress in each crisis has been required to adopt special legislation forcing a return to work.

I urge the subcommittee to report favorably the bill, S. 2959, as introduced by Senator Taft. This legislation requires parties to bargain collectively, and in good faith, in reaching a settlement. The legislation introduced by the Senator from Ohio is preferable to the Administration bill, and preferable to existing legislation.

In the final analysis, S. 2959 is preferable to those alternatives devised to date. Therefore I believe it in the National interest for the Senate to approve its terms at the earliest practicable opportunity.

Senator TART. Mr. Secretary, the first area in which I think you could be helpful is to provide clarification as to what exactly an emergency, national or regional, is, and specifically whether we are talking here about health, safety and welfare only, or are we also talking about severe economic dislocation?

Secretary HODGSON. I think not only from the standpoint of construction of language of the statute, but from its application to actual circumstances as they exist in a major labor dispute, this is one of the most difficult areas to define with exactitude, so that almost all of us would be incompetent to do so.

First of all, I think there has been a misimpression that the term "national" in the legislation meant nationwide. "National" does not necessarily mean nationwide—it should not at least, in our judgment, mean nationwide. It should include things that have broad impact on the Nation. Breadth of geography is not the sole criteria, either. Intensity of the problems involved needs to be included.

This brings your second point up, then, how about the question of economic impact? It seems to us that the breadth and intensity of the economic impact, particularly the economic impact on nonparticipants, should be woven into this health and safety concept. Whether this is done operationally or in the language of the statute, we are willing to work with this committee or others in defining this to the point that they think would be helpful; but nonetheless it should occur.

To judge this, it seems to us economic impact consideration should include several things. First of all, it seems to us they should include the number of people who are not strikers who are adversely affected, the number of workers that are laid off, that have had their workweeks cut back, that suffer separate adversity because of the strike.

It should include the lack of availability of traditional products and services in the market over significant areas, and particularly the essentiality of those products and services.

We think it ought to include a dollar loss suffered by those that are not a party to the dispute.

It ought to weigh the adverse long-term effect, such as the loss of markets that I mentioned in my testimony. Balance of trade considerations needs to be involved.

Then the expanding effect of all these things over time should be considered.

Now how we put together this combination of geographical impacts, intensity of impact, the measuring of the economic effects, and particularly the economic effects over time that I have mentioned, is something that we will want to work with the committee to develop. We do not believe that we ought to carry this concept of adverse economic impact or of breadth of strike to a point where every small labor dispute in the Nation can be considered to qualify for the action contemplated in an emergency dispute statute.

A railroad running between Dogpatch and Podunk may have very adverse effect on that small area and it may be a part of the transportation system but that is not the kind of thing we are talking about. We are talking about something that has significance geographically, that has intense economic impact, that has major economic dislocations involved.

You can see from the nature of my remarks here this morning the thinking that we have given this subject in the Department in an at-

tempt to devise a concept that will be suitable to this Congress and suitable to resolving what is the problem that we have found before us on so many occasions in the past few years—the problem of transportation units of the Nation breaking down in such a way that many personal dislocations ensued.

Senator TAFT. Thank you very much, Mr. Secretary. That is a very comprehensive answer.

In the case of the *United States v. ILA, AFL-CIO, Local 418*, decided in the Northern District of Illinois on November 3, 1971, the Court refused to issue an injunction because the effects were regional rather than national. This case related to the Chicago Grain Elevators strike.

I have an affidavit from Assistant Secretary of Agriculture, Mr. Palmby, estimating that in October and November 1971, 35 million bushels of corn and soybeans were not exported, and the price of both fell about 8 cents per bushel. This strike commenced December 1 and continues to today. It affects 10 percent of the Nation's corn crop, 15 percent of the soybean crop.

Should this type of strike continue to be outside the remedial process?

Mr. Chairman, I would like to insert at this point in the record, if I may, the affidavit of Assistant Secretary Palmby. I also would like to insert at this point in the record a copy of the decision in the case of *U.S. v. International Longshoremen's Association, Local 418*.

The CHAIRMAN. Without objection.

(The material referred to follows:)

AFFIDAVIT

City of Washington)
) ss:
 District of Columbia)

I, Clarence D. Palmby, being first duly sworn depose and say as follows:

1. I am Assistant Secretary of the United States Department of Agriculture. The matters stated herein are based upon my own knowledge, upon information available to me in my official capacity, and upon conclusions reached in accordance therewith.

2. A strike of the International Longshoremen's Association which began September 1, 1971, has prevented and will continue to prevent the movement of grain through nine of the eleven grain elevators located in the Chicago area. These grain elevators include two elevators operated by Continental Grain Company, three elevators operated by Garvey Grain Company, and elevators operated by Farmers Grain Dealers Association of Iowa, Dixie Portland Flour Mills, Indiana Grain (a division of Indiana Farm Bureau Cooperative Association), and Carey Grain Company. This strike will disrupt market prices for corn and soybeans throughout the United States with a loss of income to a significant sector of American agriculture, will adversely affect the orderly marketing of grain in a major producing area, will reduce significantly exports which would otherwise move through an important port area in the United States, and will increase Government costs.

3. Domestic and world prices for soybeans and corn are based on quotations on the Chicago market. The disruption of marketing facilities caused by the grain elevator strike in the Chicago area can be expected to have a substantial impact on prices quoted in the Chicago market and as a consequence upon prices to farmers throughout the entire country including those farmers who do not market their grain through the Chicago area. If permitted to continue, the strike can be expected to affect prices received this year by farmers for over 4 billion bushels of corn and over 1 billion bushels of soybeans.

4. The elevators affected by the strike provide facilities for the movement to market of corn and soybeans produced in the Midwest, in particular, in Northwestern Iowa, Southern Wisconsin, and Northern and Central Illinois and Indiana. In the period October through November 1971, it is anticipated that in the absence of the strike there would be approximately 35 million bushels of soybeans and corn exported through these elevators and an additional 34 million bushels stored in these elevators. The strike will cause this grain to back up at farms where produced resulting in serious storage problems and losses through deterioration. Approximately 10 percent of the corn and 15 percent of the soybeans produced in these States have just now been harvested. While price information is still scarce, reports of prices in Northern Indiana indicate that they are down by about 8 cents per bushel for both corn and soybeans due to the closing of these elevators.

5. The grain handled by the Chicago elevators affected by the IIA strike cannot be diverted to other locations. These Chicago elevators handle approximately 60 percent of the corn and soybeans which are exported through Great Lake ports during October and November. The other Great Lake ports which are used for such shipments are being utilized to capacity during the harvest season from late September through November. This includes work during weekends and overtime work during week days. Even if space were available at such elevators, any diversion would be costly. It is estimated that the added charges would approximate 5-6 cents per bushel for the first 100 miles involved in the diversion. The principal other Great Lake ports are Duluth and Toledo. The East Coast ports to which the grain could otherwise be diverted are also closed by the strike of the IIA, and it is not practicable because of the added transportation charges and lack of adequate handling facilities for the grain to be diverted to Gulf ports which are still open. Likewise, there is no possibility of diversion of these commodities overland to Canada during the harvest season.

6. Farm exports for corn and soybeans account for about one-fourth of the value of the crop and provide an important plus factor in the United States balance of trade. If the strike continues, the United States can expect to lose markets for these products to other countries. Increased feed grain

supplies abroad especially in the European Community and supplies of competing meals and oils, particularly in Peru, are currently available to replace U. S. exports affected by the strike.

7. The elevators involved in the strike provide facilities for the drying of approximately 20 million bushels of corn during the harvesting period. It is important that corn having high moisture content be artificially dried in order to maintain quality and storage life. At this time, it is too early in the season to know with certainty to what extent the corn harvested this year will be of high moisture. However, these drying facilities are normally in heavy demand during the harvest season. High moisture corn is discounted heavily by the market and loss of the use of these drying facilities will contribute to reduced farm income.

8. The strike will also have the effect of increasing Government expenditures under its domestic agricultural program. The Department conducts a program under which Commodity Credit Corporation makes loans and purchases available to producers of corn. The program is carried out under authority of the Agricultural Act of 1949, as amended, and the Commodity Credit Corporation Charter Act. As a result of the strike and inability to market corn through the Chicago elevators, the quantity of corn acquired by CCC under this program will be increased. Such acquisitions contribute to added Government costs through losses incurred in the acquisition, disposition, storage and handling of the commodities.

- 5 -

9. Based on previous experience of the Department of Agriculture, a strike of this kind will for the duration of the strike and a period thereafter seriously affect domestic transportation facilities needed for internal shipments of agricultural commodities. All forms of transportation vehicles, rail cars, and trucks will be tied up in the temporary storage of commodities loaded for movement to ports. Vehicles must be re-routed to make them available for needed domestic movements, and, after the strike has ended, there follows a prolonged period of severe shortages of rail cars, and trucks needed to carry both export and domestic movements.

10. The affidavit dated October 5 of Secretary of Agriculture Hardin sets forth graphically the impact of the longshoremen's strike on the Pacific, Atlantic and Gulf Coasts. The strike at the Chicago elevators, coupled with the longshoremen's strikes elsewhere, will place a virtual embargo on export shipments of these commodities during a most crucial period, namely in the middle of the harvest season. The Chicago strike will thereby accentuate the adverse effects described in the affidavit of Secretary Hardin.

In witness whereof, I have hereunto set my hand and seal
this date.

Clarence D. Belmont

Subscribed and sworn to before me, a Notary Public, in
and for the District of Columbia, this 6th day of October
1971.

Clara B. Woodland
Notary Public

[¶ 12,206] *United States of America, Plaintiff v. International Longshoremen's Association, AFL-CIO Local 418 et al., Defendants.*

United States District Court, Northern District of Illinois, Eastern Division. No. 71 C 2416. November 3, 1971.

[*Statement of Case*]

MAROVITZ, D. J.: 1. This action is founded upon the provisions of the Labor Management Relations Act, Title 29, United States Code, Section 178.

2. Pursuant to the provisions of the above Act, this action was instituted by the Attorney General of the United States at the direction of the President of the United States.

3. All of the defendants were duly served with process. An answer was filed by the defendant Local 418. All parties had full opportunity to participate in the hearings before the Court. Affidavits by various persons on behalf of the plaintiff were received as part of the pleadings but not as evidence in view of the objections of defendant Local 418. Witnesses were pre-

sented on behalf of the plaintiff and defendant Local 418, and various exhibits tendered by those parties were received in evidence.

4. Defendant, International Longshoremen's Association, AFL-CIO, Local 418, (hereinafter sometimes referred to as Local 418), is an unincorporated organization representing, among others, employees in an industry which is engaged in trade, commerce, transportation, transmission and communication among the several States and with foreign nations and which is represented by duly authorized officers and agents within the jurisdiction of this Court, including but not limited to, John F. McQuade, President, John Garvey, Vice-President, Raymond Murawski, Secretary-Treasurer, Santiago Ortiz, Tony Greene, John Dienes and Herbert Simmons, negoti-

ators. Defendant, International Longshoremen's Association, AFL-CIO, Local 418, is affiliated with the defendant, International Longshoremen's Association, AFL-CIO.

5. Continental Grain Company, Garvey Grain, Inc., Indiana Grain Cooperative Division of Indiana Farm Bureau Cooperative Association, Inc., Dixie Portland Flour Mills, Inc., Farmers Grain Dealers Association of Iowa and Carey Grain Corporation, defendants in this cause, are employers who operate grain elevators or are otherwise engaged in related or associated pier activities and serve as the bargaining agencies with respect to rates of pay, wages, hours, terms and conditions of employment, in unresolved labor disputes between the aforementioned employers and the defendant, Local 418.

6. Labor disputes exist between the aforementioned employers and the employees represented by defendant, Local 418. As a result of the disputes existing between the defendant union and defendant employers, a strike commenced on September 1, 1971 and continued until October 9, 1971, when it ceased by operation of a Temporary Restraining Order issued by this Court in this cause on October 6, 1971. The Temporary Restraining Order was continued in full force and effect to October 14, 1971, and by agreement of the parties it was continued in effect to and including 5:00 P.M. on November 3, 1971.

7. Prior to directing the institution of this suit, the President of the United States, on October 4, 1971, acting under the provisions of Section 206 of Title 29, United States Code, issued Executive Order #11,621, whereby he created a Board of Inquiry to inquire into the issues involved in the disputes mentioned in said Executive Order. The Executive Order named the International Longshoremen's Association, AFL-CIO, the International Longshoremen's Association and Warehousemen's Union, and in the amendment it named the International Association of Machinists and Aerospace Workers, AFL-CIO and District Lodge 94 and Local Lodge 1484 thereof. The defendant, Local 418, was not named in the Executive Order or in the amendment thereof.

8. In issuing said Executive Order, the President made a finding that the aforementioned disputes have resulted in strikes affecting a substantial part of the maritime industry, an industry engaged in trade,

commerce, transportation, transmission or communication among the several States and with foreign nations and that such strikes, if permitted to continue, would imperil the national health and safety.

[Board of Inquiry]

9. The Board of Inquiry convened by direction of the President to inquire into the issues involved in the disputes made its written report to the President on October 6, 1971. Said report was submitted in accordance with the provisions of Section 206 of Title 29, United States Code. Certain labor organizations appeared before the Board of Inquiry in hearings. Local 418 was not invited to appear but only to state a position by telephone or telegram.

10. The strike by employees represented by defendant, Local 418, has prevented the movement of agricultural commodities through 9 of the 11 grain elevators located in the Chicago, Illinois area. These grain elevators include two elevators operated by Continental Grain Company, three elevators operated by Garvey Grain, Inc., and elevators operated by Farmers Grain Dealers Association of Iowa, Dixie Portland Flour Mills, Inc., Indiana Grain Cooperative Division of Indiana Farmers Bureau Cooperative Association, Inc. and Carey Grain Corporation. Only three of these elevators, namely Continental B, Continental C, and Gateway handle corn and soy beans.

[Other Strikes]

11. Strikes have also affected marine terminal facilities in Atlantic, Pacific and Gulf ports, impairing operations of a substantial portion of the maritime industry and also a substantial portion of the marine terminal facilities in the United States. Defendant, Local 418, is not the same union involved in the dispute which has caused the strike affecting marine terminal facilities at Pacific ports. The contract previously in effect between defendant employers and defendant Local 418, is not the same as the contract existing between unions and employers who are involved in strikes affecting marine terminal facilities in Atlantic ports. The local unions involved in said disputes and strikes at Atlantic and Gulf ports are affiliated with the International Longshoremen's Association, AFL-CIO.

12. No previous application has been made by or on behalf of the United States for the relief sought in this cause.

13. The period between October 1, 1971 and December 15, 1971, is the peak season for the handling of soybeans and corn through the marine terminal facilities in the Chicago, Illinois area. The St. Lawrence Seaway is closed on or about December 15, 1971 until on or about April 15, 1972.

14. Since about October 6, 1971, the strike in the Pacific ports has ceased following an injunction issued by a United States District Court. Since about October 25, 1971, the strike in the port of New Orleans has ended pursuant to an injunction.

15. During the period involved herein, there have been no strikes in any of the Gulf ports located in the State of Texas. During the period involved herein, all of the ports on the Great Lakes, other than those grain elevators affected by the strike of Local 418 in Chicago have remained open. These include the grain-shipping ports of Milwaukee, Toledo, and Duluth-Superior.

16. The principal commodities for storage and shipment abroad that have been affected by the strike of Local 418 are corn and soy beans. The grain elevators that handle corn and soybeans that were closed by the strike of Local 418, Continental B, Continental C, and Gateway, have a combined storage capacity of approximately 20,000,000 bushels. The Cargill elevator in Chicago was not affected by the strike, and it has a storage capacity of 23,000,000 bushels.

17. If the strike of Local 418 were to continue from now until the end of the Great Lakes Shipping Season around December 14, 1971, approximately 35,000,000 bushels of corn and soybeans that would otherwise be received and shipped from the struck elevators would be affected.

18. The Cargill elevator in Chicago could, in the event of such a strike by Local 418 at the other Chicago elevators, increase its shipments of corn and soybeans by about 20%, or about 1,000,000 bushels per week. The Continental elevator in Milwaukee, which has unrestricted deep water shipping facilities and which is not presently busy, could handle additional shipment of corn and soybeans of about 2,000,000 bushels per week. The Cargill elevator in Milwaukee, which is not presently busy, accommodates small ocean going vessels and lake vessels, and it could handle additional shipments of about 2,000,000 bushels per week on such vessel. As it is customary to schedule shipments of grain from alternative ports,

such as Chicago, Duluth, Milwaukee and Toledo, shipment of all or substantially all of the grain in question could be made from the Cargill elevator in Chicago and from the Continental and Cargill elevators in Milwaukee, instead of from the struck elevators in Chicago.

19. The strike of Local 418 in Chicago involves 200 longshoremen who work inside the grain elevators. It does not involve the members of Local 101, International Longshoremen's Association, AFL-CIO, who are the graintrimmers who load corn and soybeans (and other commodities) from the elevators into vessels. In the event the strike of Local 418 were resumed, the members of Local 101 would continue to handle the shipment of commodities from the Cargill elevator, whose inside workers are also unaffected by the strike of Local 418.

20. The members of Local 418 involved in its strike constitute .0009% of the total number of maritime workers (208,000) in the United States, or .0036% of all the longshoremen in the United States (55,000). The port of Chicago ranks fifteenth among all United States ports in its total volume of all exports, handling approximately 1.75% of all U. S. exports.

21. The total value of all exports of soybeans and corn from all United States ports represents approximately 2.8% and 1.9%, respectively, of the dollar value of all United States exports. The entire port of Chicago accounts for approximately 10% of United States shipments of corn and 9% of soybeans, or under 1/2 of one percent of all United States exports, on an annual basis.

22. The amount of corn and soybeans that would be shipped from the port of Chicago, from the elevators affected by the strike of Local 418, from now until the end of the shipping season, would be about 35,000,000 bushels, or about 3.8% of the total of 900,000,000 bushels of those commodities to be shipped from all United States ports.

23. The value of the corn and soybeans that would be shipped from the elevators that would be affected by the continuation of the strike of Local 418 in Chicago would be approximately \$75,000,000. The total value of all United States exports in the year 1970 was approximately \$43,226,000,000. The deficit in the United States balance of payments in 1970 was approximately \$3,589,000,000.00.

24. The employers in the port of Chicago who would be affected by a continuation of

the strike of Local 418 are not involved in any activities related to any military or defense program of the United States.

25. The continuation of the strike by Local 418 would not involve any employers in any field related to national health.

26. Local 418 has local autonomy, under the constitution of the International Longshoremen's Association, AFL-CIO, to negotiate and execute its contract with the employers in the port of Chicago. The International Longshoremen's Association, AFL-CIO, does not have the power under its constitution to call off a strike of Local 418.

27. The Attorney General has not instituted any proceedings to enjoin the strikes of the International Longshoremen's Association, AFL-CIO, which has closed the Atlantic coast seaports and most of the Gulf Coast ports of the United States.

28. The strike of Local 418 in the port of Chicago does not affect the entire maritime industry or a substantial part of the maritime industry.

29. If the strike of Local 418 is permitted to continue it will not imperil the national health and safety.

Conclusions of Law

1. Under the limiting provisions of the Act under which this suit was brought, 29 U. S. C. § 178, (a)(i)(ii), this Court has no jurisdiction to enjoin the strike of Local 418 as such strike does not affect 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 into commerce, and if permitted to occur or continue, such strike will not imperil the national health or safety.

2. As this Court is without jurisdiction to enjoin the strike of Local 418 under the provisions of 29 U. S. C. § 178(a)(i)(ii), the Complaint is dismissed.

Opinion

[Limitations on Injunctions]

When asked to grant an "eighty-day" injunction under the emergency provisions of 29 U. S. C. § 178, as we are now being asked to do, a Court must be certain that it is viewing the entire proceeding from a proper factual and legal perspective given the narrow and limited scope of that sec-

tion. We must be cognizant of the fact that we are being asked to do the extraordinary rather than the ordinary. The recognition of the right to strike was long in coming and remains labor's only weapon to equalize the sometimes gross inequities in power that previously existed between labor and management. The entire history of the labor injunction is thus permeated with the language of limitation and is imbued with a rigidity that recognizes the sterile and insulated conditions, uncontaminated by extrinsic influences and pressures, under which labor negotiations must proceed. The failure to maintain this delicate balance that exists between labor and management and the abusive implementation by Federal Courts of the injunction measure with an elasticity it was never intended to have, necessitated the restrictions embodied in the Norris-LaGuardia Act, 29 U. S. C. § 101-115. As Justice Douglas aptly stated in *United Steelworkers of America v. United States*, [38 LC ¶(65,856)] 361 U. S. 39 at 73 (dissenting opinion):

"Labor injunctions were long used as cudgels—so broad in scope, so indiscriminate in application as once to be dubbed a 'scarecrow' device for curbing the economic pressure of a strike".

Justices Harlan and Frankfurter, concurring in *Steelworkers*, 361 U. S. at 53, saw the Norris-LaGuardia Act as limiting "the power of the federal courts to employ injunctions to affect labor disputes. The purpose of the Act was rigorously to define the conditions under which federal courts were empowered to issue injunctions in industrial controversies as between employers and employees and to devise a safeguarding procedure for the intervention of the federal judiciary in the course of private litigation."

The Government soon realized, however, that it must have the power to terminate strikes that threaten a national emergency and Congress therefore legislated § 208 of the Labor Management Relations Act, 29 U. S. C. § 178. It is under this provision that the Government is proceeding in this case. Though the Act was never envisioned as creating an "eighty-day" wonder that would magically resolve labor management disputes in critical industries, it recognized certain rights in the public to have unimpeded for a time, production in industries vital to the national health and safety and established machinery to obtain a peaceful settlement of the underlying dispute during the pendency of the injunction. While

the Supreme Court in the *Steelworkers* case, (concurring opinion 361 U. S. at 52) indicated that "§ 208 is not to be construed narrowly, as if it were merely an exception to the policies which led to the restrictions on the use of injunctions in labor disputes embodied in the Norris-LaGuardia Act" and that "[t]otally different policies led to the enactment of the national emergency provisions of the 1947 Act," § 208 is nevertheless succinct on its face as to the conditions that must exist before it can be invoked. It provides that:

"(a) upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lock-out 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 . . ."

With the long history of judicial restraint in the issuance of injunctions uppermost in this Court's mind we are compelled to deny the Government's motion for injunctive relief given the absence of a threat to the national safety and health and the lack of an industry-wide strike in the present case.

[*Threat to National Safety*]

I. The Government draws an elaborate map of the national and international grain market, with Chicago as its capital, and contends that Local 418's work stoppage has sent dire economic repercussions throughout the industry resulting in immediate and irreparable injury to the national health and safety. We fail to be convinced by both the factual and legal contentions of the Government and find that a) § 178 precludes the enjoining of a strike on purely economic grounds absent some element of national defense; b) assuming that such a legal construction were possible the findings indicate that injury to the extent alleged does not exist and c) even allowing for the existence of the type of injury alleged by the Government, it is so remote

and insubstantial as to fall far short of this Court's § 178 jurisdictional power to grant relief.

The words "imperi" and "national health or safety" when being used in a labor context are terms of art of a most precise and limited meaning. The Government expends a great deal of time and effort in its attempt to engraft an economic context on the statutory terms of "national health or safety". In conjuring up every conceivable economic argument as grounds for this Court's jurisdiction to enjoin this strike the Government is asking us to do what no other Court has ever done before—to enjoin the strike of a single local on a purely economic basis totally devoid of any threat to the national defense or any war effort as such. This is not the first attempt by the Government to give "national health" a fiscal rather than a physical connotation. In *United States Steelworkers*, 361 U. S. at 41-42 the Supreme Court deliberately avoided such an interpretation of the statute:

"The statute imposes upon the courts the duty of finding, upon the evidence adduced, whether a strike or lockout meets with statutory conditions of breadth of involvement and peril to the national health or safety. . . . The parties dispute the meaning of the statutory term "national health"; the government insists that the term comprehends the country's general well being, its *economic health*; petitioner urges that simply the physical health of the citizenry is meant. *We need not resolve this question, for we think the judgment below is amply supported on the ground that the strike imperils the national safety.* Here we rely upon the evidence of the strike's effect on specific defense projects; we need not pass on the Government's contention that "national safety" in this context should be given a broader construction and application. [Emphasis added.]

The "national safety" involved in that case was the effect of a nationwide steel strike on a multitude of defense projects given the critical nature of the steel industry. Given the "industry-wide" strike requirement of § 178 and the degree of economic effect that a strike of that breadth is bound to have, there are admittedly a good many cases that include some language as to economics. Yet the Government has failed to cite even one case despite our many requests—and this Court has been unable to find any such instance—where an injunction under § 178 was granted where injury to the national defense or the war

effort was not an important if not crucial element of the irreparable harm alleged. The then Senator John F. Kennedy during discussions of these emergency provisions recognized that too broad an interpretation of Governmental power might lead to the same abuses that the Norris-LaGuardia Act had attempted to cure. He said:

"The proposal embraces two separate things: health and safety. Because the remedy is drastic, these two, in my opinion are sufficient. I believe we should apply this remedy when the strike affects health and safety but not the welfare and interest which may mean anything. I would not interfere in an automobile strike because while perhaps that affects national interest it does not affect health and safety." 93 Congressional Record 3513.

We agree with Senator Kennedy's remarks. Given the complete absence of any decision that has granted an injunction based solely on national economic interest without considerations of national defense or physical health, we cannot permit an interpretation of § 178 that would include economic injury as a controlling part of the "national health or safety". The Government in the present case has not made any reference to the national defense as indeed it cannot. Corn and soybeans are not airplane parts or missile components and grain elevators are not steel mills or railroads. Thus, the Government is precluded from invoking part (ii) of § 178 since "national health or safety" cannot be interpreted as fiscal health or national economic welfare and it is foreclosed from picturing this strike as a defense threat to the "national safety" by the complete lack of any defense or war effort considerations.

[*Failure to Show Injury*]

Even assuming arguendo that the economic injury complained of is statutorily sufficient under § 178, we believe that the Government has not proven that injury exists in the proportions and to the extent that it has alleged. If the strike was to continue until December 15, the end of the Great Lakes shipping period, the evidence indicates that about 35 million bushels of corn and soybeans, the commodities involved in this strike, will be denied access to the grain elevators on strike. The Government contends that these 35 million bushels will bog down somewhere along the pre-shipment route and will thus fail to reach foreign markets resulting in dumping by farmers, injury to the balance of trade deficit and

harm to the national and international grain pricing mechanism. Local 418 refutes these charges by illustrating that a substantial portion of the 35 million bushels in question can be shipped from alternate points, albeit at a higher price given the somewhat greater distances involved, and that consequently this grain will ultimately reach its foreign destination eliminating any harm to the balance of trade and alleviating farmer dumping.

[*Alternate Ports*]

In regard to alternate points, testimony revealed that the Cargill elevator is the largest grain elevator in Chicago—is not on strike—and could thus absorb some of the grain that would normally reach the struck elevators between now and December 15. In addition, the ports of Milwaukee, Duluth, Toledo, the Texas Gulf ports and the New Orleans port now open pursuant to an injunction, all accommodate ocean going vessels and have grain elevator facilities providing yet another large outlet for the 35 million bushels of Midwestern corn and soybeans.

The Government attempts to refute the alternate point argument by citing *Steelworkers* to the proposition that the United States need not look to other portions of an industry to obtain relief that it needs. The Government, it is argued, can therefore ignore the fact that the ports of Toledo, Milwaukee, etc. might be able to handle the grain in question and need only consider the Chicago strike in isolation.

In *Steelworkers* the Union contended that "somewhat in excess of 15% of the steel industry remained unaffected by the stoppage, and that only 1% of the gross steel product is ordinarily allocated to defense production" 361 U. S. at 47. The Union therefore argued that the national safety was not imperiled since all defense steel could come from a small percentage of the nation's steel mills and, consequently, the entire industry should not have been enjoined because of the minute percentage which was defense related. The Supreme Court held that:

"A court is not qualified to devise schemes for the conduct of an industry so as to assure the securing of necessary defense materials. It is not competent to sit in judgment on the existing distribution of factors in the conduct of an integrated industry to ascertain whether it can be segmented with a view to its reorganization for the supply exclusively, or even primarily, of government-needed

materials. Nor is it able to readjust or adequately to reweigh the forces of economic competition within the industry or to appraise the relevance of such forces in carrying out a defense program for the Government."

On these same grounds the Government would have us ignore the alternate points available. There is, however, absolutely no basis of comparison between this case and *Steelworkers*. The Supreme Court, in *Steelworkers* indicated at great length that steel was an integrated industry making it virtually impossible to separate needed from unneeded items and that it would be too burdensome if not impossible for a District Court to choose which facilities to open or reorganize for defense needs given the multitude of considerations involved and the vast number of items involved.

Quite unlike that case, the industry in our case does not deal with numerous defense projects but rather with two distinct fungible commodities; the grain industry is not at all similar to the integrated production of the steel industry and can be segmented; and most importantly the burden will not be upon this Court, once the injunction is denied, to select those alternate points of shipment for the grain involved. Rather this Court's involvement will terminate upon the denial of injunction and the grain market itself will perform have to readjust by itself to reflect the unavailability of Chicago facilities and shippers will of necessity gravitate to alternate port facilities without further burden upon this Court. Thus, *Steelworkers* has no bearing in this regard on our case.

We therefore can and must consider the availability of other ports and based on that availability we find that the injury falls far short of that which the Government has alleged and, consequently, even if we were to permit § 178 to apply to a national economic emergency we simply do not find such an emergency to exist.

Granted that the greater distance involved in alternate point shipment has a bearing on the grain price mechanism yet this has very little effect on the balance of trade deficit and impairment of the national might that the Government has alleged.

We are willing to go even one step further and concede for argument's sake that there is no substantial alternate method of shipment and that there is therefore injury to some extent to the national economy. We would nevertheless be compelled to deny this injunction given the remoteness

and minimal effect accounted for by Local 418's strike.

[Inconsequential Injury]

Some harm or threat of injury is regrettably a natural indispensable element of any strike; however, it is the very essence of the only weapon labor can aim at management. But such injury remains a question of degree. The closing of a small factory somewhere in the United States, due to the striking of ten employees may injure the economy, if we stretch the meaning of injury to absurd proportions, by decreasing the Gross National Product by \$25,000 and might add to the balance of trade deficit by that same amount. Yet, no one would venture that this is an injury of such consequential dimensions as to necessitate governmental intervention. On the other hand, the fact that only two—or two hundred—workers are on strike is not of itself dispositive of whether a strike is critical or not. A qualitative as well as quantitative approach must be taken; it is not how many do it but rather what they do. If two men manufacture the firing pins for all of this country's rifles, quite obviously their refusal to work is of enormous significance despite their insignificant number. This, in fact, is the basis for enjoining strikes even in small segments of the defense industry. Local 418, however, with its two hundred men, simply does not fall into either the qualitative or quantitative categories that traditionally allow for § 178 powers. They are not involved in any defense projects, by any stretch of the imagination, and the injury that results from their strike is relatively remote and minimal. As the Findings of Fact indicate this strike involves .0009% of this Country's maritime workers and .0036% of all longshoremen in the United States. The Port of Chicago ranks Fifteenth among all United States ports in total volume of exports handling approximately 1.75% of all U. S. exports. The total volume of all exports of soybeans and corn, the commodities affected by this strike, represents about 2.8% and 1.9%, respectively, of the dollar value of all United States exports. The entire Port of Chicago accounts for approximately 10% of United States shipments of corn and 9% of soybeans or under one-half of 1% of all U. S. exports annually. About 3.8% (35,000,000 bushels) of the total 900 million bushels that are shipped from the United States will be affected if Local 418 stays out until December 15, the end of the

shipping season. The monetary value of the corn and soybeans affected is about \$75 million, all U. S. exports amounted in 1970 to about \$43,226,000,000 and the 1970 balance of trade deficit was about \$3,589,000,000.

Thus it seems fairly evident that the effect of the Local 418's strike on the total economic picture is not very substantial. Though admittedly it is not so minute as in the example of the small factory mentioned earlier, still, it is not an injury of such proportions that would compel governmental intervention into a local strike. The Government also argues that aside from the balance of trade and export harm, farmers are being forced to dump grain for lack of storage or shipping facilities and that the grain pricing mechanism has been adversely affected. These injuries likewise, regrettable as they are, (and this Court is certainly sympathetic to the farmer's problem) are not consequential injuries in a labor injunction context. A major cause for the dumping is the stipulated fact that farmers have produced a bumper crop whose surplusage would to some extent result in dumping even absent Local 418's strike. This dumping may be alleviated once this injunction is denied, given the fact that farmers will realize that they must seek alternate routes.

[Pricing System]

The contention that the grain pricing system is impaired, while somewhat speculative given the fact that the bumper crop itself has disrupted that system, is far removed from the genre of harm that Federal Courts will enjoin. It is doubtful that the strike, should it last until December 15, will cause the destruction to the pricing mechanism that the Government alleges and no doubt the denial of this injunction will cause alternate methods of shipment which will be reflected in a new or adjusted pricing system.

Thus, we have demonstrated that Local 418's strike is not within § 178(ii); that no substantial injury is involved and that the injury that might result is too remote to invoke this Court's jurisdiction.

Finally, the circumstances here do not meet the "industry-wide" requirements of § 178(i). By all indications Local 418's strike involves a minute portion of the Maritime industry. Nor is the grain elevator industry substantially affected given the small fraction of the total corn and soybean export that the struck elevators

account for and the availability of numerous other ports for shipment.

[Part of Bigger Strikes]

What emerges from this confrontation once the smoke has cleared is that a small local's strike has somehow been swept up in a wave of litigation that was aimed at giants under a statute that never was intended to apply to a work stoppage of such a limited nature. Facts adequately indicate how totally unrelated and unassociated the grain elevator strike is to the various other longshoremen strikes that are now or were recently in progress. One need only juxtapose the Chicago strike with the Pacific Coast strike to see the gross incongruity between the two. The West Coast strike had been going on for several months, involving 15,000 longshoremen, a multitude of companies and closing every port facility from Mexico to Juneau, Alaska, before the Chicago strike involving two hundred men began on September 1. The Chicago union is not the same union as was on strike on the Pacific Coast and the labor issues here are totally unrelated to those involved in the West or the East. The Port of Chicago as such is not and has not been on strike. All longshoremen activities have proceeded uninterrupted save for Local 418's strike, quite unlike the total work stoppage in the West. On October 1 the East Coast longshoremen went out on strike and suddenly Local 418 was both geographically and legally in the center of a strike it had absolutely no relationship to and found itself as a defendant in a suit simply because it too had "Longshoremen" in its name. It seems that the Government was in error to include Local 418 in its national litigation and now that the Pacific Coast and New Orleans strikes have been enjoined, Local 418 ought to be allowed to pursue its negotiations in the undisturbed manner that preceded its misplaced notoriety.

[Duty to Accept Executive Findings]

One last point must be cleared up that touches upon the discretion this Court has in finding as it did. Counsel for the Government quoting from *Steelworkers* has repeatedly stressed throughout the hearings that the President, his Board of Inquiry and the Attorney General in instituting this suit, have already determined that this strike is of national emergency proportions thus intimating that we have very little choice but to grant the injunction. The Supreme Court in *Steelworkers* said:

"It is not for the judiciary to canvass the competence of officers of cabinet rank, with responsibility only below that of the President for the matters to which they speak under oath, to express the opinions set forth in these affidavits. Findings based directly upon them surely cannot be said to be 'clearly erroneous.' Fed. Rules Civ. Proc., 52(a).

"Moreover, under § 208 the trier of these facts was called upon to make a judgment already twice made by the President of the United States: once when he convened the Board of Inquiry; and once when he directed the Attorney General to commence this action. His reasoned judgment was presumably based upon the facts we have summarized, and it is not for us to set aside findings consistent with them. The President's judgment is not controlling; § 208 makes it the court's duty to 'find' the requisite jurisdictional fact for itself. But in the discharge of its duty a District Court would disregard reason not to give due weight to determinations previously made by the President, who is, after all, the ultimate constitutional executive repository for assuring the safety of the Nation, and upon whose judgment the invocation of the emergency provisions depends." 361 U. S. at 48.

Our determinations would indeed be superfluous and this Court would merely be a rubber stamp if it was irrevocably bound by the Factual Findings of the President and his various Cabinet Members. This Court believes that it has properly fulfilled its duty in searching for the "requisite jurisdictional fact for itself" and that it has not disregarded reason in the weight given the judgment previously made by the President. If we were the trier of fact in the Pacific Coast strike we would admittedly be far more constricted by the prior findings given the enormity of that work stoppage and the vast amount of space given to that strike by the Board of Inquiry and in all of the affidavits filed. Likewise, if we were the court sitting in the Steelworkers' strike our path would be narrow and quite obvious.

But this case is not a steel strike or an enormous coastal strike. We have given

the various affidavits and findings from Washington the weight they deserve and find them of little relevance in deciding this case affecting the Chicago Area. The affidavits in this case were not stipulated to as they were in the *Steelworkers* case; thus, they do not carry the same evidentiary weight.

Furthermore, the vast majority of affidavits, the President's Executive Order and the many papers filed to set the injunction procedure in motion, including the Board of Inquiry Findings are overwhelmingly concerned with the West Coast strike and little reference is made to the Chicago strike. The only affidavit among many that mentions or shows any knowledge of the Chicago strike is that of Clarence D. Palmby, Assistant Secretary of Agriculture.

Even the President's Board of Inquiry failed to invite Local 418 to appear before it reflecting on the degree of "inquiry" that was involved in regard to the Chicago strike. Thus the perfunctory manner in which the Chicago strike was treated indicates a prior judgment far less reasoned than that which bound the court in *Steelworkers*, and it seems that the decision to enjoin the Chicago strike is a mere appendage to the West Coast litigation.

The District Court obviously has no discretion to counteract Congress' intentions under the statute once it has made the determination that a national emergency exists. It cannot say that no injunction should issue in the face of a national emergency; it cannot issue a 40-day or a 90-day injunction. But this Court most certainly has the discretion to find for itself that the jurisdictional fact necessary to invoke § 178 does not exist. (See *Steelworkers* pp. 56-58)

Having found that the strike by Local 418 does not imperil the national health or safety and that the strike is not of an industry-wide nature we deny the motion for an injunction and vacate the Temporary Restraining Order.

Senator TAFT. I would also add that in S. 560, which you support, there is no provision for any mechanism for dealing with emergency strikes which have a regional as opposed to a national impact.

Should this type of regional strike continue to be outside the remedial processes of the law?

Secretary HODGSON. I would just like to reflect aloud to the committee why we made our initial proposal as we did limiting the coverage of our legislation as we did.

No. 1, we did not want to have our legislation constitute a serious departure from collective bargaining in this Nation. As a result, we wanted to restrict this legislation to those areas that really caused significant economic dislocation and adverse effect on the health and safety of the Nation. That was the first consideration.

The second was that we realized that if you attempt to expand the concept that we are suggesting is needed for those emergencies too widely, a great many people will question the need for such expansion and we may lose the necessary support to accomplish the kind of legislation we want. So the question is, how far can you go in expanding this concept? We believe that we can go farther than is explicitly described in our original legislative proposal and that is why I am suggesting that we work with this committee to expand that to a point where we will achieve coverage of some of the kinds of disputes that many might be tempted to say do not matter.

Senator JAVITS. Would the Senator yield?

Secretary HODGSON. That is the basis.

Senator TAFT. I would be glad to yield to the Senator from New York.

Senator JAVITS. You know, I have authored this legislation for a long time, and I cannot tell how pleased I am that you are on it and Senator Taft has taken such a vital interest, certainly, and made a great contribution.

To me, the central point is the one you are now making. Five hundred workers in our operating tugboats in New York Harbor can effectively paralyze perhaps all of our city and that is not unique to New York. I am sure that Senator Taft and all my colleagues have similar instances, so to me this creativity at this point is the most critical break of what you did propose, that is, its weakness, and it is the most creative thing I think we can work out. The question of applicability is crucial to this country. I thank my colleague.

You would agree with that?

Secretary HODGSON. I think that one of the reasons why we have decided to indulge in this creativity, Senator, is the fact that we find some receptivity for it on that side of the table.

Senator TAFT. Mr. Secretary, recently I have reviewed a memorandum of August 13 by a Mr. Carl V. Lyon, Acting Administrator of the Federal Railroad Administration, to the Secretary of the Department of Transportation. That memorandum analyzes the impact of the partial railway strike which occurred between July 16 and August 2 of this year. The memorandum concludes:

The nonrecoverable economic loss to the Nation's economy as a result of the strike appears to have been approximately \$27 million per day at the height of the strike (slightly less than 1 percent of daily Gross National Product).

This estimate is based on an assumed employment impact equivalent to 200,000 people with no purchasing power and deterioration of perishable commodities at the rate of \$4 million per day plus the secondary impact resulting from the "multiplier" effect. The majority of this impact was felt in the following States: California, Oregon, Washington, Idaho, Nebraska, Kansas, and Colorado.

Because this memorandum is very detailed and lists the economic impact in terms of States and companies affected, I would ask that it appear at this point in the hearing record.

The CHAIRMAN. Without objection.

(The memorandum referred to follows:)

UNITED STATES GOVERNMENT

*Memorandum*DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION

DATE: AUG 13 1971

In reply
refer to:

TO : The Secretary

FROM : Acting Administrator

SUBJECT: INFORMATION: Preliminary Analysis of the Impact of the
July 16 to August 2, 1971 UTU Strike

In response to your request (dated August 6, 1971) that our preliminary analysis of the impact of the UTU strike (dated August 3, 1971) be expanded in certain areas and made more specific where possible, we herewith submit the revised report.

Carl V. Lyon
Carl V. Lyon

Enclosure.

SUMMARY

The analysis of the economic impact of the selective ^{1/} strike by the United Transportation Union during the period from July 15 to August 2, 1971, may be segregated into three categories. First, the wages and salaries lost by railroad employees and the associated secondary impact generated by reduced spending on the part of these individuals. Second, the production and wages lost due to the inability of firms to obtain material inputs. Third, the production and wages lost due to the inability of firms to ship their output. The implications of the first category are immediate though reduced by strike funds. The second and third categories are generally of a longer run nature, and their ultimate impact depends on the size of the inventories of inputs, the available space for the storage of output, the availability of alternative sources of transportation, and, of course, the duration of the strike.

Status Before the Strike

During the week ended July 10, 1971, the railroad industry received approximately 41,000 carloads of farm products, 168,500 carloads of products from mines, 41,000 carloads of food and kindred products, 81,300 carloads of forest

^{1/} The Southern Railway and the Union Pacific Railroad were struck on July 16; the Norfolk and Western Railway and Southern Pacific Transportation Company were struck on July 24; and the Atchison, Topeka and Santa Fe Railway Company and five smaller railroads were struck on July 30, 1971.

- 2 -

products and 113,000 carloads of manufactured products. The value of the contents of the carloads received by the railroads was approximately \$0.163 billion for farm products, \$0.139 billion for the products of mines, \$0.311 billion for food and related products, \$0.282 billion for the forest products, and \$1.100 billion for manufactured products. Thus, during the week just prior to the strike, the railroad industry received 484,855 carloads of goods with a total estimated value of \$2.275 billion. Statistics pertaining to revenue carloadings and estimated wholesale value of the commodities moved are contained in Appendix C, Table 2, and are summarized in Section C of the report.

Weekly Impact of the Strike

During the first week of the strike, carloads received declined 56,000 to 428,882, valued at \$1.981 billion. The two struck railroads (Southern and Union Pacific) lost an estimated \$0.003 billion in operating revenues each day. Due to the limited geographic area served by the two railroads, the existence of alternative rail and highway service, and the fragmentary nature of the reports received, it is difficult to precisely ascertain the economic impact of the strike during the first week. In general, the economic losses which did occur were due to the reduced purchasing power of the directly affected railroad workers and the

- 3 -

deterioration of agriculture products which ripened but could not be marketed (primarily in California).

During the second week of the strike, carloads received declined an additional 44,000 to 384,890, with contents valued at \$1.767 billion. The four struck railroads lost an estimated \$0.007 billion in operating revenues each day. The impact of the strike on perishable goods increased and spread to forest products and mining operations served by the struck railroads. While California was the most widely affected state, the economies of Oregon, Washington, Idaho, and Arizona also suffered substantial losses.

Had the strike lasted three weeks, it is estimated that carloadings would have declined to 346,186 with contents valued at approximately \$1.625 billion. When the Santa Fe was struck (July 30, 1971), California was essentially without rail service, and, as a consequence, the economic losses from deterioration of perishable goods and unemployment would have dealt the state's economy a staggering blow. Other states in the area west of the Mississippi River would have suffered similar but lesser affects.

Total Effect of the Strike

A large portion of the decline in rail carloads was either moved by motor carrier, stockpiled by the producer, or will

- 4 -

be accounted for by increased production at a later time, Those products for which this does not necessarily hold true are the perishable products of agriculture which either must be sold at reduced prices, allowed to deteriorate, or moved to market by more expensive methods.

In light of these factors, the nonrecoverable economic loss to the Nation's economy as a result of the strike appears to have been approximately \$27 million per day at the height of the strike (slightly less than 1 percent of daily Gross National Product). This estimate is based on an assumed employment impact equivalent ^{2/} to 200,000 people with no purchasing power and deterioration of perishable commodities at the rate of \$4 million per day plus the secondary impact resulting from the "multiplier" effect. The majority of this impact was felt in the following States: California, Oregon, Washington, Idaho, Nebraska, Kansas, and Colorado. These States were hardest hit because of the extent of the loss of their rail service and the dependence of their economies on the production of perishable commodities such as fresh fruit and vegetables and grain.

^{2/} It is estimated that more than 400,000 people were unemployed or working short days. However, the lost spending power is not commensurate with the reduction in employment because unemployment insurance, strike funds, and overtime, when production resumes, provide partial compensation.

- 5 -

California, which suffered the greatest impact, was estimated to have had 100,000 people unemployed, and the State's economy was losing approximately \$14 million per day at the height of the strike (a portion of which will be recovered later through increased production). A state-by-state analysis of the impact of the strike is contained in Section A of the report.

The commodities most seriously affected were those perishable products such as wheat, cantaloupes, lettuce, tomatoes and fresh fruit which must be harvested and marketed when ripe to prevent almost immediate deterioration. The wheat harvest in Nebraska, Kansas and Colorado was completed during the strike, and, due to the lack of rail transportation, an estimated 2 million bushels of wheat were stored on the ground. The fresh fruit which ripened during the strike was all harvested, but a substantial portion of the crop was canned (which yields a lower price to the producer) instead of being sold fresh. The fresh vegetables and melons which ripened and couldn't be marketed were left to deteriorate in the fields. Although the report contains estimates of the financial losses due to crop deterioration, there is no available estimate of the portion of the total crop which was lost.

The coal mining and forest products industries depend on rail service for almost immediate movement of their

- 6 -

output. Although there was substantial unemployment in these industries, the long run loss of output will probably be very small. The industry-by-industry analysis of the impact of the strike is contained in Section B of the report.

Impact If the Strike Had Continued

The impact of the strike increased with both the passage of time and the spread of the strike to additional railroads. Had the strike continued through the end of the third week, the reduced employment throughout the economy would have been approximately equivalent to 350,000 people without purchasing power, and the financial loss to the producers of perishable commodities would have been approximately \$8 million per day. The combined effect would have been equal to approximately 2 percent of the daily Gross National Product or nearly \$70 million per day.

On August 6, 1971, the strike would have engulfed the Chicago, Rock Island and Pacific; Chicago, Milwaukee, St. Paul and Pacific; Missouri, Kansas, Texas; Baltimore and Ohio; and Chesapeake and Ohio Railroads. Consequently, a much larger portion of the Nation's productive capacity would have been idled and the economic impact would have been substantially greater.

Thus, it is fortunate that the railroads and the UTU were

able to reach agreement on August 2, 1971, thereby averting continuation and expansion of the strike. As a result of the strike being terminated when it was, there are now \$500 million recoverable that would have been lost had the strike continued one more week.

SURVEY OF THE IMPACT OF THE
UNITED TRANSPORTATION UNION'S
SELECTIVE STRIKE: July 16 TO AUGUST 2, 1971

The high degree of specialization which characterizes economic activity in the United States creates intricate and pervasive inter-producer, inter-area, and inter-regional dependence relationships. The railroad industry provides the backbone of the transportation system which makes specialization possible and the loss of rail transportation or any significant part thereof carries unmistakable repercussions for the whole economy.

The UTU's selective strike reached the point where more than twenty percent of the railroad system was at a standstill and those roads which were still operating experienced difficulties due to increased traffic volume and the inability to follow normal interchange patterns. The strike closed down Southern Railway and the Union Pacific Railroad at 6:00 a.m. on July 16; the Norfolk and Western Railway and Southern Pacific Transportation Company at 6:00 a.m. on July 24; and the Atchison, Topeka and Santa Fe Railway Co. and five smaller railroads at 6:00 a.m. on July 30. The Chesapeake and Ohio; Baltimore and Ohio, Chicago, Milwaukee, St. Paul and Pacific;

Chicago, Rock Island and Pacific; and the Missouri-Kansas, Texas Railroads were scheduled to be struck on August 6. Agreement between the UTU and the railroads was reached on August 2 and relatively normal service was restored forty-eight hours later. Due to its selective nature, the strike did not cause an equal impact throughout the country or even within a given region. The States of Arizona, California, Idaho, New Mexico and Oregon lost more than 75 percent of their rail transportation. Kansas, Nevada, Texas, Utah and Virginia lost more than half of their rail service. This pattern indicates that the western states were being subjected to the greatest impact. However, even within these states the impact was uneven. The larger businesses are often able to, at least for a time, use alternative but higher cost transportation and thereby minimize the impact. Small producers are not able to absorb the extra costs and therefore feel the impact of a rail strike much more quickly. This impact pattern was accentuated by the fact that grain, fresh fruit and vegetable producers, typically small operations, were, or soon would be harvesting their crops.

The following analysis of the impact of the strike consists of three separate parts. The first section considers the strike's

impact on the economy of several states, most of which are located west of the Mississippi River. The second part deals with the impact of the strike on several sectors of the economy. The final section describes the impact of the strike on the railroads which were closed down as well as on the whole system. Each section presents a somewhat different view of the overall impact of the UTU's strike.

A. State-By-State Analysis of the Impact of the UTU Strike

The analysis of the impact of the strike on the economy of the several states is based on the responses of the Governors to a request from the Secretary of Transportation for impact information. A number of states reported no discernible impact and have not been specifically included below. The Governors of Texas and Louisiana reported that their states felt a substantial impact but provided no details and therefore, these two states are also excluded.

The information which was supplied indicates that the major impact was felt in the agriculture, mining and forest products sectors of the economy. There were, of course, secondary impacts throughout the economy.

The impact on each state depended on the extent to which rail service was lost as well as the dependence of the state's economy on the above basic industries. Therefore, because the western states lost a large portion of their rail service (as indicated by Appendix A) and are heavily dependent on agriculture, mining, and lumber activities, most of the impact was centered in this area. Within the West, California suffered the most severe blow. The fruit and vegetable producers were in the process of harvesting their perishable crops and the greatly reduced ability to load rail cars resulted in substantial crop deterioration from over-ripening. The economies of the States of Washington, Oregon and Idaho also felt a substantial impact.

The Governors of Arizona, California, Idaho, Montana, Oregon and Washington estimated that 112,000 people were without work due to the strike. These and other states reported that in addition to the railroad workers directly affected, minor layoffs and reduced work-days left an approximate total of 350,000 people unemployed. However, the lost purchasing power was not commensurate with the number of unemployed due to the existence of unemployment insurance, strike funds, and in the long run, overtime to make up for lost production. Thus, it is estimated that the equivalent of 200,000 employees were without purchasing power. In terms of the impact on GNP, the reduction in consumption with the associated multiplicative effect is estimated to have been equivalent to 1/2 of one percent of the economy's daily output. Since the impact is cumulative, had the strike lasted another week, the impact of reduced employment on the GNP would have been approximately one percent.

Alabama

Governor George C. Wallace reported that feed grain for the poultry industry was in critically short supply as was coal for both utility and industry needs. The paper industry, which is important to the Alabama economy, was experiencing extreme difficulty in both obtaining inputs and shipping output. There was no available estimate on either reductions in the labor force or economic losses.

Arizona

Governor Jack Williams stated that the impact on Arizona of the strike against the railroads was much less than it could have been because agricultural activity was at a seasonal low. However, more than 40 percent of the state's food is brought in by railroad, and while no severe shortages resulted, a longer strike would have caused critical shortages. The SP shutdown left an estimated 2,000 employees without work.

Had the Santa Fe ceased to operate for a longer period, the effects would have been more widespread. Lumber operations at Flagstaff, McNary and Eagar, and the paper mill at Snow Flake would have been idled. The Santa Fe ships water to Ashfork (70,000 gallons every second day), Congress (10,000 gallons

per week) and Morristown (10,000 gallons per day), and these cities would have had difficulty in obtaining alternative supplies. The closing of this railroad would have left an additional 2,400 people without work, and four short line railroads would have been forced to stop operations, affecting 2,000 employees.

California

Governor Ronald Reagan described the strike as having "a devastating effect on California's economy and (it) will pose untold hardships on a great portion of California's population."

It was estimated that 75 percent of the state's agriculture sector was affected and therefore, closely related sectors also felt a severe impact. An estimated 100,000 people were unemployed, and financial losses to growers, farm labor and related industries amounted to \$11.1 million per day as a consequence of the strike against the railroads. Had the Santa Fe remained closed, the above daily impact would have more than doubled, and crucial commodities such as chlorine would have been unavailable to most of California's population centers.

The economic losses to agriculture and related activities as a consequence of the SP-UP strike were itemized by

the Governor as follows:

Commodity	Carloads Lost Per Day	Financial Loss Per Day
Cantaloupes	125	\$495,000
Pears	100	450,000
Grapes	45	393,000
Lettuce	100	250,000
Lemons	40	245,000
Tomatoes	40	200,000
Plums	30	198,000
Oranges	55	178,750
Honey Dew Melons	35	75,000
Nectarines	12	72,000
Potatoes	60	60,000
Grapefruit	15	40,000
Celery	<u>15</u>	<u>31,500</u>
Total Commodity Loss	672	\$2,789,450
Loss to Related Industries		8,363,350
Total Daily Economic Loss		\$11,157,800

Excluded from this listing is an estimated daily loss of \$2 million from deterioration of the sugar beet crop as well as long term losses to agriculture and related activities.

Colorado

Governor John Love reported that the most immediate impact was on grain producers who were experiencing substantial difficulty in moving their product to market. Extension of the strike would have soon affected construction, steel production, paper products and the state's ability to obtain medical and surgical supplies. There was no ready estimate of employment and financial losses.

Delaware

Governor Russell Peterson reported no discernible impact on the state's economy due to the strike. However, had the B&O-C&O been struck, the state would have experienced severe difficulties.

Georgia

Governor Jimmy Carter reported a severe state-wide strike impact. The supply of poultry feed was very low, and feed prices were rising sharply. The pulpwood industry had been forced to greatly reduce production and was experiencing losses of substantial magnitude. The movement of raw materials for asphalt and concrete production was at a standstill, and a

continuation of the strike would have forced the curtailment of production. The inventories of fuel for utility and industrial use approached the critical level. The paper industry could neither obtain inputs or ship outputs. Ocean shipping at Garde City and Ocean Terminal was nearly at a standstill. It was reported that motor carrier traffic was 10 to 15 percent above normal and that industry was operating near capacity. There was no available estimate of the employment and financial impact.

Idaho

Governor Cecil Andrus reported that the major impact of the strike was in Southern Idaho which is served by the UP. The early grain harvest had filled available storage space, and some grain was piled on the ground. The lumber industry had laid off 2,200 employees, and an additional 3,000 people would have been idled by August 6, had the strike continued. Fertilizer plants were unable to move products and had reduced their labor force by 800. There was no available estimate of the financial losses.

Illinois

Governor Richard V. Ogilvie reported minor impact on the state's

economy. However, there are 60,000 railroad employees in the state, and had the strike continued to spread, the economy would have suffered a disastrous blow both from the railroad industry and the economic sectors which depend on rail transportation.

Iowa

Governor Robert D. Ray reported that the grain producing, grain processing, construction and lumber industries were being affected by the strike. However, had the Rock Island and Milwaukee Railroads been struck, the state would have been in a critical position. There was no available estimate of the employment or financial impact.

Kansas

Governor Robert Docking reported that the major impact in his state had fallen on grain producers. The wheat crop appears to have been of record size. All available storage was full, and an estimated 323,000 bushels of wheat were being stored on the ground. Furthermore, 27 carloads of wheat destined for Pakistan were standing on UP tracks at Abilene and approximately 50 carloads destined for export were being held at other points within the state. Had the strike on the Santa Fe lasted for

a longer period, and spread to the Rock Island and Missouri-Kansas-Texas Railroads, the state would have been completely without rail service. There were no available data on employees idled or financial losses suffered.

Mississippi

Governor John Bell Williams estimated that the rail strike resulted in a \$500,000 loss per day to the state's economy. The construction industry was most severely hurt because of greatly reduced inbound shipments of lumber, sand, gravel and crude oil. There was no estimate of the number of employees affected.

Missouri

Governor Warren Hearns reported no discernible impact from the strike. However, had the strike continued an additional two weeks, seventeen large industrial firms and many farm and terminal grain elevators would have been forced to curtail or stop operations.

Montana

Governor Forrest H. Anderson reported that the UP serves only a minor part of the state, and therefore the impact of the

strike was relatively small. The major Montana industries served by the UP are Stauffer Chemical; Pfizer, Inc.; and Anaconda Company. However, the Anaconda Company was itself closed by a strike and therefore felt no impact. Had the strike lasted through August 6, the other two companies would have been forced to close, and 200 people would have been idled. Furthermore, on August 6 the Milwaukee Road would have been struck and Montana's grain and lumber industries would have suffered substantial injury.

Nebraska

Governor J. James Enon reported that the impact on the state's agricultural sector was serious and worsening each day. An estimated 104 million bushel wheat crop had filled available storage, and a portion was being stored on the ground. Wheat loss cost the state's farmers \$6 million, and 20 percent of the crop was in danger of being lost. The impact would have compounded during the weeks of August 2 and 9 with the harvest of the early potato, corn and grain sorghum crops.

Nevada

Governor Mike O'Callaghan reported no major problems although some mines had been closed. Mining, warehousing and manufacturing would have been seriously affected by mid-August had the strike continued.

Oregon

Governor Tom McCall reported that the rail strike had a disastrous effect on the state's economy because the SP and UP provide the majority of the state's rail service. The forest products industry, which employs 72,400 people, had laid off 5,000 employees. By August 3rd or 4th, more than 10,000 employees would have been idle, and by August 13 the industry would have ceased operation. Both hay and grain was lying on the ground. Harvest of the pea and potato crops (which must move to the west coast for processing) began early in August and, had the strike continued, substantial losses would have occurred. There was no available estimate of financial losses suffered due to the strike against the railroads.

Tennessee

Governor Winfield Dunn expressed concern about the reduced

movement of sand, gravel and coal. However, he did not provide data on the impact on the state's economy.

Utah

Governor Calvin Rampton reported that the impact of the strike had been felt by 5,000 businesses within the state. There was no data pertaining to either labor force reductions or financial losses.

Washington

Governor Daniel J. Evans reported that because the Burlington Northern continued to operate, the impact of the strike was relatively small.

The primary impact was felt by the wood products industry. Fourteen plywood mills closed during the strike and seventeen more would have closed by August 6.

The agricultural sector of the economy is primarily served by both the UP and Milwaukee railroads. However, an estimated 106 million bushel wheat crop was being harvested, and had the strike continued, and spread to the Milwaukee, the financial loss to the wheat farmers would have been substantial. A similar situation would have prevailed with respect to the potato

crop. The Governor's analysis of the labor force reduction and payroll lost as a consequence of the strike appears below.

	As of July 30	As of week of August 2	Maximum Level
Unemployment:			
Direct Railroad Employees	600	5,400	12,000
Indirect Employees	<u>580</u>	<u>5,200</u>	<u>11,600</u>
TOTAL	1,180	10,600	23,600
Weekly Wages and Salaries Lost:			
Direct	\$108,000	\$970,000	\$2,160,000
Indirect	<u>72,000</u>	<u>670,000</u>	<u>1,510,000</u>
TOTAL	\$180,000	\$1,640,000	\$3,670,000

B. Industry-By-Industry Analysis of the Impact of the UTU Strike

The industry-by-industry analysis of the impact of the strike is based on telephone conversations with various industry representatives. Consequently, the material is by no means complete but is intended only as a representation of the impact felt by the several sectors of the economy.

The information obtained indicates that the majority of the impact of the strike was felt by agriculture, mining, lumbering and closely allied industries. In some instances, specific data pertaining to the impact of the strike was supplied and is included below. However, in a majority of the cases, specific detail was not available and therefore the analysis is somewhat abstract.

There was substantial difficulty encountered in separating the impact of the railroad strike from the effects of other economic phenomena. The longshoremen's strike had closed the West Coast ports to shipping prior to (and during) the strike. Thus, numerous industries in the States of California, Oregon and Washington were already experiencing economic difficulties. The steel industry was preparing to be closed down by a steelworker's strike. Poultry and egg producers were facing low prices for their products due to over supply prior to the strike and were preparing to rationalize their flocks even before the feed shortage. These and many other related occurrences served to confound specific analysis of the impact of the rail strike.

It appears that the long run impact on the Nation's output will be due to deterioration of perishable crops (primarily wheat, and fresh fruit and vegetables). The extent of this deterioration is estimated to have been approximately \$4 million per day at the height of the strike. This reduced income with its multiplicative impact is estimated to have been equivalent to between $1/3$ and $1/2$ of one percent of the daily GNP. However, had the strike continued for another week, the impact would probably have more than doubled.

The Automobile Industry:

The rail strike occurred at a time when the auto manufacturers were preparing to stop operations for the model change. However, the strike forced an early change-over at many plants. There is no available estimate of the impact on component manufacturers who may have been affected. General Motors reported that, due to the strike, its Kansas City plant closed earlier than anticipated and 3,500 employees were affected. Ford reported a similar situation at its Kansas City and St. Louis plants, leaving 6,600 people without work. They projected that their Chicago and Los Angeles plants would not have reopened after the model change (during the week of August 2) which would have idled an additional 5,400 people. Trucks were used to maintain the operation of other plants. Chrysler reported that no closings would have occurred until August 16. During that week, it was expected that seven plants would have closed and 40,000 people would have been out of work. By the end of the week of August 23 it was estimated that 35 plants would have been closed and 110,000 people idled.

Chemical Industry:

E. I. Du Pont closed down a small plant in Indiana which employs about 50 persons. Advance planning for the rail

strike apparently overlooked this facility which requires soda ash in carload lots to maintain operation. Du Pont generally arranged for a buildup of raw materials at its many plants around the country so as to prevent shutdowns of production during the strike. Had the strike against the Houston Belt and Terminal Railway continued, the Houston plant, which employs more than 1,000 people, would have had to curtail or stop production.

Stauffer Chemical had 17 plants without rail service. Five plants were cutting back production, with several more scheduled to do so. The company had furloughed 2,360 employees. Movement of materials into storage facilities had been cut back considerably.

Dow Chemical did not feel severe effects from the strike although all shipments to the West Coast had ceased. Production at the Midland, Michigan, plant would have been reduced had the B&O/C&O been struck because the Penn Central would not have been able to handle the tonnage offered. The Pittsburg, California, plant which produces chlorine was shut down. It employs about 250 persons.

Coal Mining:

The West Virginia Department of Mines advised that of the 46,000 miners employed in that state, 24,000 are employed in the Pocahontas District. That district normally produces 366,000 tons of coal for loading daily. There are generally no storage facilities at the mine head, and coal must be loaded into rail cars directly from the breaker. Therefore, the loss of rail service typically forces the mines to close. Because the Pocahontas district (except for six mines located on the outskirts which are served by the C&O) is served exclusively by the N&W, only 50,000 tons were loaded daily during the week of July 28. As a result of the curtailment of service by the N&W, 191 mines were closed and 20,570 employees were out of work. The lost output amounted to 6,500 carloads of coal per day. Between 150 and 180 carloads of coal were scheduled for movement to Norfolk, Virginia, for export to Europe by August 1. Had the C&O been struck, 80% of West Virginia's mines would have closed.

Tennessee, Kentucky, and Virginia mines were not affected as much by the strike as were the Pocahontas Fields. Sixty-eight mines on various branch lines of the Southern Railroad in western Virginia and eastern Kentucky and Tennessee were closed. As a result 2,456 employees were furloughed.

Utah and Wyoming coal movements to the Richland, Washington, atomic works; Nevada Power at Moapa, Nevada; and numerous other consumers and dealers in Wyoming, Utah, Idaho, Oregon, Washington and Nevada were either stopped or greatly curtailed by the strike against UP.

The following coal companies, which employ approximately 1,000 people, were closed due to the strike.

Dren-Campbell Coal	Hemlock, Kentucky
Sterns Coal & Lumber	Kentucky and Tennessee
Ikerd & Bandy Coal	Ferguson, Kentucky
U. S. Fuel	Hiawatha, Utah
Utah Refining	Miduals, Utah
Carbon Fuel	Helper, Utah
Swisher Coal	Helper, Utah
Giant Coal	Three locations in Wyoming
Rosebud Coal Sales	Hanna, Wyoming
Whaltery City Coal Company	Pine Know, Kentucky
Overton Brothers Coal Company	Robbins, Tennessee

Daughtery Coal Company	Oneida, Tennessee
Blue Diamond Coal Company	Winfield, Tennessee
Wilson Farm Coal Company	Winfield, Tennessee
Earl Dean Coal Company	Rosedale, Tennessee
West Coal Company	Rosedale, Tennessee
Ryan Coal Company	Stearns, Kentucky
West Coal Company	Stearns, Kentucky
St. Regis Paper Company	Fargo, Louisiana

Food Processing:

Food processing installations reported a double squeeze - the inability to either obtain inputs or ship output. However, the major problem of food canners arose from the reduced ability to ship output because rail cars are loaded directly from the production line. The strike against SP would have forced nearly 50 percent of California's canning industry to stop production during the week of August 2. Had the Santa Fe been struck, the canning industry would have been shut down. Expanded reliance on motor carriers served to reduce the impact but this caused substantial additional cost.

Del Monte reported that the strike against the AP and the Santa Fe isolated nearly all of its West Coast plants. Truck

transportation enabled continued operations but at a reduced level. The majority of the output was moved into storage. There were no reductions in the labor force.

General Mills reported no critical effect from the strike against the Southern Railroad or the Norfolk & Western because alternative rail service was available. However, the strikes against the SP and Santa Fe suspended shipments from California plants which affected customers in California, Arizona, Utah, Oregon and Washington and would have resulted in a substantial reduction in the labor force. No employees were idled since stockpiling was possible.

General Foods reported that the greatest impact was felt at its distribution centers due to the reduced level of output. Eight employees were laid off in Atlanta and five at the Charlotte distribution centers. Their processing operations at Denver, Topeka, Houston, Los Angeles and San Francisco were reduced, but no employees were to have been laid off until the week of August 2 when more than 1,000 people would have been furloughed.

The following food processing plants, employing 1,666 people, were closed:

Salt Lake Flour Mills Salt Lake City, Utah

Big J. Milling Co.	Brigham City, Utah
Kellogg Company	Omaha, Nebraska Plant
Clougherty Bros. (Meat Packers)	Los Angeles, California
Inglehardt Flour Mill	Pendleton, Oregon
Sunshine Biscuits, Inc.	The Dalles, Oregon Plant
Mathis Grain Company	Mathis, Texas
Holley Sugar Company	Tracy, California

In addition 105 employees were affected by reduced operations by the following plants:

Amalgamated Sugar Co.	Various locations in Idaho and Utah
C. G. F. Grain Company.	Topeka, Kansas
Rodney Milling	Topeka, Kansas
Topeka Grain & Elevator Co.	Topeka, Kansas

Fresh Fruits and Vegetables:

The strike had a harsh impact on the producers of fresh fruits and vegetables in Arizona and California for a variety of reasons. The timing of the marketing of these commodities is unpredictable because weather conditions ripen the crops at varying times. Therefore, it is necessary to have adequate transportation by both rail and highway in a quantity and at locations that cannot be accurately predicted.

The closing of Union Pacific, Southern Pacific and Santa Fe eliminated 50 percent of the transportation normally used to move these produces. Although the remaining transportation is normally supplied by truck, the absence of rail transportation greatly increased the demand for motor carriage. Truck shortages were expected to continue well into the week of August 9 because an unusually large number of motor carriers accepted loads to the East Coast in response to the high rates. (For example, the normal rate for moving tomatoes from California to New Jersey is approximately \$1,700, but during the strike rates were reported to be as high as \$3,450 per truck-load.) Many of these trucks usually serve the Midwest, Northwest or Southwest and it will take time for them to return to California service from the East. As a result of the high rates and limited supply of transportation, only 40 to 50 percent of the row crops were harvested.

Tree fruits were still being completely harvested. However, a substantial financial loss occurred. The high land, labor and water prices in California raise the costs of processing fruits to a level which is not competitive with other areas (Florida, Texas, etc.) and therefore greatly reduced the price.

which the farmer receives. However, in order to realize even a marginal return, the producers were forced to channel a substantial portion of the ripe fruit crop into harvesting.

The problem was further compounded by the small size of the average fruit and vegetable producer. Their limited financial resources make it impossible for them to absorb the loss of even a few days market. However, even that product which did reach market often received lower prices due to pressure from terminal market buyers to offset rapidly increasing transportation costs. It was reported that had the strike continued, a large number of California fruit and vegetable growers would have faced bankruptcy.

The Council of California Growers estimated that California fruit and vegetable producers lost approximately \$4 million per day during the strike. There was not, however, a substantial reduction in the labor force because tree fruits were still being harvested; the ripe melons which were not marketed had to be picked in order to protect the vines and to prevent deterioration of the still green melons (in the hope that there would be a market when they ripened) and those row crops which were not harvested had to be plowed under. Had the Santa Fe

ceased operation for a longer period, there would have been a \$13 million loss each day to citrus fruit and cantaloupe producers.

The California Grape and Tree Fruit League, which has over 400 grower-members, reported that although the grape harvest is just beginning, approximately \$400,000 was lost each day. Plums and pears were in full harvest and producers lost about \$650,000 per day. Nearly 200 carloads of these three commodities are normally shipped each day. Fruit growers in the Sacramento River district who were forced to store their crop expect substantially lower market prices because the Menacino County growers are now harvesting their crop which is normally of superior quality.

The Western Growers Association reported that lettuce, melons and tomatoes were at or near the peak of the season. Over 600 carloads are normally shipped each day. However, less than 50 percent of the crop was being harvested and the equivalent of 100 carloads were being shipped by truck each day.

The Potato Growers Association, which represents 300 potato producers, stated that 75 cars are normally shipped each day by railroad (50 by Santa Fe and 25 by Southern Pacific). Only a small portion of the harvest was moved by truck. It was estimated that the members lost \$75,000 per day during the strike against the railroads.

Sunkist Growers is an association made up of more than 8,500 fruit producers in California and Arizona. Their financial status requires that they sell virtually 100 percent of their crop and that 75 percent be sold in fresh form in order to maintain solvency. It was estimated that the growers lost \$6 million each week from produce deterioration and from fruit moving into processing plants at a much lower price. These two states are the only source of fresh citrus fruit this time of year and normally 550 to 600 carloads of fruit shipped each day.

Grain and Grain Marketing:

The full impact of the strike on grain producers and marketing is not readily identifiable at this time. However, the strike contributed to what may be the most serious car shortage experienced by the grain industry in many years.

The wheat harvest, which was in the final stages in Nebraska, Colorado and Kansas, appears to have been of record size. As a result, country elevators were filled to capacity and the strike greatly reduced the normal country elevator-to-market flow of grain which necessitated on-ground storage of an estimated two million bushels of wheat. This backlog of demand for rail transportation will shortly be complicated by the harvest of what appears to be record sorghum and corn

crops. Thus, the impact of the UTU strike on the grain industry will depend on how much grain will have to be stored on-ground and the consequent quality deterioration. This, in turn, will depend on the ability of the railroads to obtain maximum use from the grain car fleet.

There are two major sources of potential financial loss. First, grain is a semi-perishable commodity and therefore subject to a substantial amount of deterioration if not protected from the elements of nature. Because grain processing and feeding requires high quality grain, deterioration will lower the quality of the final products and therefore reduce the market price for both the final products and for grain.

Second, the reduced flow of grain (especially wheat) to the export ports may have a long term impact on the competitive position of this country in the world market. The major consumers of grain which flows through the export centers require a stable volume over a long period and this is typically reflected in the contracts which are negotiated. The inability of this country to fulfill existing contracts may well have an adverse impact on our ability to attract future contracts.

Continental Grain is a large grain collection and exporting firm. Because their operations are wide spread, the strike caused no

critical problems. The biggest concern was the competitive position of the U. S. grain on the world market.

FAR-MAR-CO reported that the enormous wheat crop filled their country elevator but that many of their terminal elevators were nearly empty (there was nearly 20 million bushels of empty storage capacity in their Hutchison, Kansas, facility). However, the middle of August marks the beginning of the sorghum harvest which promises to be a record and this would have complicated the situation. The employees were working at a variety of tasks which were put off during the wheat harvest and there was no reduction in the labor force.

The Northern Pacific Grain Growers report that the major impact was in the early crop area served by the Union Pacific. A portion of the crop had to be stored on the ground. However, combination truck-barge movements reduced the impact.

The Omaha Grain Exchange stated that their operation was not severely affected although the use of trucks had increased the cost of grain. Their concern was the car shortage which promised to develop when the railroads resumed operations.

The Kansas City Board of Trade reported that its three largest elevators are served exclusively by railroads which were struck

(the Santa Fe A Elevators operated by Cargill and served by the Santa Fe, and FAR-MAR-CO and River Rail both served by Union Pacific). Each of these elevators has more than 10 million bushels capacity and together they represent one third of the area's terminal elevator capacity.

The National Association of Wheat Growers stated that the price of wheat is substantially lower than is normal for this time of year but it is impossible to estimate a consequent loss. The eventual loss will depend on the wheat deterioration and the prices established during the remainder of the crop year.

Those hurt were the smaller producers who had to sell their product quickly. As mentioned previously, a major concern is the long term impact on foreign sales. Japan is the most important cash buyer of wheat but a continued strike could force her to turn to Canada and/or Australia for wheat. This situation is complicated by the longshoremen's strike on the West Coast. Japan uses its grain vessels as storage and therefore requires a steady wheat flow. The U. S. supplies 50% of the wheat sold to Japan.

Lumber, Pulp, Paper and Allied Products:

The lumber, pulp, paper and allied products industry accounts for more than \$2 billion in railroad revenues each year.

Although the railroads that were struck serve approximately fifty percent of the firms in this industry, the major impact appears to have fallen on the small producers of lumber and wood products.

Champion Paper Co. Canton, N. C. has two plants in that state which are served exclusively by Southern Railway. Southern continued to deliver wood which was on line as of July 16, and additional raw materials were being trucked into the plants. However, truck service was not wholly adequate and production would have been curtailed on August 2. Champion Paper normally ships and receives a total of 50,000 carloads of freight per year. Because the railroad "pipeline" of supplies was empty, it will take about 7 days for the supply line to refill after normal rail service resumes and this delay may force the plant to shut down for a short period.

Georgia Kraft Paper, which has plants at Krannert and Mead, Georgia, reported that they would have closed during the week of August 2 had the strike continued. More than 2,000 people would have been furloughed.

Kimberly Clark reported that its North Carolina, Alabama and California plants were experiencing critical inventory shortages.

During the week of July 26, 125 employees had been laid off in their lumber operations. By August 13, more than 2,000 of its 28,000 member labor force would have been without work.

Following is a list of paper mills, with total employment of 200 people, which were closed because of a cutoff of supplies:

St. Regis Paper Co.	Fargo, Georgia
Rayonier Paper Co.	Eastman, Georgia
Union Camp	Surrency, Georgia

Some 1,530 employees were laid off as a result of the closing of the following lumber and wood product operations:

Hoff Lumber Co.	Horseshoe Bend, Idaho
Firr-Ply	White City, Oregon
Millinton Lumber Co.	Bridal Veil, Oregon
George Lumber Co.	Cascade Locks, Oregon
Diamond Lumber Co.	Tillamook, Oregon
Smith River Lumber	Draine, Oregon
Draine Plywood Co.	Draine, Oregon
Mt. Baldy Lumber Co.	Yoncalla, Oregon
Hills Creek Lumber Co.	Hills Creek, Oregon
Hegewald Lumber Co.	Cascade Locks, Oregon
J. H. Banter Lumber Co.	The Dalles, Oregon
Riddle Stock Lumber	Tifton, Georgia

Forest product plants at the following locations were forced to burn valuable wood chips normally used in producing paper and chipboard.

Plummer, Idaho

Osburn, Idaho

Coeur D'Alene, Idaho

Elgin, Oregon

Le Grande, Oregon

Joseph, Oregon

Saratoga, Wyoming

Walden, Colorado

Ocean Shipping:

Hampton Roads, Virginia, reported a 5% decrease in total traffic handled since the start of the strike against the Norfolk & Western. The decline would have been more substantial had the strike continued. Export coal was the commodity showing the greatest decrease. The Norfolk & Western piers at Lambert's Point normally serve several colliers at a time. Many grades and classes of coal are stored in the large yard near the piers. There were 16 large foreign flag colliers at anchor at Hampton Roads awaiting clearance to move dockside for loading.

Houston, Texas, at this time of year is usually at the peak of the grain export rush. Grain elevators were full, and many cars were being held outside the port area. The shutdown of the Houston Belt & Terminal Railroad was not of sufficient duration to significantly affect the port operation but had it continued, the port's general cargo traffic would have declined by 80 percent.

Petroleum Industry:

The vast majority of petroleum and gas moves through pipelines and therefore, the impact of the railroad strike on this industry was not of substantial importance. However, Phillips Petroleum reported that its Ecco, Texas, plant was forced to reduce output and the gas collection plant at Douglas, Wyoming would have shut down August 3.

Poultry and Egg Industry

Since the start of the strike against the Southern Railway, the poultry feed mills in northern Georgia had been cut off from their normal supply of raw materials. Corn is shipped to the mills in "Big John" covered hopper cars while soybeans and fish meal are delivered in box cars. Several of the mills

are located on Seaboard Coast Line tracks and continued to operate without difficulty. Those mills could have increased their outputs to take up some of the increased demand caused by cutbacks at Southern Railway-based plants. The Southern managed to deliver some grain cars to consignees at Gainesville, Georgia, the center of poultry production in that state.

In North Carolina a similar situation existed, except that more mills are served by Southern. Approximately 45-50 million chickens are in the area, and several million are shipped to market each week. Some feed mills moved grain from the nearest Seaboard Coast Line siding to their plants by trucks. The feed producers advised that they require 18 truck loads to move the contents of one "Big John" hopper car. There is considerable extra expense involved in this transfer. To reduce feed consumption, some farmers were beginning to thin out their flocks by shipping under-normal weight birds to market. Had feed supplies not been forthcoming during the week of August 2, Southern egg producers may have taken their birds off of producing rations which would have thrown the birds into molt which generally results in no egg production for two to three months. Those producers which

were using truck transportation reported an extra cost of five cents per bushel.

There is a large poultry farming complex in the area around Riverside, California, which produces eggs. It is not possible to ship that type of bird to market to reduce feed consumption. Since the start of the Southern Pacific strike, deliveries of grains via the Santa Fe were slowed down, with some arriving 4 days late. It was reported that several cars were stranded at Barstow, California. They were not moved to their destination at Riverside because of what Santa Fe officials described as a "power shortage". It is estimated that extra transportation costs for poultry feed amounted to \$400,000 during the strike (75 percent of that in the Southeast and 25 percent in the West).

Steel Industry:

The steel industry depends heavily on rail transportation for the receipt of raw materials and shipment of its products. However, the industry was in the process of stopping operations in anticipation of a steelworkers' strike which was to take effect at midnight, July 31, but which was settled August 1. Even without the strike, the industry's output during the next few weeks will be well below normal due to the stockpiling by steel consumers. Thus, the impact of the railroad strike on the steel

industry was of minor significance. However, had the Houston Belt and Terminal, and the Elgin, Joliet and Eastern railroads remained struck, steel shipments in the Houston and Chicago areas would have been greatly reduced.

National Steel Corporation (Weirton Works) reported that delivery of tin plate to the west coast nearly ceased. Shipments via AT&SF were cut back in advance of the shutdown. Normally this item is moved via the UP-SP route. Some of the customers on the line of the Southern Railroad were served by truck. However, because of a truck shortage, the plant was 16-20 car loads behind schedule on outbound shipments. Norfolk & Western coal was cut off, but Chesapeake & Ohio and Penn Central were able to increase their shipments.

Tobacco-Cigarette Industry

The strike against the railroads caused the tobacco industry to absorb substantial extra transportation expense but otherwise resulted in little substantial injury. However, had the strike continued, the impact would have been more severe. The tobacco auction markets opened August 3 in Georgia, South Carolina, and southern North Carolina. Approximately 60 percent

were using truck transportation reported an extra cost of five cents per bushel.

There is a large poultry farming complex in the area around Riverside, California, which produces eggs. It is not possible to ship that type of bird to market to reduce feed consumption. Since the start of the Southern Pacific strike, deliveries of grains via the Santa Fe were slowed down, with some arriving 4 days late. It was reported that several cars were stranded at Barstow, California. They were not moved to their destination at Riverside because of what Santa Fe officials described as a "power shortage". It is estimated that extra transportation costs for poultry feed amounted to \$400,000 during the strike (75 percent of that in the Southeast and 25 percent in the West).

Steel Industry:

The steel industry depends heavily on rail transportation for the receipt of raw materials and shipment of its products. However, the industry was in the process of stopping operations in anticipation of a steelworkers' strike which was to take effect at midnight, July 31, but which was settled August 1. Even without the strike, the industry's output during the next few weeks will be well below normal due to the stockpiling by steel consumers. Thus, the impact of the railroad strike on the steel

of the tobacco from these markets normally moves by rail (mostly Southern Railway) to redrying plants in North Carolina. Tobacco as sold by the grower is perishable and must be moved to redrying plants in a short time to prevent deterioration. Thus, a continued rail stoppage would have had critical repercussions for the tobacco industry.

R. J. Reynolds Co., Winston-Salem, North Carolina, was cut off from direct rail service by the shutdown of the Southern Railroad. Cars were being spotted by the Seaboard Coast Line at the point on their line which is nearest to the Reynolds plant, and trucks were used to move lading to and from Winston-Salem. No difficulty was encountered, but there was considerable extra expense. Normally, 25 carloads of products are shipped from the Winston-Salem plant each day. Obtaining empty cars for loading had become a major problem. The closing of the Santa Fe would have forced high-cost cross-country trucking of products. Under normal conditions, it costs \$500 more to ship a carload of product by truck than by rail.

The leaf processing plant at Lexington, Kentucky, is on a Southern Railway spur. It normally receives 2 million pounds of leaf per week. This plant continued to operate. However,

a prolonged strike would have forced it to close.

Phillip Morris, Richmond, Virginia, reduced shipments to the West Coast by 50 percent to prevent carloads of cigarettts from frustration en route. It ships 20-25 carloads per week to the West Coast.

Department of Defense:

At the height of the strike, the Department of Defense reported that 56 military installations were without service. Ammunition plants at Crane, Indiana and Yorktown, Virginia, had reduced their level of operations and by mid-August, these two plants as well as the Radford and Holston Army Ammunition plants would have closed. Failure of a contractor to follow established procedures caused 500 employees to miss 2 eight-hour shifts at the Cornhusker Army Ammunition Plant in Nebraska.

Expedited delivery of 11 carloads of inputs by the UP allowed production to resume. Alternate rail and motor carrier service was adequate to meet the Department's needs.

C. Impact of the UTU Strike on Railroad Operations.

At the height of the strike, 23 percent of the miles of road operated by the Nation's railroads were idle, affecting more than 20 percent of the railroad traffic. APPENDIX B, Table 1 shows the impact on the revenue, ton-miles and employment of the Nation's railroad system as a consequence of the strike. By July 30, the struck railroads were losing more than \$10 million per day in operating revenues, \$1.1 million daily in net operating income, and more than 160,000 railroad employees were directly affected. The struck roads normally pay their employees more than \$4.5 million daily.

The impact of the strike on the individual railroads affected is indicated by the traffic data contained in APPENDIX B, Tables 2-6. Despite the strike, during the week ending July 24, the Southern Railway continued to handle a substantial volume of traffic as indicated by Table 2. During that week a year ago, Southern received 44,458 carloads of revenue freight, and during the first full week of the strike it handled 8,124 cars. On the other hand, Union Pacific received more than 30,000 carloads during the comparable week in 1970 but essentially no traffic during the first full week of the strike (Table #3).

During the second full week of the strike, neither railroad received any significant volume of traffic. During this same week, the Norfolk & Western, and Southern Pacific were added to the list of struck railroads. During the week (ending July 31), neither of these two railroads registered any significant volume of received traffic. (Tables 4 and 5).

Although the statistics are not yet available, the three day strike against the Santa Fe Railroad did produce a significant interruption in its traffic flow. Had the strike continued and spread to the other railroads designated for strike action, the carloads received would have declined accordingly. The remaining tables in APPENDIX B indicate what the impact would have been had the Santa Fe remained closed and the eight additional railroads been struck.

Computing the carloads and/or ton-miles lost by each railroad as a consequence of the strike does not necessarily provide an accurate indication of the reduction in rail traffic due to the strike because it was possible to reroute some traffic over still operating lines. APPENDIX C, Table 1 indicates a reduction of 800 million ton-miles between the week just before the strike and the first week of the strike and a

reduction of 3 billion ton-miles during the second week of the strike. Table 2 indicates the change in the number of cars loaded and received from connections by commodity between the period prior to the strike and the weeks during the strike. The number of cars handled during the first week of the strike was 100,000 below the previous week. During the second week, more than 150,000 fewer carloads were received.

Using the week ended July 17, 1971, as the bench mark, APPENDIX C, Table 3 indicates the trend in cars loaded during each week of the strike classified by commodity group. In total, there was a decline of approximately 55,000 carloads during the first week of the strike and approximately 100,000 carloads during the second week of the strike. This table also indicates the estimated value of the contents of the carloads of the several commodities. During the week of July 17, 1971, the Class I railroads moved an estimated \$2,275 million worth of commodities; during the first week of the strike, the values of the commodities carried declined to an estimated \$1,982 million (a decline of \$300 million); and during the final week, the value further declined to \$1,767 million (more than \$500 million below the value during the week prior to the strike). It must not be assumed however, that all of this production was lost. Many producers were able to stockpile their products for later shipment. Furthermore, motor carriers were able to move a portion of this product.

APPENDIX A

Miles of Railroad Idled, By State
Due to the UTU Strike Against
The Southern, Union Pacific, Norfolk
and Western, Southern Pacific, and Santa Fe Railroads

<u>State</u>	<u>Miles of Road</u>	<u>% of State Total</u>
Alabama	964	21.1
Arizona	1,897	92.4
California	5,989	80.4
Colorado	1,250	35.6
District of Columbia	3	9.7
Georgia	848	15.6
Idaho	1,983	74.3
Illinois	1,443	13.3
Indiana	1,345	20.9
Iowa	233	2.9
Kansas	3,857	49.4
Kentucky	175	5.0
Louisiana	706	18.6
Maryland	15	1.3
Michigan	120	1.9
Mississippi	46	1.2
Missouri	931	14.6
Montana	143	2.9
Nebraska	1,332	24.2
Nevada	962	58.8
New Mexico	1,870	
New York	80	1.4
North Carolina	1,398	35.6
Ohio	1,578	20.0
Oklahoma	1,408	25.9
Oregon	2,360	76.7
Pennsylvania	149	1.8
South Carolina	1,000	32.2
Tennessee	682	21.1
Texas	6,892	49.6
Utah	919	52.5
Virginia	2,242	57.0
Washington	1,015	20.6
West Virginia	718	20.2
Wyoming	787	43.4
Total	47,588	% of Nation 22.9

APPENDIX B
Table 1
1970 REVENUE, TON-MILES AND EMPLOYEES OF THE
CLASS I LINE-HAUL RAILROADS CHOSEN FOR STRIKE ACTION
BY THE UTU a

Work Stoppage Date By Carrier	Operating Revenue		Ton-Miles		Employees	
	Amount (Millions)	Percent of System Total	Amount (Billions)	Percent of System Total	Number	Percent of System Total
<u>JULY 16</u>						
SOU	\$ 400.1	3.3	\$ 26.1	3.4	19,372	3.4
UP	669.6	5.6	47.2	6.2	29,362	5.2
Total, Two Railroads	1,069.7	8.9	73.3	9.6	48,734	8.6
<u>JULY 24</u>						
SP	935.7	7.8	65.0	8.5	40,730	7.2
N&W	734.2	6.1	52.8	6.9	30,482	5.4
Total, Four Railroads	2,739.6	22.8	191.1	25.0	119,946	21.2
<u>JULY 30</u>						
ATSF	753.3	6.3	48.3	6.3	35,416	6.2
DMIR	45.3	0.4	2.2	0.3	1,599	0.3
EJE	62.1	0.5	0.8	0.1	3,401	0.6
BLE	44.0	0.4	2.5	0.3	1,609	0.3
Total, Eight Railroads	3,644.3	30.4	244.9	32.0	161,971	28.6
<u>AUGUST 6</u>						
RI	273.5	2.3	20.6	2.7	11,880	2.1
MILW	277.5	2.3	17.5	2.3	14,803	2.6
MKT	69.4	0.6	5.0	0.7	2,834	0.5
B&O	479.2	4.0	28.6	3.7	21,427	3.8
C&O	453.0	3.8	37.1	4.9	24,557	4.3
Total, Thirteen Railroads	5,196.9	43.4	353.7	46.3	237,472	41.9

1970 REVENUE, TON-MILES AND EMPLOYEES OF THE
 CLASS I LINE-HAUL CHOSEN FOR STRIKE ACTION BY THE UTU (Continued) a

Work Stoppage Date By Carrier	Operating Revenue		Ton-Miles		Employees	
	Amount (Millions)	Percent of System Total	Amount (Billions)	Percent of System Total	Number	Percent of System Total
AUGUST 11						
LSN	\$ 381.5	3.2	\$ 30.6	4.0	15,711	2.8
EL	262.2	2.2	15.0	2.0	13,684	2.4
SLSF	185.4	1.5	12.8	1.7	8,292	1.5
Total, Sixteen Railroads	6,026.0	50.3	412.1	54.0	275,159	48.6
U. S. TOTAL	11,985.0	100.0	762.5	100.0	566,282	100.0

a Source: Interstate Commerce Commission, Bureau of Economics

APPENDIX B
 Table 2
 Comparison of Revenue Cars Loaded and Received From Connections By Week:
 Southern Railway a

Commodity	Week Ended	Week Ended	Week Ended
	July 17 1970	July 24 1971	July 31 1971
Grain	529	513	502
Farm Products	462	181	0
Except Grain	379	541	765
Metallic Ores	318	276	342
Coal	2038	2485	2374
Crushed Stone,			
Gravel & Sand	2661	2695	2545
Nonmetallic Minerals	720	652	607
Grain Mill Products	525	498	501
Food & Kindred			
Products	1132	1210	1152
Primary Forest			
Products	4241	3868	4326
Lumber & Wood Products			
Except Furniture	704	685	716
Pulp, Paper & Allied			
Products	2096	2171	2151
Chemicals & Allied			
Products	1399	1472	1335
Petroleum Products	229	252	233
Stone, Clay & Glass			
Products	2694	2411	2616
Coke	89	86	95
Metal & Products			
Except Coke	1078	969	975
Motor Vehicles &			
Equipment	739	455	454
Waste & Scrap			
Materials	962	929	1002

Carloads By Week: Southern Railway (Continued)

Commodity	Week Ended		Week Ended		Week Ended	
	July 17 1970	July 17 1971	July 24 1970	July 24 1971	July 31 1970	July 31 1971
Forwarder & Shipper Assoc. Traffic	300	112	312	12	355	0
All other Carloads	3652	2531	3547	511	3802	0
LCL Traffic	12	5	13	0	3	0
TOTAL CARS LOADED	26497	20833	26040	5360	26851	NA
TOTAL CARS REVENUE FREIGHT RECEIVED FROM CONNECTIONS	19187	15235	18418	2764	18170	NA

a. Source: Car Service Division, Association of American Railroads, Statement 54A. Car Service Division, Association of American Railroads, Statement CS-54A. Due to lag in reporting struck railroads, figures for the week ended July 31 are somewhat incomplete.

APPENDIX B
Table 3
Comparison of Revenue Cars Loaded and Received From Connections By Week:
Union Pacific Railroad ^a

Commodity	Week Ended July 17		Week Ended July 24		Week Ended July 31	
	1970	1971	1970	1971	1970	1971
Grain	2235	2208	2126	0	2245	0
Farm Products						
Except Grain	504	388	480	0	506	0
Metallic Ores	1210	830	1151	0	1215	0
Coal	218	375	208	0	218	0
Crushed Stone,						
Gravel & Sand	924	776	879	0	928	0
Nonmetallic Minerals	1412	1311	1343	0	1417	0
Grain Mill Products	1277	990	1215	0	1283	0
Food & Kindred						
Products	1546	1258	1471	0	1553	0
Primary Forest						
Products	571	361	544	0	574	0
Lumber & Wood Products						
Except Furniture	1261	950	1199	0	1265	0
Pulp, Paper & Allied						
Products	454	347	432	0	456	0
Chemicals & Allied						
Products	1008	763	958	0	1013	0
Petroleum Products	202	161	191	0	203	0
Stone, Clay & Glass						
Products	908	616	863	0	912	0
Coke	117	67	111	0	118	0
Metal & Products						
Except Coke	890	562	846	0	895	0
Motor Vehicles &						
Equipment	100	80	96	0	101	0
Waste & Scrap						
Materials	218	187	208	0	219	0

Carloads By Week: Union Pacific Railroad (Continued)

Commodity	Week Ended		Week Ended		Week Ended	
	July 17 1970	July 17 1971	July 24 1970	July 24 1971	July 31 1970	July 31 1971
Forwarder & Shipper						
Assoc. Traffic	67	67	64	0	68	0
All other Carloads	1680	1083	1598	0	1688	0
LCL Traffic	5	1	5	0	7	0
TOTAL CARS LOADED	16807	*13381	15988	NA	16884	NA
TOTAL CARS REVENUE	13735	*11685	14531	NA	14452	NA
FREIGHT RECEIVED FROM CONNECTIONS						

*July 10 Figures

a. Source: Car Service Division, Association of American Railroads, Statement 54A. Car Service Division, Association of American Railroads, Statement CS-54A. Due to lag in reporting struck railroads, figures for the week ended July 31 are somewhat incomplete.

APPENDIX B
Table 4Comparison of Revenue Cars Loaded and Received From Connections By Week:
Southern Pacific Transportation Company

Commodity	Week Ended		Week Ended		Week Ended	
	July 17 1970	July 17 1971	July 24 1970	July 24 1971	July 31 1970	July 31 1971
Grain	752	467	766	413	808	0
Farm Products						
Except Grain	6062	4762	5231	4196	5241	0
Metallic Ores	3754	916	3987	1387	3860	0
Coal	0	0	0	0	0	0
Crushed Stone,						
Gravel & Sand	3377	3001	3274	2962	3078	0
Nonmetallic Minerals	736	658	780	718	818	0
Grain Mill Products	834	775	792	802	844	0
Food & Kindred						
Products	2004	2032	2179	2014	1988	0
Primary Forest						
Products	1498	1604	1743	1511	1724	0
Lumber & Wood Products						
Except Furniture	4144	4863	4505	4611	4737	0
Pulp, Paper & Allied						
Products	1312	1348	1309	1273	1288	0
Chemicals & Allied						
Products	2187	2294	2246	2176	2032	0
Petroleum Products	1238	1022	1075	1108	1194	0
Stone, Clay & Glass						
Products	641	793	746	746	606	0
Coke	208	100	249	103	245	0
Metal & Products						
Except Coke	837	902	913	835	877	0
Motor Vehicles &						
Equipment	663	517	198	219	102	0
Waste & Scrap						
Materials	823	763	976	972	875	0

Carloads By Week: Southern Pacific Transportation Company (Continued)

Commodity	Week Ended July 17 1971		Week Ended July 24 1971		Week Ended July 31 1971	
	1970	1971	1970	1971	1970	1971
Forwarder & Shipper						
Assoc. Traffic	387	391	300	370	292	0
All other Carloads	3580	2681	3533	2667	3542	0
LCL Traffic	16	2	37	1	30	0
TOTAL CARS LOADED	35053	29891	34839	28904	34181	NA
TOTAL CARS REVENUE FREIGHT RECEIVED FROM CONNECTIONS	14798	13685	15772	13285	14667	NA

a. Source: Car Service Division, Association of American Railroads, Statement 54A. Car Service Division, Association of American Railroads, Statement CS-54A. Due to lag in reporting struck railroads, figures for the week ended July 31 are somewhat incomplete.

APPENDIX B
Table 5Comparison of Revenue Cars Loaded and Received From Connections By Week:
Norfolk & Western Railway Company^a

Commodity	Week Ended July 17		Week Ended July 24		Week Ended July 31	
	1970	1971	1970	1971 ^b	1970	1971
Grain	911	817	1056	--	1133	111
Farm Products						
Except Grain	32	60	21	--	18	1
Metallic Ores	1403	798	645	--	559	0
Coal	18097	16110	14119	--	12789	3584
Crushed Stone,						
Gravel & Sand	1737	1094	1235	--	1344	84
Nonmetallic Minerals	2	41	1	--	6	1
Grain Mill Products	1231	1202	1216	--	1158	14
Food & Kindred						
Products	1609	1218	1366	--	1269	34
Primary Forest						
Products	331	398	325	--	384	3
Lumber & Wood Products						
Except Furniture	212	190	209	--	241	7
Pulp, Paper & Allied						
Products	389	223	337	--	410	6
Chemicals & Allied						
Products	1122	865	894	--	990	22
Petroleum Products	223	169	174	--	236	2
Stone, Clay & Glass						
Products	1485	1306	1316	--	1350	56
Coke	905	1051	864	--	825	0
Metal & Products						
Except Coke	1881	1321	1267	--	1673	37
Motor Vehicles &						
Equipment	1947	1815	1511	--	1295	52
Waste & Scrap						
Materials	563	412	526	--	543	8

Carloads By Week: Norfolk & Western Railway Company

Commodity	Week Ended		Week Ended		Week Ended	
	1970	1971	1970	1971 ^b	1970	1971
Forwarder & Shipper						
Assoc. Traffic	922	592	794	--	691	13
All other Carloads	2772	2058	2410	--	2496	58
LCL Traffic	0	0	0	--	0	0
TOTAL CARS LOADED	3774	31740	30283	NA	29405	4098
TOTAL CARS REVENUE						
FREIGHT RECEIVED	17556	15378	16154	NA	16083	320
FROM CONNECTIONS						

a. Source: Car Service Division, Association of American Railroads, Statement 54A. Car Service Division, Association of American Railroads, Statement CS-54A. Due to lag in reporting struck railroads, figures for the week ended July 31 are somewhat incomplete.

b. No Report Filed.

APPENDIX B

Table 6

Comparison of Revenue Cars Loaded and Received From Connection By Week:

Commodity	Week Ended July 17		Week Ended July 24		Week Ended July 31	
	1970	1971	1970	1971	1970	1971
Grain	3150	2080	2343	1699	1743	1202
Farm Products						
Except Grain	1877	2084	1462	1764	1271	1707
Metallic Ores	368	213	453	215	404	197
Coal	179	406	419	269	329	328
Crushed Stone,						
Gravel & Sand	1412	1406	1385	1247	1405	781
Nonmetallic Minerals	538	497	616	491	444	508
Grain Mill Products	1070	1243	1076	1165	1059	766
Food & Kindred						
Products	1109	1151	1171	1252	1231	1109
Primary Forest						
Products	503	467	572	469	543	403
Lumber & Wood Products						
Except Furniture	266	318	286	313	302	291
Pulp, Paper & Allied						
Products	585	622	544	587	646	471
Chemicals & Allied						
Products	1514	1927	1815	1863	1915	1170
Petroleum Products	1028	882	1021	917	1025	687
Stone, Clay & Glass						
Products	1190	1308	1222	1406	1214	996
Coke	28	11	47	5	102	0
Metal & Products						
Except Coke	525	546	579	589	620	392
Motor Vehicles &						
Equipment	143	137	132	85	225	123
Waste & Scrap						
Materials	341	318	368	334	337	274

a. Source: Car Service Division, Association of American Railroads, Statement 54A. Car Service Division, Association of American Railroads, Statement CS-54A. Due to lag in reporting struck railroads, figures for the week ended July 31 are somewhat incomplete.

Carloads By Week: Atchison, Topeka and Santa Fe Railway Co. (Continued)

Commodity	Week Ended July 17		Week Ended July 24		Week Ended July 31	
	1970	1971	1970	1971	1970	1971
Forwarder & Shipper						
Assoc. Traffic	826	827	820	715	851	507
All other Carloads	1864	1966	2163	1862	2123	1587
LCL Traffic	174	54	183	49	165	41
TOTAL CARS LOADED	18690	18463	18677	17296	17954	13540
TOTAL CARS REVENUE						
FREIGHT RECEIVED	10951	10071	11333	11834	11299	9094
FROM CONNECTIONS						

a. Source: Car Service Division, Association of American Railroads, Statement 54A. Car Service Division, Association of American Railroads, Statement CS-54A. Due to lag in reporting struck railroads, figures for the week ended July 31 are somewhat incomplete.

APPENDIX B
Table 7
Comparison of Revenue Cars Loaded and Received From Connections By Week:
Chicago, Rock Island and Pacific Railroad Company

Commodity	Week Ended July 17 1970		Week Ended July 24 1971		Week Ended July 31 1971	
	1970	1971	1970	1971	1970	1971
Grain	3,206	3,705	3,040	2,465	2,665	2,473
Farm Products						
Except Grain	85	105	81	107	86	104
Metallic Ores	109	86	100	91	119	94
Coal	397	330	425	546	311	557
Crushed Stone, Gravel & Sand	1,283	1,166	1,232	1,087	1,174	1,408
Nonmetallic Minerals	131	157	136	128	174	119
Grain Mill Products	1,314	1,191	1,475	1,361	1,057	1,232
Food & Kindred Products	971	902	981	878	969	879
Primary Forest Products	217	189	201	230	273	117
Lumber & Wood Products						
Except Furniture	156	166	233	199	169	167
Pulp, Paper & Allied Products	179	175	183	164	250	183
Chemicals & Allied Products	462	435	490	462	451	541
Petroleum Products	262	272	313	312	264	274
Stone, Clay & Glass Products	346	317	376	419	385	403
Coke	241	333	195	332	198	291
Metal & Products						
Except Coke	186	224	256	224	243	203
Motor Vehicles & Equipment	42	64	48	43	26	66
Waste & Scrap Materials	93	143	114	114	157	86

Carloads By Week: Rock Island and Pacific Railway Company (Continued)

Commodity	Week Ended July 17		Week Ended July 24		Week Ended July 31	
	1970	1971	1970	1971	1970	1971
Forwarder & Shipper Assoc. Traffic	96	128	123	104	112	145
All other Carloads	1,877	1,404	1,706	1,405	1,379	1,538
LCL Traffic	0	0	1	0	0	0
TOTAL CARS LOADED	11,653	10,862	11,709	10,671	10,462	10,880
TOTAL CARS REVENUE FREIGHT RECEIVED FROM CONNECTIONS	9,038	8,400	8,940	8,013	7,917	7,025

a. Source: Car Service Division, Association of American Railroads, Statement 54A. Car Service Division, Association of American Railroads, Statement CS-54A. Due to lag in reporting struck railroads, figures for the week ended July 31 are somewhat incomplete.

APPENDIX B
Table 8

Comparison of Revenue Cars Loaded and Received From Connections By Week:
Chicago, Milwaukee, St. Paul and Pacific Railroad a

Commodity	Week Ended July 17		Week Ended July 24		Week Ended July 31	
	1970	1971	1970	1971	1970	1971
Grain	2012	1857	2243	2084	2198	2157
Farm Products						
Except Grain	103	107	129	87	163	127
Metallic Ores	18	2	26	0	32	0
Coal	1110	1101	1284	961	1000	1171
Crushed Stone,						
Gravel & Sand	1052	878	994	1004	1166	1039
Nonmetallic Minerals	809	691	911	654	704	595
Grain Mill products	756	902	739	858	784	934
Food & Kindred						
Products	731	827	730	932	787	868
Primary Forest						
Products	1036	936	1119	1054	1221	949
Lumber & Wood Products						
Except Furniture	505	703	577	711	633	769
Pulp, Paper & Allied						
Products	954	1088	960	1156	944	1142
Chemicals & Allied						
Products	275	287	274	243	253	244
Petroleum Products	103	76	133	72	91	116
Stone, Clay & Glass						
Products	422	396	467	364	468	305
Coke	150	57	82	89	94	76
Metal & Products						
Except Coke	547	447	508	365	497	299
Motor Vehicles &						
Equipment	162	140	88	86	49	66
Waste & Scrap						
Materials	373	333	400	319	384	266

Carloads By Week: Chicago, Milwaukee, St. Paul and Pacific Railroad (Continued)

Commodity	Week Ended July 17		Week Ended July 24		Week Ended July 31	
	1970	1971	1970	1971	1970	1971
Forwarder & Shipper						
Assoc. Traffic	373	304	407	260	438	340
All other Carloads	1489	1096	1435	1068	1347	1040
LCL Traffic	0	1	5	2	3	1
TOTAL CARS LOADED	12980	12229	13511	12369	13256	12500
TOTAL CARS REVENUE						
FREIGHT RECEIVED	6075	5321	6267	5584	4818	4911
FROM CONNECTIONS						

a. Source: Car Service Division, Association of American Railroads, Statement 54A. Car Service Division, Association of American Railroads, Statement CS-54A. Due to lag in reporting struck railroads, figures for the week ended July 31 are somewhat incomplete.

APPENDIX B
Table 9

Comparison of Revenue Cars Loaded and Received From Connections By Week:
Missouri-Kansas-Texas Railroad Company^a

Commodity	Week Ended July 17 1970		Week Ended July 24 1971		Week Ended July 31 1971	
	1970	1971	1970	1971	1970	1971
Grain	148	208	107	190	233	143
Farm Products						
Except Grain	61	30	50	40	61	50
Metallic Ores	2	0	2	0	0	4
Coal	487	337	446	347	435	309
Crushed Stone, Gravel & Sand	69	84	73	78	258	69
Nonmetallic Minerals	109	77	127	126	66	141
Grain Mill Products	115	147	110	161	122	119
Food & Kindred Products	150	137	150	132	155	140
Primary Forest Products	72	55	66	56	85	80
Lumber & Wood Products						
Except Furniture	12	24	14	20	26	22
Pulp, Paper & Allied Products	97	78	94	72	101	63
Chemicals & Allied Products	92	68	80	77	96	99
Petroleum Products	225	184	191	188	178	180
Stone, Clay & Glass Products	149	158	133	118	110	139
Coke	0	0	0	0	0	0
Metal & Products Except Coke	157	89	112	82	109	81
Motor Vehicles & Equipment	11	48	18	45	10	16
Waste & Scrap Materials	186	156	151	140	176	166

Carloads By Week: Missouri-Kansas-Texas Railroad Co. (Continued)

Commodity	Week Ended		Week Ended		Week Ended	
	1970	1971	1970	1971	1970	1971
Forwarder & Shipper						
Assoc. Traffic	3	0	3	0	3	0
All other Carloads	374	471	369	381	262	501
LCL Traffic	28	5	20	12	19	0
TOTAL CARS LOADED	2547	2356	2316	2266	2505	2322
TOTAL CARS REVENUE	3090	3020	3371	3136	3437	2968
FREIGHT RECEIVED						
FROM CONNECTIONS						

a. Source: Car Service Division, Association of American Railroads, Statement 54A. Car Service Division, Association of American Railroads, Statement CS-54A. Due to lag in reporting struck railroads, figures for the week ended July 31 are somewhat incomplete.

APPENDIX B
 Table 10
 Comparison of Revenue Cars Loaded and Received From Connections By Week:
 Baltimore & Ohio Railroad Company

Commodity	Week Ended July 17		Week Ended July 24		Week Ended July 31	
	1970	1971	1970	1971	1970	1971
Grain	361	258	402	209	265	268
Farm Products						
Except Grain	115	73	141	96	157	81
Metallic Ores	833	806	1233	722	1951	540
Coal	11511	10570	11682	11185	12380	11465
Crushed Stone,						
Gravel & Sand	1863	1478	1843	1716	1884	1446
Nonmetallic Minerals	233	179	188	177	235	138
Grain Mill Products	249	273	250	260	325	283
Food & Kindred						
Products	219	276	251	281	202	262
Primary Forest						
Products	72	80	75	83	72	96
Lumber & Wood Products						
Except Furniture	156	107	131	118	111	140
Pulp, Paper & Allied						
Products	451	371	399	324	481	297
Chemicals & Allied						
Products	958	1037	911	1053	1026	1128
Petroleum Products	530	453	540	431	454	432
Stone, Clay & Glass						
Products	847	861	725	554	753	538
Coke	496	725	581	623	861	522
Metal & Products						
Except Coke	1464	1641	1482	1797	1408	1720
Motor Vehicles &						
Equipment	464	1000	480	669	566	748
Waste & Scrap						
Materials	559	632	488	597	494	552

Carloads By Week: Baltimore & Ohio Railroad Company (Continued)

Commodity	Week Ended		Week Ended		Week Ended	
	1970	1971	1970	1971	1970	1971
Forwarder & Shipper						
Assoc. Traffic	192	129	201	91	189	142
All other Carloads	4101	2793	3911	3021	4084	3184
LCL Traffic	0	0	0	0	0	0
TOTAL CARS LOADED	25674	23742	25914	24007	27898	23982
TOTAL CARS REVENUE						
FREIGHT RECEIVED	12516	11601	13352	10658	13258	12043
FROM CONNECTIONS						

a. Source: Car Service Division, Association of American Railroads, Statement 54A. Car Service Division, Association of American Railroads, Statement CS-54A. Due to lag in reporting struck railroads, figures for the week ended July 31 are somewhat incomplete.

APPENDIX B
 Table 11
 Comparison of Revenue Cars Loaded and Received From Connections By Week
 Chesapeake and Ohio Railway Company a

Commodity	Week Ended July 17		Week Ended July 24		Week Ended July 31	
	1970	1971	1970	1971	1970	1971
Grain	148	167	299	439	404	312
Farm Products						
Except Grain	212	120	179	75	154	89
Metallc Ores	565	963	1178	1103	1316	808
Coal	12470	11062	10298	11540	8951	11998
Crushed Stone, Gravel & Sand	1139	1195	1309	1192	1069	1202
Nonmetallic Minerals	84	26	65	31	49	23
Grain Mill Products	137	123	119	130	168	162
Food & Kindred Products	361	466	418	454	347	509
Primary Forest Products	403	369	407	364	377	428
Lumber & Wood Products						
Except Furniture	119	148	119	70	92	48
Pulp, Paper & Allied Products	546	239	570	383	525	369
Chemicals & Allied Products	1076	1147	1104	1058	1018	1031
Petroleum Products	216	263	191	225	194	164
Stone, Clay & Glass Products	344	417	463	456	490	329
Coke	486	468	342	500	581	622
Metal & Products Except Coke	478	511	484	455	535	490
Motor Vehicles & Equipment	977	1507	746	930	796	921
Waste & Scrap Materials	431	431	432	384	453	388

Carloads By Week: Chesapeake and Ohio Railway Co. (Continued)

Commodity	Week Ended July 17		Week Ended July 24		Week Ended July 31	
	1970	1971	1970	1971	1970	1971
Forwarder & Shipper Assoc. Traffic	1	0	1	0	1	0
All other Carloads	1813	1497	1644	1494	1838	1704
LCL Traffic	0	0	0	0	0	0
TOTAL CARS LOADED	22006	21119	20368	21283	19358	21597
TOTAL CARS REVENUE FREIGHT RECEIVED FROM CONNECTIONS	13075	10191	13107	9773	11770	10771

a. Source: Car Service Division, Association of American Railroads, Statement 54A. Car Service Division, Association of American Railroads, Statement CS-54A. Due to lag in reporting struck railroads, figures for the week ended July 31 are somewhat incomplete.

APPENDIX B
Table 12
Comparison of Revenue Cars Loaded and Received From Connections By Week
Louisville and Nashville Railway Company^a

Commodity	Week Ended July 17		Week Ended July 24		Week Ended July 31	
	1970	1971	1970	1971	1970	1971
Grain	669	784	655	698	667	654
Farm Products						
Except Grain	88	129	58	27	52	87
Metallic Ores	534	455	527	597	405	450
Coal	13645	11738	14518	12164	13409	12094
Crushed Stone, Gravel and Sand	1907	1439	1708	1530	1698	1419
Nonmetallic Minerals	1023	728	930	558	940	277
Grain Mill Products	886	820	818	838	872	744
Food & Kindred Products	657	626	668	747	751	669
Primary Forest Products	1493	1160	1214	1276	1300	1058
Lumber & Wood Products						
Except Furniture	465	388	411	442	462	384
Pulp, Paper & Allied Products	1003	736	934	1004	946	921
Chemicals & Allied Products	924	904	972	915	858	838
Petroleum Products	128	121	126	73	147	85
Stone, Clay & Glass Products	1304	1175	1506	1151	1479	1148
Coke	423	271	577	263	641	472
Metal & Products						
Except Coke	982	964	1063	1026	804	972
Motor Vehicles & Equipment	204	280	139	261	146	138
Waste & Scrap Materials	477	486	488	404	496	404

Carloads By Week: Louisville and Nashville Railway Company (Continued)

Commodity	Week Ended July 17		Week Ended July 24		Week Ended July 31	
	1970	1971	1970	1971	1970	1971
Forwarder & Shipper						
Assoc. Traffic	361	312	340	432	404	474
All other Carloads	1903	2030	1694	2560	2159	2747
LCL Traffic	7	3	10	3	16	3
TOTAL CARS LOADED	29183	25549	29356	26969	28652	26038
TOTAL CARS REVENUE						
FREIGHT RECEIVED	10892	10479	10871	14149	10897	13012
FROM CONNECTIONS						

a. Source: Car Service Division, Association of American Railroads, Statement 54A. Car Service Division, Association of American Railroads, Statement CS-54A. Due to lag in reporting struck railroads, figures for the week ended July 31 are somewhat incomplete.

APPENDIX B

Table 13
Comparison of Revenue Cars Loaded and Received From Connections By Week
Eric Lackawanna Railway Company a

Commodity	Week Ended July 17		Week Ended July 24		Week Ended July 31	
	1970	1971	1970	1971	1970	1971
Grain	155	132	188	122	281	136
Farm Products						
Except Grain	11	12	7	3	4	3
Metalllc Ores	1467	1622	1337	2133	915	856
Coal	139	191	160	166	203	202
Crushed Stone, Gravel & Sand	0	0	0	0	0	0
Nonmetallic Minerals	477	485	512	669	479	452
Grain Mill Products	572	517	628	475	543	554
Food & Kindred Products	186	132	194	128	176	150
Primary Forest Products	0	0	0	0	0	0
Lumber & Wood Products						
Except Furniture	71	27	61	45	56	51
Pulp, Paper & Allied Products	162	161	172	157	245	196
Chemicals & Allied Products	468	414	496	404	528	376
Petroleum Products	101	86	96	62	81	77
Stone, Clay & Glass Products	239	193	254	188	298	159
Coke	143	18	224	18	128	27
Metal & Products	981	741	1193	953	1127	745
Except Coke						
Motor Vehicles & Equipment	183	283	223	256	223	253
Waste & Scrap Materials	396	351	366	307	375	250

a. Source: Car Service Division, Association of American Railroads, Statement 54A. Car Service Division, Association of American Railroads, Statement CS-54A. Due to lag in reporting struck railroads, figures for the week ended July 31 are somewhat incomplete.

Carloads By Week: Erie Lackawanna Railway Company (Continued)

Commodity	Week Ended July 17		Week Ended July 24		Week Ended July 31	
	1970	1971	1970	1971	1970	1971
Forwarder & Shipper						
Assoc. Traffic	152	59	133	95	170	105
All other Carloads	1778	1756	1978	1802	1815	1824
LCL Traffic	0	0	0	0	0	0
TOTAL CARS LOADED	7681	7180	8222	7983	7647	6416
TOTAL CARS REVENUE FREIGHT RECEIVED FROM CONNECTIONS	10665	9234	10155	9768	9982	8443

a. Source: Car Service Division, Association of American Railroads, Statement 54A. Car Service Division, Association of American Railroads, Statement CS-54A. Due to lag in reporting struck railroads, figures for the week ended July 31 are somewhat incomplete.

APPENDIX B

Table 14

Comparison of Revenue Cars Loaded and Received From Connections By Week:
St. Louis-San Francisco Railway Company a

Commodity	Week Ended July 17, 1971		Week Ended July 24, 1971		Week Ended July 31, 1971	
	1970	1971	1970	1971	1970	1971
Grain	415	396	351	402	191	438
Farm Products						
Except Grain	125	72	108	51	88	65
Metallurgical Ores	246	254	249	218	203	434
Coal	685	510	657	424	626	569
Crushed Stone,						
Gravel & Sand	571	428	550	439	653	432
Nonmetallic Minerals	87	61	47	100	53	69
Grain Mill Products	633	645	618	620	621	690
Food & Kindred						
Products	488	617	585	572	637	674
Primary Forest						
Products	436	290	332	363	391	329
Lumber & Wood Products						
Except Furniture	108	134	159	174	127	184
Pulp, Paper & Allied						
Products	456	458	419	456	405	465
Chemicals & Allied						
Products	265	242	293	255	278	275
Petroleum Products	341	279	336	280	391	301
Stone, Clay & Glass						
Products	827	708	721	675	923	631
Coke	13	230	169	42	165	122
Metal & Products						
Except Coke	275	280	300	265	255	216
Motor Vehicles &						
Equipment	328	303	331	117	203	250
Waste & Scrap						
Materials	317	482	323	422	285	334

Carloads By Week: St. Louis-San Francisco Railway Co. (Continued)

Commodity	Week Ended July 17		Week Ended July 24		Week Ended July 31	
	1970	1971	1970	1971	1970	1971
Forwarder & Shipper						
Assoc. Traffic	259	185	317	250	260	223
All other Carloads	830	857	894	1014	1095	1007
LCL Traffic	3	1	6	1	0	0
TOTAL CARS LOADED	7708	7432	7765	7140	7850	7708
TOTAL CARS REVENUE						
FREIGHT RECEIVED	7122	7410	7697	7978	7690	7703
FROM CONNECTIONS						

a. Source: Car Service Division, Association of American Railroads, Statement 54A. Car Service Division, Association of American Railroads, Statement CS-54A. Due to lag in reporting struck railroads, figures for the week ended July 31 are somewhat incomplete.

APPENDIX C
Table 1Comparison of Ton-Miles, 1969, 1970, 1971 ^a

Period	Estimated Ton-Miles, Class I Railroads				
	1971 (Billions)	1970 (Billions)	1969 (Billions)	Percent vs. 1970	Change ^b vs. 1969
Week Ended July 10	11.3	12.8	12.9	D11.4	D12.0
28 Weeks Ended July 10	405.4	410.4	406.0	D1.2	D0.2
Week Ended July 17	13.9	14.5	14.2	D4.3	D2.6
29 Weeks Ended July 17	419.2	424.9	420.3	D1.3	D0.2
Week Ended July 24	12.3	14.5	14.4	D15.1	D14.4
30 Weeks Ended July 24	431.5	439.4	434.6	D1.8	D0.7
Week Ended July 31	10.9	14.4	14.8	D24.3	D26.6
31 Weeks Ended July 31	443.2	453.7	449.5	D2.3	D1.4

a. Source: Car Service Division, Association of American Railroads, Statement 54A. Car Service Division, Association of American Railroads, Statement CS-54A. Due to lag in reporting by struck railroads, figures for the week ended July 31 are somewhat incomplete.

b. I denotes Increase
D denotes Decrease

APPENDIX C
 Table 3

 Carloadings and Estimated Wholesale Value of the Goods
 Transported for the Weeks Ending July 17, 24 and 31, 1971:
 Class I Railroads

Commodity	Week Ended July 17		Week Ended July 24		Week Ended July 31	
	Cars	Est. Value Thous.	Cars	Est. Value Thous.	Cars	Est. Value Thous.
Grain	29,692	\$99,973	26,826	\$90,324	22,765	\$79,650
Farm Products	10,783	63,436	9,525	56,035	5,413	31,845
Except Grain	42,851	70,490	47,089	77,461	35,357	58,162
Metallic Ores	84,775	47,208	68699	38,265	77,085	42,936
Coal						
Crushed Stone, Gravel & Sand	31,176	8,791	26,643	7,513	22,100	6,232
Nonmetallic Minerals	9,666	12,672	8,054	10,559	6,626	8,687
Grain Mill Products	18,092	61,784	15,789	53,920	14,577	49,780
Food & Kindred Products	22,926	248,993	19,818	246,358	17,050	211,949
Primary Forest Products	22,738	82,289	21,086	76,310	18,167	65,746
Lumber & Wood Products	15,072	43,211	14,055	40,796	9,934	28,481
Pulp, Paper & Allied Products	20,519	156,252	19,944	151,874	19,171	145,987
Chemicals & Allied Products	22,639	203,162	19,928	178,296	16,834	150,614
Petroleum Products	8,867	21,804	8,464	20,813	6,923	17,024
Stone, Clay & Glass Products	20,892	185,061	16,340	144,474	13,685	121,222
Coke	6,725	8,621	6,051	7,757	4,704	6,031
Metal & Products	24,285	280,836	22,238	259,969	20,623	239,474
Except Coke	16,533	320,939	10,597	205,709	10,293	199,808
Motor Vehicles & Equipment	13,066	5,020	11,130	4,362	8,929	3,437
Waste & Scrap Materials						

Carloadings and Estimated Wholesale Value of the Goods (continued)

Commodity	Week Ended July 17		Week Ended July 24		Week Ended July 31	
	Cars	Est. Value. Thous.	Cars	Est. Value. Thous.	Cars	Est. Value. Thous.
Forwarder & Shipper	5,946	136,449	4,982	114,327	4,825	110,724
Assoc. Traffic	57,612	218,395	51,634	196,416	49,824	189,550
All other Carloads						
LCL Traffic						
TOTAL CARS LOADED	484,855	2,275,386	428,882	1,981,538	384,890	1,767,199

TOTAL CARS REVENUE
FREIGHT RECEIVED
FROM CONNECTIONS

a. Source: Car Service Division, Association of American Railroads, Statement 54A. Car Service Division, Association of American Railroads, Statement CS-54A. Due to lag in reporting struck railroads, figures for the week ended July 31 are somewhat incomplete. Estimated wholesale value was calculated using ICC estimates of the percent of wholesale value represented for railroad freight rates in conjunction with the average freight rate for each commodity group computed from the ICC, Freight Commodity Statistics, 1969. Because the data used in this computation is somewhat out-of-date, the estimated value is probably low.

Senator TAFT. Have you made an analysis of this memorandum and of the regional impact of selective strikes of this type?

Secretary HODGSON. We asked that such a study be prepared, and we have assisted to the extent that we can supply supplementary information to the Department of Transportation, but we have no reason to doubt any of the information that is contained in that memorandum.

Senator TAFT. Mr. Secretary, I am not sure I understand fully what would be covered under transportation in the language that you have used. S. 560 covers docks, I take it, although docks are certainly not under the Railway Labor Act.

Secretary HODGSON. In fact, there are only two forms of transportation that are under the Railway Labor Act. We are covering six here.

Senator TAFT. You are covering four additional ones, then?

Secretary HODGSON. Yes. We cover trucking, longshoring, maritime, in addition to railroads and airlines, and of course barge traffic as well.

Senator TAFT. How do these other areas, particularly docks, differ, really, in their potential impact on the economy from other areas outside of the transportation field? Specifically, let me mention a coal strike, which was one of the principal reasons for passage of national emergency legislation in 1947.

I would also suggest that strikes in the areas of food processing, steel, and communication should be covered by emergency strike legislation.

Secretary HODGSON. Very clearly, we thought that it would be wise at this stage of the evolution of our labor relations statutory basis to apply legislation of this kind only to areas of known, clearly discernible past or potential need. Need was the criteria. Need clearly applies to distributive industries because in those spheres a major economic impact occurs quickly and we have irreparable kinds of losses. When the docks shut down, the flow of traffic stops the same as if the ships do not operate. The railroads: clearly that is an essential distributive industry.

Some have asked why we included airlines. The Railway Labor Act was established in 1926 and it is still on the books today, almost 50 years later. It may very well be that the piece of legislation that we will be enacting here will be on the books 50 years from now, so we should look ahead and see what may happen to our transportation system. It is entirely possible that the airline system in this country will be, in addition to a major passenger carrier, a major cargo carrier in the near future. Certainly that is not unreasonable. We ought to provide for potential impact of a work stoppage of that kind of a system.

We do not believe that history has shown the need for application of the kind of measures we are advocating here outside of the transportation field. The Taft-Hartley Act, except in the longshore areas, has been able to settle under its present provisions all of the disputes to which it has been applied, with two exceptions—and even those two exceptions did not result in strikes that lasted long enough to reinstitute a national emergency.

So we believe we are responding to need and responding to it in the areas where the Congress ought to consider entertaining action, but we would be very loathe to go beyond the evidence of that need as we see it now.

Senator TAFT. Mr. Secretary, particularly with regard to these areas in which the 80-day injunction clause of the present act has been used, I wonder if you have any opinion if these situations might have been avoided if the alternative remedies suggested in some of the pending legislation would have been available.

Might not the very existence of these remedies brought about settlement without ever implementing the 80-day injunction?

Secretary HODGSON. That is our great hope in instituting the kind of legislation that we have proposed with two elements that should stimulate more effective bargaining from the outset. One, the uncertainty of the possible remedy, and two, the nature of the final offer selector system. Both should serve to induce more meaningful bargaining from the outset, and hopefully this would occur under our proposal.

So quite clearly, yes, we believe that the possibility exists for inducing more meaningful bargaining by having this machinery available at the end. We don't believe, however, at the present time we ought to spread that beyond the known need. We recognize that there may be such areas, and we have proposed in our bill that we create a special commission to study industries that do present major bargaining problems other than in transportation, with the idea of developing recommendations that should apply to those particular industries if it is indeed found that further legislation is needed for that.

At the present time, we only feel sufficiently certain of ourselves to recommend going forward in transportation.

Senator TAFT. Would coal be one of those areas which this might well be true?

Secretary HODGSON. It is one of the more obvious; yes.

Senator TAFT. Mr. Chairman, I have quite a number of additional questions, but I do not want to monopolize all the time. If the chairman would like to pass the ball here to some other members, I would be glad to do so.

The CHAIRMAN. We will break it up. We will come back to you.

Senator STEVENSON, do you have questions?

Mr. STEVENSON. Thank you, Mr. Chairman.

Mr. Secretary, I don't think there can be much question any more that the price of breakdowns caused by nationwide strikes in the transportation industry is too high. I don't think that is the real question; the real question is what exactly do we do about it—not whether the cat needs to be skinned, to use Senator Javits' expression, but how do you skin it. That leads me to my first question.

In cases where both final offers are unreasonable, what would be wrong with giving the final offer selector the additional option of refusing both final offers?

Secretary HODGSON. It is a very critical question that you are asking. The reason is that if we are going to attempt to restrengthen and reinvigorate collective bargaining in this critical sphere we ought to do everything possible to make collective bargaining work. The concept of the final offer selector is to drive the parties toward reasonable solution with every possible incentive to do so, and if you give them

an out to be unreasonable, there are a great many pressures and temptations to take that out.

The nature of the bargaining processes, the pressures, policy questions involved, the responsiveness to your constituencies are such that it is very, very difficult on some occasions to face up, to do what you should do and reach a settlement with the opposite member on the bargaining table, and this applies to both parties.

So we attempt to build into this process with our bill a device that clearly will make the party who conducts himself the most reasonably, be the party who is ultimately rewarded if the final offer selector has to be used, but by placing that as a terminal point in the procedure, we stimulate all along the line from the onset of bargaining the concept of reasonableness.

We bring the parties closer together, and it is my belief that this concept will result in most of the decisions that have produced these emergency disputes being brought into a posture well before the time the final offer selector decision has to be made where an agreement can be reached, because of the effectiveness of this procedure of bringing people together. But if indeed, you do as you are suggesting, allow what amounts to arbitration of positions, rather than selection, then you reward those who maintain a distant and remote position. So my recommendation is strongly that we stay away from anything that smacks of arbitration, of compromise, of a determination by a third party neutral of what he thinks is the best solution, and leave it up to this third party neutral to select which of the offers before him is the correct one.

I do think we had one thing that we wanted to work out in this connection. It has been pointed out that there may be or could possibly be, a mistake made by a party who submits a final proposal, that some minor portion of that may have some illegal feature to it, something that in an otherwise reasonable proposal simply could not be done because they had strayed in areas of illegality. We think that we will be able to work out language to surmount that to give the final offer selector a way of dealing with that problem.

But remember, the final offer selector in our system has an opportunity to hold hearings with the parties to draw out any lack of detail that there may be in this proposal, to develop and put flesh if necessary on that proposal, so I don't think the kind of circumstance that you are talking about, too wholly unreasonable, impractical proposals, is then likely to occur.

It is not in my judgment a clear and present danger, because one thing above all others, a party's self-interest is at stake, the self-interest of getting his proposal accepted over the opposite member's proposal; and when self-interest is at stake, it has a strong conditioning effect.

Senator STEVENSON. The parties in this case are still faced with the possibility that the Board will conclude that one of the final offers is reasonable.

Secretary HODGSON. The Board has only one choice, and that is to take one of the offers before it and apply it as a collective bargaining agreement. Once the final offer selector is chosen by the President under our proposal, that then becomes the procedure that is applied. Under that procedure, each party will submit one or two final proposals. First, he will submit it, of course, to the Secretary of Labor.

The Secretary of Labor then has a powerful tool to use as a mediation wedge to bring the parties together on the basis of these final proposals. Failing in that, however, at that point the final offer selector unit will hold a hearing to determine two things: Any details that are necessary to further understand the proposals made by each of the parties, and to get a breadth of understanding of the entire range of considerations that go into making its decision. So we think that procedure will produce the best possible accommodation by both parties toward reasonableness; but if you give that third party neutral group, that panel, an opportunity to modify the proposal before it, the chances of the parties themselves then not coming forward with their best proposal are significantly affected.

Mr. STEVENSON. I simply am suggesting that the Board have the opportunity to reject both the proposals if, not withstanding the incentives you mentioned, both final offers turn out to be unreasonable.

Secretary HODGSON. Senator, there are a great many hypothetical circumstances that have been contemplated and discussed by us and by others, including professionals of the American Bar Association, and others, regarding our proposal. It may be that there are additional refinements that we ought to consider, but I think most of these hypothetical circumstances that are recited don't really contemplate the tremendous interest at stake for the parties to act in a way that is in their self-interest, which in a way dictates reasonableness—which to me would mean the kind of circumstance you are talking about should be a rare bird.

Senator STEVENSON. You have been, as you indicate, discussing this proposal with interested parties around the country. What are some of the objections that you are encountering?

Secretary HODGSON. Pretty clear. From organized labor, organized labor considers any proposal that would modify its legally established right to strike ought to be seriously questioned, and is very concerned about any such proposal. Up to now I would say they view this proposal adversely on that basis.

Management may have a similar kind of concern. Management does not like to accept and work under conditions and pay rates that they have not agreed to, and so in effect both management and labor are saying to us, as I read them, this is a form of compulsion anyway you slice it and we don't like it.

That is the reason I am convinced that eventually, and hopefully soon, when we get legislation to deal with this problem, it will be legislation that will be in response to public need but it will never in my judgment fully satisfy the parties to bargaining themselves. Either one of them.

Senator STEVENSON. As I understand your bill, the labor disputes of a regional nature would not be covered by the new procedure, nor would they be subject to the old cooling-off provisions. Would you object to a retention of the cooling-off provisions for regional dispute?

Secretary HODGSON. Absolutely not. We would not touch the present cooling-off provision of the Taft-Hartley Act for all other nontransportation industries because we think it has worked with effectiveness.

Senator STEVENSON. What about regional disputes in the transportation industry?

Secretary HODGSON. Within the transportation industry we would apply the 80-day cooling-off period in all cases. That is one thing that may not have been made clear. I don't believe all the bills would do that; our bill would.

The CHAIRMAN. In all cases, and that is the first before anything else?

Secretary HODGSON. Absolutely.

The CHAIRMAN. The 80 days is a—

Secretary HODGSON. Once the President has determined that an emergency exists the Taft-Hartley procedures now go into effect and only if that procedure fails to resolve the dispute would the second step need to be taken of a choice of options.

The CHAIRMAN. If I could interrupt for one second. This is a clear difference from Senator Taft's bill where all of the options are available at the outset?

Secretary HODGSON. As I understand the Senator's bill, yes; that is correct.

Senator TAFT. Mr. Chairman, if you would elaborate just to make it perfectly clear. One of the options that is left in my bill after the Board of Inquiry is to go the 80-day injunction route.

Secretary HODGSON. As I understand your bill, Senator, the 80-day cooling-off period is an option rather than a step.

Senator TAFT. Correct.

Senator STEVENSON. So the cooling-off provision within the transportation industry would be applicable in all cases. If that fails, then your new procedures would come into effect only with respect to the national emergency. What I am getting at is what happens beyond the 80-day cooling-off provision in disputes that are not covered by the national emergency or the expanded national emergency provisions that we have discussed.

Secretary HODGSON. I should make clear, Senator, that the only time that we get into this whole process, including the cooling-off period, is when it is considered that there is an emergency of the kind we have been talking about—national, regional, or whatever the terminology you want to use to describe it. We don't even get into any of the emergency provisions until that occurs. We don't have a cooling-off period, we don't have options. So it would be a determination by the President that the kind of emergency we are talking about exists or there is no action whatsoever on the part of the Government, other than the traditional mediation and the similar approaches to attempt to resolve it.

Senator STEVENSON. Well, would you support the applicability of cooling-off provisions to your Podunk-Dogpatch situation?

Secretary HODGSON. No. We don't believe that that would be wise.

Senator STEVENSON. This is digressing a little, but would you care to prognosticate about the possibilities of a resumption of the west coast dock strike on Christmas Day?

Secretary HODGSON. I will give you the best information I can on that. First of all, being in the position I am it does not pay to be unduly pessimistic about things, you see.

This circumstance is not one, however, that is inclined to make one an optimist.

There will be a vote on the final offer made by the employers within a week. My understanding is that at least at this stage the offer that the employers are willing to place before the union will not have a rec-

ommendation on the part of union leadership. However, we have pressed into service in the west coast dispute the Taft-Hartley Board that was appointed by the President as a mediation board. It is headed by the associate dean of the Stanford Law School, Keith Mann, who is an outstanding mediator, and of course we hope that he will be able to contribute a great deal. But if he is unable to reach a settlement with the parties, if indeed the final offer is made and that final offer is rejected, then there will be an opportunity on the part of the union involved to strike as of December 25.

Whether they will or not is only known to them. I don't believe that we should hazard a guess about that at this time. They just merely have that opportunity, but unions quite frequently either work without contracts or work on a temporary understanding and continue to bargain so we can not automatically assume there will be a strike at that time. There is certainly, however, an opportunity for them to do so. So we have three distinct possibilities: No. 1, there could be a statement as a result of the mediation activity which is now underway.

Second, there could be a vote on the employer's final offer which could result either in a settlement or rejection.

Third, if there was a rejection there is on December 25 an opportunity either for a strike or a continuation of work without contact on the part of the ILWU membership.

Senator STEVENSON. Thank you, Mr. Secretary.

Thank you, Mr. Chairman.

Senator PACKWOOD. Mr. Secretary, apart from the potential for airlines to carry freight in the future, what is the need today to include airlines in this legislation?

Secretary HODGSON. The principal need would be, it would seem to me, if labor relations in that industry should assume the similar posture that they assumed in at least some parts of the railroad industry where they are in effect nationwide and all competing lines are shut down, we very well might have to examine in those circumstances whether or not the economy of the Nation or the health and safety of the Nation were sufficiently adversely affected by that kind of dispute to apply this kind of pressure to a dispute. It would be, however, up to the President to determine whether that actually occurred. It would not automatically apply, certainly. I want to make that clear, that we say that these various different transportation industries can have this procedure apply to them. It does not automatically apply, it will only apply if there is a determination made that an emergency condition exists.

Senator PACKWOOD. The reason I ask, Mr. Secretary, is that I am hard-pressed to believe that apart from inconvenienced businessmen, Senators and tourists that the shutdown of the airline industry would be any graver to this country than a shutdown of the steel industry or a shutdown of the auto industry. I just don't see the other interlinking industries or the cargo-carrying disaster that you have with trucks or longshoring or railways.

Secretary HODGSON. Well, that is an understandable point of view. On the other hand, it is an integral part of our transportation system. It is a growing problem. It is a part that has doubled and redoubled and redoubled in the last 20 years.

So when we legislate we ought to contemplate the potential growth of that industry and its potential essentiality far beyond what exists today. As you will recognize, for instance, in 1926 when the Railway Labor Act was enacted, they didn't even provide in the act itself for anything with regard to the airline industry, it was not even anticipated that such an industry would occur.

I think we ought to look a little bit farther ahead than that. I know that some of the airline people are concerned about having this kind of provision apply to them but they have the same reasons for their concern that others do, and I don't think they have any beyond that.

Further, if I remember rightly, in the 1966 period when there was a strike of a group of major airlines, the national hue and cry was very considerable, and not all come from businessmen and Senators. So I think we ought to put the airline industry into this bill, but we should leave it up to the President to decide whether or not the emergency created by a strike in that industry is sufficient to dictate the kind of provisions that are exclusively provided for in our legislation.

Senator PACKWOOD. In your testimony, you indicated that the partial operation of the railroads last summer didn't really turn out to be very satisfactory. You refer to it as a selective strike, but it turns up being partial operation.

Can you give me your views as to how you think partial operation in the railroads could work as one of the options and make it satisfactory?

Secretary HODGSON. The principal way that this would have to be done, it seems to me, is by providing some sort of mechanism as we have suggested in our bill to create a group or panel or unit of people to examine how we can still maintain basically essential transportation to a majority of the areas of the Nation, do it in an orderly fashion and yet have the economic forces of a selective strike operate.

We know that we have had in this country selective strikes that have not had an effect sufficiently adverse to call upon the use of the kind of legislation that is implicit here. So we are not saying that every selective strike that would be called would even qualify for this kind of legislation, but if it did come to a point of where it qualified for it, then we believe it ought to be structured in such a way that the public interest is protected, and the only way you can do that, it seems to me, or the best way you can do it is to individualize with each dispute how it should be set up.

Now there are those who are proposing a kind of formula basis for doing this. That is, that if x percentage of the Nation's rail system is shut down or if x percentage of the country's geographic area is affected, or some such formula like that, that Congress may want to consider it.

We don't consider that we are able to guess in advance the impact of percentages of the kind that have been described as a possible solution to this thing. To make sure that we can protect the public interest, this is the way we think we ought to proceed. We think we ought to individualize attention to each of these cases and draw up a structure and an operational approach that applies to that case, and that should be done on an ad hoc basis any time the partial operations option is selected.

Senator PACKWOOD. So you can envision in a railway strike either the total operation of some of the roads and none of the operation of the others, or perhaps partial operation of all of them on a limited basis. In any event, it would fit your definition of partial operation?

Secretary HODGSON. That is correct.

Senator PACKWOOD. And in a dock situation you can envision closing New York or opening Baltimore, and that would be partial operation?

Secretary HODGSON. Yes, or certain products through Baltimore and certain ones through New York, and these kinds of things.

Senator PACKWOOD. Why not just eliminate partial operation altogether?

Secretary HODGSON. Because we think it would be quite a useful device. For instance, one of the problems in connection with the dock strike has been a special suffering that the State of Hawaii has had at various different times when it was completely shut down due to a dock strike. This is the kind of circumstance where the partial operation approach might very well be used.

Senator PACKWOOD. Then the only reason you are keeping partial operation in is that you are not quite prepared to say that a shutdown in the transportation industry is initially so critical that you want to eliminate the partial operation option. Because if you are saying that, you can keep your 80-day step and 30-day step, just eliminate that, and then guarantee—assuming that employees and employers will follow the law—a continued transportation service.

Secretary HODGSON. No, there are a couple of other reasons. One, we would like to have that partial operation device in as a further option for uncertainty as to which one will be chosen.

Another one is that we will go a little bit beyond the attitude that you have implied to us in your question. We think that there may very well be a number of circumstances where this can be applied. We think it could provide a substantial service to this operation by leaving it there.

Senator PACKWOOD. I have no other questions, Mr. Chairman.

The CHAIRMAN. Senator Javits.

Senator JAVITS. I didn't get—maybe I was out of the room, Mr. Secretary—the final statement respecting the west coast dock strike. Suppose that everything blows on December 25 and they go on strike. Then what are you going to do?

Secretary HODGSON. Well, I will have to face that at the time.

Senator JAVITS. Are you going to come to us and ask for relief?

Secretary HODGSON. Very well might. Just when, whether it would be on December 26 or January 2, or when, I have no other legal way to approach this subject. I can talk, I can urge, I can be as persuasive as the powers of the office provide me the opportunity to be but that is about all we have at our disposal at this time.

So the President now, with the application of the injunctive proceedings under the Taft-Hartley Act, has exhausted all of the tools available to him in this dispute.

Senator JAVITS. So being brought to this crunch we come face to face with the really brick wall, which is a lack of any Federal law in this field.

Secretary HODGSON. Exactly.

Senator JAVITS. And the Congress will again ad hoc it under the immediate pressure of a stoppage which is by then of enormous damage to the Nation already. We have done that, and it has been unsatisfactory.

Secretary HODGSON. Unless and until we can get that kind of legislation it just seems to me there can be a parade of disputes that wind up right here.

Now, why is that the case? Why didn't that used to be the case? I think it is quite clear as I talk to the parties who are engaged in bargaining these days, in these critical industries, that at one time the possibility that their dispute might wind up in the lap of Congress was viewed as a fearsome thing, something that they just didn't want to have happen for many reasons, including the fact that you never knew what those fellows up there were going to do. But now some disputes have come up here and really who has suffered by what Congress has done in those disputes? Has management particularly suffered? Has the union particularly suffered? Well, compared to the extent of the suffering, if there has been any, the kind of tough decisionmaking that they were required to do to settle the dispute made the choice just too easy for them. Let the thing come to Congress. We have got to deny them that choice.

Senator JAVITS. In other words, we should not be the final arbiter in labor disputes worthy of coming up here and if they are not that serious, then we don't have the problem, right?

Secretary HODGSON. Right.

Senator JAVITS. I thoroughly agree with you, Mr. Secretary. As you know, we have tried in this field for probably a decade, myself and others.

I notice one interesting point. Since the 1963 firemen's dispute you have gotten away from the seizure business. The classic remedy before then was seizure and the classic remedy in my own bills has been seizure. This I think is more favorable to labor. I think it is more favorable to labor, and I think we must always remember that old concept of Lord Mansfield that you can prevent them from working but you can't make them work. Patriotic Americans, they will obey a court order but there is no such thing as a mandatory injunction in this field. So under all those circumstances, seizure would seem to be the logical remedy that deals with all questions, personnel would then work for the U.S.A. Why have they kind of discarded this?

Secretary HODGSON. I think that one of the more substantial reasons that we discarded it was that if we examined the cases, and we did, of seizure, we found the same sort of thing prevailing there that marked the cases that are to go to Congress, nobody suffered because of it. The employers in the end didn't really particularly sacrifice a great deal and neither did the workers.

So why not let these difficult things float up into seizure and let seizure happen? If nobody is going to be hurt, their temptation is too great to let that happen. We just don't want to allow them to view that as a distinct possibility. The thing we want to do is make a case for the inevitability that they are going to settle it or somebody else is going to settle it on the basis of the most reasonable position that they can muster, and that is the basis for it. A little simple in its basic concept, but it is fundamental.

Senator JAVITS. Of course, whether they are hurt or not, depends on the terms and conditions—

Secretary HODGSON. That is right.

Senator JAVITS (continuing). Of seizure the Government can operate for their account or pay compensation. In other words, tantamount to a receivership or pay compensation or if the Government is permitted to operate on a spartan basis solely, what is required for the public health and safety, employers could get very hurt.

Secretary HODGSON. We think that the second part of it can better be handled by our selective operation or partial operation approach.

Senator JAVITS. As to workers, if they have to make a deal with the U.S. Government, and it is illegal to strike the U.S. Government, that kind of puts a bind on them, does it not?

Secretary HODGSON. Well, it would seem to, but I must say, Senator, that if we contemplate too the concept that you mentioned—that is, that you can't make people work—if we weigh that too, we sort of defeat ourselves in this whole idea of legislation. What we have got to try to do is provide legislation that the worker will accept as being the most reasonable.

Now, that is what we have tried to do. Even in the circumstance that you describe in the Federal Government where a strike is illegal, that has not stopped all strikes, as we know. It should, but it has not necessarily. I would not count on it doing it uniformly in the seizure case, either.

Senator JAVITS. How do we get away in your bill, or in any bill, from what labor fights the hardest, compulsory arbitration? Now we have used lovely euphemisms like "Mediation of Finality" and "The last final offer." I think it would be important for the record for you to tell us how we get over that violent trade union objection.

Secretary HODGSON. The fact is, you don't get over it. You get some compulsion in anything that provides an opportunity for a Government party or a neutral party to settle a dispute on the basis other than which a party has specifically agreed to settle. So there is a great dilemma here. Has a form of compulsion in labor disputes been sufficiently called for by circumstances beyond that dispute? Is the magnitude or the effect of this work stoppage on the public sufficiently great to require the workers affected and the management affected to set aside its time-honored position of not wanting to place into effect any agreement without the parties having agreed to it?

My feeling is that the public has now reached that decision, at least on a limited basis with regard to the kinds of strikes that produce these national emergencies in the transportation industry. They may not have gone much farther than that, but I think they have gone that far, and that is the reason why that is the area we have narrowed our approach to, because we think that clearly is supported by public need and demand.

Senator JAVITS. Of course, many employers, Mr. Mittelman reminds me, also violently object to any form of arbitration, finality, or last final offer, et cetera.

Secretary HODGSON. Right; through years of being a collective bargainer, I found arbitration as a way of solving a labor dispute for what I considered were very good and proper reasons.

Senator JAVITS. My last question relates to the selectivity of this bill for transportation. Why not electric power or other energy? Why not communications? Why only transportation?

Secretary HODGSON. Well, for the principle reason that is the only area that we can show demonstrable need. In electric power, in communications, because of the structure of that kind of industry, alternate sources or ways of dealing with the kind of communications problem, or the kind of power problem that existed, there has always been a way to resolve that without monumental widespread impact.

Very serious inconvenience, tremendous adverse effects on a localized basis have occurred, but actually the system, one way or another, basically operates—not well, not as good, but it does not possess the magnitude of strikes in the transportation industry.

Senator JAVITS. So, you would say, if the utilities of New York City were shut down, that is not a regional emergency?

Secretary HODGSON. I don't think that the utilities in New York have been fully shut down. For instance, the telephone people in New York City are on strike at the present time.

Senator JAVITS. They have been for the last 5 months.

Secretary HODGSON. Yes; and there has been manifest inconvenience but the telephone system still works, you and I can still get a call through to New York City. So we cannot claim that it is an emergency of the magnitude of these others.

Senator JAVITS. But the idea of your statute, you are getting a statute now on the books to implement the power of Government to deal with emergencies.

We have not dismantled the Army, Navy, and Air Force because we don't think there is not going to be a war; we have not even dismantled the atomic bomb because we don't think there is going to be an atomic war. Frankly, I see this as one of your really big difficulties.

You want us to provide by law for great national and regional emergencies and all you can tell us is where we have not had one like this. You are not telling us anything that will catch up with tomorrow, you are telling us what we need to do for yesterday. And that is not why we are passing the law, yesterday has been taken care of; bad or good, it is finished.

Secretary HODGSON. Then I guess I don't have to worry along with you as I did with Senator Packwood about the problem of including the airlines because there we are clearly worrying about tomorrow.

However, we have a provision in our statute, as I mentioned, to deal with tomorrow where we propose that the Congress include in its new legislation a commission to study problem industries beyond the transportation industry and determine if there are some where similar kinds of provisions could be extended and affected. I worry, Senator, about going much beyond transportation on the basis of the kind of support that we need to get for this legislation. If we start spreading the application of this legislation much beyond transportation, the wider we spread it, the more subject we are to criticism that we are undermining the existing system where it does not need to be undermined, that we are compromising the rights of people that don't need to be compromised, that have not had this need manifest itself.

So I don't want to pick up any more opposition to this concept than I possibly can. I want to capitalize on the support that we have. The

support is clear in the transportation area. I am not sure how clear it is beyond that.

Senator JAVITS. I think you might make something of a case for anything other than power and light and communications but they have crept upon the A.T. & T. so closely now with the strike on the long lines and the strike on the installations and I really don't think that can be ruled out. That is a complete paralysis of the system.

I think it would be highly improper if we didn't make some effort to include communication and energy transmittal in this measure. I hope we can.

Thank you, Mr. Secretary.

I will say this: You are a long way forward from where we have been with other administrations and I am very gratified that this is so and certainly support the administration's effort to get legislation on the books on this subject.

Secretary HODGSON. Senator, I think we are a long way forward but I still think we are way behind the demands of the American people.

Senator JAVITS. I have always emphasized this and I repeat that 11 minutes to the 11th hour is just highly improper and very dangerous. I thoroughly agree with you.

Thank you very much.

The CHAIRMAN. Senator Taft.

Senator TAFT. Thank you, Senator.

I would like to expand on what Senator Javits just said with regard to power. This relates in most sections of the country also to the coal situation. I would like to ask if it is not true that we were pretty close to a major power crisis in the coal strike?

Can you give us any estimate as to how much coal was left in the stockpiles of the electric utilities and what period they might have been able to operate for without additional coal?

Secretary HODGSON. Well, there were three things that mitigated the effect of the coal strike. No. 1 is there had been considerable anticipatory behavior on the part of the consumers of coal, they had built up huge stockpiles anticipating the strike. That is not the kind of thing that can occur in transportation, you cannot accumulate rail movement for any particular area.

Senator TAFT. Automobiles have been accumulated.

Secretary HODGSON. Automobiles, yes, but the rail movement of perishables and that sort of thing cannot be anticipated. So there was anticipatory behavior with accumulation of stockpiles by companies.

Second, that about one-quarter of the Nation's coal mines are non-union that kept working during this time so it was not a complete shutoff of coal supply.

Senator TAFT. Is it not true that most areas, for instance, in Ohio, the movement of coal was effectively prevented insofar as any non-union mines were concerned?

Secretary HODGSON. Some of it was but that was not true throughout the entire Nation.

Third, there are a considerable number of users of coal, particularly utilities, that can shift back and forth from coal to gas or from coal to oil, so that there was some cross utilization.

These things helped. That is the reason the strike had as little adverse effect as it did over the period of time. But there is no question that a time would have evolved 30 or 60 days down the road from the date of actual settlement when we could have had a serious shortage of coal that would have qualified perhaps as a national emergency. It didn't occur, it has not occurred in that particular context for anything beyond the use of the 80-day injunction provision.

The Taft-Hartley Act has been adequate up to now so that we did not include coal as one of the areas here.

Senator TAFT. As a matter of fact, the OEP did have contingent emergency plans during the last phases of the coal strike and found that the situation was becoming critical, did they not?

Secretary HODGSON. What they were required to do was to find ways to allocate the existing stores or reserves of coal because it was coming ever more close to an emergency.

Senator TAFT. Mr. Secretary, particularly with regard to the comparison in procedural approaches of S. 2959 as compared to S. 560, do you understand that the 80-day injunction proceeding in S. 2959 and the three other alternatives are all available in any one case?

In other words, if the Secretary wished, under S. 2959 to use the 80-day injunction powers first, in every case he would have the alternative of doing so?

Secretary HODGSON. I understand.

Senator TAFT. So there would be no compulsion that he would make a complete choice at that time. The only one of the three alternatives which would be a final disposition when selected, would be the last offer procedure. The others would add on. The 30 days, in other words, could come before the 80 days or it could come after the 80 days. The same thing is true of partial operation, so that all of these can be used discretionately.

Let me ask you why you feel that this would not be preferable to a rigid situation which you would have under S. 560, which would require you, no matter what the situation might be, to use the 80-day provision first?

Secretary HODGSON. Remember, one of my principal elements, the key element that I stated I would like to see in any bill is to maximize the enhancement of collective bargaining.

Collective bargaining still occurs during an 80-day injunction period. The purpose of that period is to provide a cooling off so the collective bargaining can continue to work.

If we examine the history of the Taft-Hartley Act where the 80-day injunction is required in every single case, we find that except in the longshore industry that has worked from 1947 to this date in every single instance, with two exceptions.

So we feel that there is good reason for insisting that that be a step that these disputes go through. It has worked, quite clearly. That is the principal reason we selected it.

A second reason is that we felt we have a better chance of enactment of legislation in this field if we have minimum changes in existing legislation. Existing legislation calls for it, let's continue it and just make minimum changes.

The third reason, I guess I would have to say, is that I have been involved in circumstances personally in the labor relations business

where I have been on the receiving end of effecting the 80-day injunction and I found it a very effective, persuasive device in achieving a settlement of the dispute.

So I am favorably disposed toward the device as something that ought to be undertaken before we consider other options.

Senator TAFT. Of course, I can see some circumstances where it might be preferable not to go to court, to use the 30-day standstill.

I might point out that in the appendix submitted from the Department in connection with S. 2959 it is in error, I think, in that respect. There is no requirement of an injunction for the Secretary to issue the 30-day order. That is just a minor correction in the memorandum.

There is a court enforcement procedure; that is, the order is not observed but there is no requirement of an initial injunction as in the 80 day.

Secretary HODGSON. I realize, Senator, the effect of your bill might be exactly the same.

Senator TAFT. You are worried about passage?

Secretary HODGSON. What we are proposing. That is a very considerable worry. I think if the Nation wants this legislation, I would like to be an instrument helpful to the Nation in getting it and I want to frame it in such a way to speed the getting of it.

Senator TAFT. I recognize that and I sympathize with you. I have no particular pride of authorship and we threw it in as an omnibus bill.

Secretary HODGSON. Thank you.

Senator TAFT. Mr. Secretary, with regard to the recent dock strikes, OEP estimated losses at between \$280 and \$300 million a week.

The coal strike was estimated to have adversely affected our balance of payments by \$20 million a week.

In July and August it is estimated approximately \$215 million in export sales of fruits and vegetables was lost through west coast ports and \$40 million in fresh fruits and vegetables were totally spoiled.

The Pacific Northwest lost more than \$55 million in export sales of wheat.

Wheat shipments from Nebraska, Kansas, Oklahoma, and Texas decreased by 664,000 tons, worth \$40 million.

The loss of corn and soybeans was placed at \$75 million because of a dock strike.

In Ohio, my own State, 1.5 million bushels of corn had to be dumped on the ground without proper storage because of the dock strike and in Illinois this figure was 3½ to 4 million bushels.

In the State of Oregon the wood products industry lost \$5 million a week.

The U.S. Department of Agriculture reported that the dock strike on the west coast, followed by the strikes in the gulf ports, cost American farmers over 1.2 million tons of grain exports in this fiscal year.

Now, as of January 1970, the Labor Department issued a study entitled "Impact of Longshore Strikes on National Economy." On page 4 of that study there is the following statement relative to the 1962, 1965, and 1968 dock strikes. The statement is as follows:

The strikes had no visible impact on the economy as a whole—industrial production, retail sales, national income, or total employment.

Do you think that that statement would apply to the dock strike and the coal strike as we had them?

Secretary HODGSON. I think the report to which you refer was an overall economic analysis rather than an analysis of the effect of a particular strike.

Now in fact, on the introduction to that whole report, I read the following:

Although this report considers strikes which involved Federal action under the Taft-Hartley Act, there was no attempt to measure their impact on either "health" or "safety," the standards set up in that Act. The study was confined to analysis of economic impact—realizing that the line between "economic" and "health and safety" is ambiguous. Further, it was directed to national rather than local impacts.

I think in this way the report attempted to distinguish between a study of what might be called macroeconomic conditions from the specific impact of a specific strike or combination of strikes in this area.

Senator TAFT. Thank you very much.

Mr. Chairman, at this point I would like to have the affidavit of the former Secretary of Agriculture, Mr. Hardin, dated October 5; and the Journal of Commerce article entitled "Dock Strike Causes 1 Million-Ton Loss in Grain Exports;" the statement by Mr. Kenneth E. Frick, Administrator, Agricultural Stabilization and Conservation Services, dated November 5, 1971; and an affidavit of J. Phil Campbell, Acting Secretary of Agriculture, dated November 24, 1971, inserted in the record.

The CHAIRMAN. Without objection, the documents referred to will become a part of the record at this point.

Senator TAFT. Thank you, Mr. Chairman.

(The information referred to above follows:)

AFFIDAVIT

CITY OF WASHINGTON)
) ss:
 DISTRICT OF COLUMBIA)

I, Clifford M. Hardin, being first duly sworn depose and say as follows:

1. I am the Secretary of Agriculture of the United States. The matters stated herein are based upon my own knowledge, upon information available to me in my official capacity, and upon conclusions reached in accordance therewith.

2. A strike of the International Longshoremen's and Warehousemen's Union on the Pacific Coast which began July 1, 1971, and of the International Longshoremen's Association which began on October 1, 1971 on the Atlantic and Gulf Coasts, thus joining an ILA strike already in existence against certain grain elevator companies in the Great Lakes area, has prevented and will continue to prevent the loading and unloading of United States-flag and foreign-flag vessels at United States ports. Such strike will materially affect shipments of agricultural commodities from the United States. At stake is the growth in agricultural exports that this Department has achieved in the past two years--at great expenditure of effort in building markets overseas. Now--with farm exports taking the produce of one acre out of four and providing one of the few plus factors in U.S. trade balance--a major share of this market is being lost with a consequent adverse effect upon United States balance of payments, American agriculture and otherwise upon the domestic economy as a whole. Also at stake

are imports of certain agricultural commodities, such as sugar, which are of significant importance to the economy of the United States.

3. The Department of Agriculture carries out numerous activities to promote the commercial exportation of a wide variety of agricultural commodities by domestic firms. These activities include, among others, the payment of subsidies on exports of certain commodities under authority of the Commodity Credit Corporation Charter Act, market development activities abroad pursuant to Section 104(b) of the Agricultural Trade Development and Assistance Act of 1954, as amended (7 U.S.C. 1704), the Export Credit Sales Program pursuant to the Commodity Credit Corporation Charter Act under which the Corporation finances commercial exports of agricultural commodities on a deferred payment basis for periods up to a maximum of 36 months, and the barter program of Commodity Credit Corporation under which agricultural commodities are exported in connection with offshore procurement of materials and services needed by the Department of Defense, the Agency for International Development, and other agencies, pursuant to authority of the Commodity Credit Corporation Charter Act. For the period October through December 1971, it is estimated that there would be exported, in the absence of the strike, a total of 778,000 metric tons of agricultural commodities under the CCC Export Credit Sales Program and 1,184,000 metric tons under the barter program.

4. The Commodity Credit Corporation is a federally-chartered agency, created by the Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714, et seq.), within the Department of Agriculture, under the general supervision and direction of the Secretary of Agriculture. The by-laws of Commodity Credit Corporation provide for the Secretary of Agriculture to serve as Chairman of its Board of Directors.

5. American agriculture in recent years has made a consistent and important contribution to the U. S. balance of payments. In fiscal year 1971, United States commercial agricultural exports exceeded imports by \$1 billion.

In the fiscal year ended June 30, 1971, \$7.8 billion of agricultural products were exported by the United States, including about \$6.8 billion of commercial sales. Of this total, \$5.2 billion - two-thirds of the total - were exported through East and Gulf Coast ports. Exports of principal agricultural commodities through East Coast and Gulf Coast ports in fiscal year 1971 were as follows: soybeans and soybean products, \$1.6 billion or 86 percent of total soybean exports; feedgrains \$875 million or 75 percent of the total; wheat and flour \$732 million or 61 percent of the total; cotton \$302 million or 61 percent of the total; rice \$218 million or 76 percent of the total and tobacco \$567 million or 99 percent of the total.

The Gulf ports which remain open at the present time (Houston, Galveston, Corpus Christi, Port Arthur, and Brownsville, Texas, and Lake Charles, Louisiana) exported nearly \$1.5 billion worth of agricultural commodities in

fiscal year 1971 - 28 percent of agricultural exports from the East and Gulf coasts, or 19 percent of total agricultural exports from the United States. These ports were particularly important in the export of the following commodities: wheat and flour - \$566 million or 47 percent of the United States total in fiscal 1971; cotton - \$248 million or 50 percent of the United States total; grain sorghum - \$208 million or 91 percent of the United States total; and rice - \$167 million or 58 percent of the United States total.

While some additional commodities could move through these ports - if they remained open while the remainder of the East Coast and Gulf Coast ports were closed - any estimate of the additional exports that these open ports could handle would be speculative. It is not believed, however, that the additional exports through these ports would be significant in terms of the total quantities that could be expected to move through all East Coast and Gulf Coast ports if they all remained open.

West Coast ports are also a major avenue to many important markets, including Japan, our largest single dollar market. In the fiscal year ended June 30, 1971, Japan purchased \$1.2 billion of agricultural commodities much of which were shipped from Pacific Coast ports. Exports of agricultural commodities from the United States would be expected, in the absence of a strike, to total in October and November over \$100 million weekly from Gulf and East Coast ports and \$25 million weekly from Pacific Coast ports. If the open

Gulf Coast ports identified above remain open, about \$30 million worth of commodities weekly would be expected to be exported through these ports in October and November.

6. Exports in the fiscal year ended June 30, 1971, accounted for the output of 1 out of every 4 acres harvested or 72 million acres of U.S. cropland. The foreign market took over half of the rice, wheat and soybeans produced; nearly two-fifths of the cattle hides, over one-third of the tallow, tobacco and cotton produced; about one-fifth of total feed grain sales by U.S. farmers.

7. There is a critical danger that major portions of our export markets will be lost forever as a result of the longshoremen strikes. American agriculture has already lost markets overseas from the strike on the West Coast.* Japan is beginning to question the dependability of the United States as a supplier of agricultural commodities. In recent bilateral discussions with the Japanese, we learned that they are sending missions to other supplying countries of the world to urge that they increase their output especially of grains so as to reduce Japan's dependence on the United States. In addition to losses in sales, we are witnessing a decline in the quality of our products offered for export which is directly attributable to the strike. The strike at the East and Gulf Coast ports will multiply greatly the permanent loss in markets because of the larger quantity of exports which move overseas through these ports.

*For the months of July and August, an estimated \$215 million worth of farm products, which would have moved through West Coast ports, could not be delivered.

8. The following are examples of losses to the economy that have already occurred as a result of the strike on the Pacific Coast.

a. Western wheat growers this year harvested a near record crop. Transportation and storage facilities from farms to Pacific Coast ports are still clogged as a result of the strike. At the peak of harvest about 30 million bushels of grain--largely wheat--were on the ground in the Pacific Northwest. Since then, about 9 million bushels have been moved to storage, about 6 million fed or otherwise disposed of, but 15 million bushels remain on the ground as of September 20. Some of this has been damaged. These losses will mount even more unless this grain can be moved to storage.

b. Northwestern wheat is produced largely for export. So the impact of the strike on these farmers is especially great. Already we have lost about 25 million bushels in export sales of this wheat mostly to Japan. The Japanese and our other customers are replacing our business with purchases from our competitors such as Australia and Canada.

c. Ten alfalfa meal dehydration plants in California have been closed because of the longshoremen's strike. Since exports usually account for about two-thirds of the California output, the domestic market was quickly flooded with alfalfa that normally would be dehydrated for exporting. Furthermore, alfalfa pellets and cubes destined for export and held by the strike are exposed to sun which reduces carotene content to no more than that of ordinary hay. As

a result their value, if they can be sold, would be at most \$20 per ton compared with the pre-strike price of \$50 per ton.

d. Cotton growers, too, are losing markets. Just recently India, which had purchased about 75,000 bales of cotton now held on California docks as a result of the strike, has sent a mission to buy cotton in Russia.

e. In the case of fruits and vegetables, harvesting is still going on and although severe crop losses have not been encountered thus far, the situation is becoming critical for several items. In the case of canned fruits, dried fruits, and tree nuts for which the export outlet is of great significance, many export sales already have been lost and the goods remain in storage. In addition, most exporters have made conditional sales contracts in order to protect themselves and their buyers if the strike continues. Most of these sales contracts provide for cancellation if shipments are not made by a given date--usually in October. Some contracts have already been cancelled by major buyers under these provisions. Much of the export business of these items is for the holiday season; therefore, if the ports are not opened soon, our producers and marketers stand to lose varying shares of their export sales averaging perhaps one-third of the total season sales. Export shipments of deciduous fruits--mostly apples, pears and grapes--normally would start in October. Marketing problems, especially for this year's large crop of pears, will come later if the ports cannot be opened.

f. The California-Arizona citrus industry thus far has been able to partially cope with the strike by diverting its exports at an added cost through Mexico, through East and Gulf Coast ports, and even by air to its overseas customers. Recently there have been out-of-condition arrivals because of the added handling involved, and the consequent diversion of potential U.S. business to other foreign suppliers.

g. The seed industry in the Western states is highly dependent upon export markets. In Oregon about 50 percent goes for export. Thus far losses have been held down through diversion of shipments to other ports but at an added cost. Losses will be large, however, if normal shipments cannot be resumed soon.

9. The Agricultural Trade Development and Assistance Act of 1954, as amended (7 U.S.C. 1691, et seq.), has among its objects the following:

" . . . to expand international trade, to develop and expand export markets for United States agricultural commodities; to use the abundant agricultural productivity of the United States to combat hunger and malnutrition and to encourage economic development in the developing countries, with particular emphasis on assistance to those countries that are determined to improve their own agricultural production; and to promote in other ways the foreign policy of the United States."

Exports under Title I and Title II of this Act are additional to commercial marketings from the United States.

10. Under the provisions of Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (7 U.S.C. 1702), the Commodity Credit Corporation is directed, in implementing agreements negotiated by the President with

friendly nations, to finance the sale and exportation of agricultural commodities for dollars on long term credit terms or for foreign currencies. Under such authority, the Department is presently carrying out numerous agreements that have been negotiated under the Act with friendly nations. It is estimated that, in the absence of the strike, approximately 1,800,000 metric tons of agricultural commodities would be shipped under these agreements during the period October through December 1971 from East, Gulf and Pacific Coast ports to various foreign countries. In addition there are approximately 30,000 metric tons of cargo on the Pacific Coast which have been waiting to move since the strike there commenced on July 1, 1971.

11. Under Title II of such Act (7 U.S.C. 1721), the Commodity Credit Corporation is directed to make available to the President such agricultural commodities determined to be available for disposition under the Act as he may request for export abroad to meet famine or other urgent or extraordinary requirements, to combat malnutrition especially in children, to promote economic and community development in friendly developing areas and for needy persons and nonprofit school lunch and preschool feeding programs outside the United States. Commodity Credit Corporation has been requested to make various agricultural commodities available for the purposes of this program for export shipment from the United States in the next several months. More than one billion pounds of commodities are

expected to move through U.S. ports during the period October through December 1971.

12. Every day of the strike causes U.S. farmers to lose business and to suffer a tragic loss in income from prices that are depressed because their products cannot move to market. As products pile up, they add to the burden of supplies that seek an outlet here at home and thus depress U.S. farm prices. It is particularly hard on farm prices and farmers now when the nation's farmers have record harvests to move to market.

The strike has also had the effect of increasing Government expenditures under its domestic agricultural programs. The Department conducts a program under which Commodity Credit Corporation makes loans and purchases available to producers of wheat, rice, feed grains, soybeans, cotton, tobacco, and certain other commodities. The program is carried out under authority of the Agricultural Act of 1949, as amended, and the Commodity Credit Corporation Charter Act. As a result of the strike and inability to make exports through West Coast ports, the quantity of commodities acquired by CCC under this program has already increased this year. The spread of the strike to other U.S. ports will cause a substantial increase in CCC acquisitions. If the strike continues and causes a permanent loss of export markets, increased acquisitions by CCC can be expected to continue in future years. It is reasonable to anticipate that CCC will acquire in its inventories under the support program stocks of commodities which cannot be exported and which are in excess of domestic needs. Such acquisitions

contribute to added Government costs through losses incurred in the acquisition, disposition, storage and handling of the commodities.

13. Based on previous experience of the Department of Agriculture, a widespread strike in the maritime industry will for the duration of the strike and a period thereafter seriously affect domestic transportation facilities needed for internal shipments of agricultural commodities. All forms of transportation vehicles, rail cars, barges, and trucks will be tied up in the temporary storage of commodities loaded for movement to ports. Vehicles must be re-routed to make them available for needed domestic movements, and, after the strike has ended, there follows a prolonged period of severe shortages of rail cars, barges, and trucks needed to carry both export and domestic movements.

14. The strike will also have a serious impact on imports of certain agricultural commodities needed for the domestic economy. Under the Sugar Act of 1948, as amended (7 U.S.C. 1100, et seq.), quotas for movement of raw sugar from offshore domestic and foreign areas for the calendar year 1971 were established. Within this quota framework approximately 1.2 million tons of offshore raw sugar remain to be shipped to mainland cane sugar refineries. Of this total, about 900,000 tons would be expected to be brought into East and Gulf Ports and the remaining 300,000 tons into Pacific Coast ports. In order to import this sugar within 1971 quotas to the mainland United States market, about 400,000 tons per month must be brought from offshore areas during the period October through December 1971.

Total U.S. imports of farm products were \$5.8 billion in fiscal year 1971, of which \$2.1 billion were for products that are not produced in the United States. The largest item is coffee--\$1.2 billion. Imports of bananas were almost \$200 million.

Import requirements for coffee in October-December are estimated at 3.5 million bags, having a value of about \$200 million. About five-sixths of coffee imports are generally through Gulf and East Coast ports. For bananas, about 80 percent come through Gulf and East Coast ports. The import requirements for October-December are estimated at a value of close to \$50 million.

In witness whereof, I have hereunto set my hand and seal this date.

Clifford M. Hardin

Subscribed and sworn to before me, a Notary Public, in and for the District of Columbia, this 5th day of October 1971.

Sandra D. Foster
Notary Public

My Commission Expires Sept. 30, 1975

[From the Journal of Commerce, Nov. 23, 1971]

DOCK STRIKE CAUSES 1 MILLION-TON LOSS IN GRAIN EXPORTS

WASHINGTON, November 22.—The dock strike on the West Coast followed by strikes in Gulf ports had cost the U.S. farmers, over 1.2 million tons of grain exports, this fiscal year, which will never be made up, USDA's Foreign Agriculture Service reports.

For the first three months of fiscal 1971 the U.S. shipped a total of 990,000 metric tons of grain to Japan, compared to 2,190,000 in 1970. During that period Australia increased its sale of grains to Japan by 325,000 tons, South Africa by 100,000 tons, Canada by 150,000 tons and Korea by 60,000 tons. Starting in November, Japan will receive monthly shipments of corn from Thailand with which it has recently signed a contract for a million tons.

This year Japan will have to import a total of about 18 million tons of grain. The U.S. is expected to supply about 7 million tons of that total.

The low price of corn will make it an attractive buy and out of a projected 6.2 million tons to be imported by Japan, it is anticipated the U.S. will supply at least 5.9 million tons. U.S. exporters are also expected to ship 1.1 million tons of sorghum out of a total of 3.6 million tons needed.

For the first three months of the fiscal year, the U.S. has shipped 253,000 tons of wheat to Japan compared with 857,000 tons for the same period a year ago, 617,000 tons of corn, compared to 911,000 tons, and 120,000 tons of milo compared to 422,000 tons the previous season.

U.S. DEPARTMENT OF AGRICULTURE

AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE

STATEMENT OF KENNETH E. FRICK, ADMINISTRATOR, AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE, U.S. DEPARTMENT OF AGRICULTURE, BEFORE THE SUBCOMMITTEE ON AGRICULTURAL EXPORTS OF THE SENATE AGRICULTURE AND FORESTRY COMMITTEE, U.S. SENATE, NOVEMBER 5, 1971

Any disruption of normal marketing channels will reduce farm prices and be reflected in lower farm income and higher government costs. Certainly, the dock strikes are a major disruption and a major threat to our entire farm marketing system.

The dock strikes and the threat of new strikes reduce, and in some instances, foreclose on our ability to compete in the international agricultural market. Hence, they place in jeopardy an important part of our agricultural income. Last year production from one out of every four acres was exported. Foreign markets account for over half of the wheat, soybeans and rice produced, nearly two-fifths of the cattle hides, over one-third of the tallow, tobacco and cotton produced, and about one-fifth of total feed grain sales by U.S. farmers.

Farmers have long known that they must compete. And they know 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 more than \$6 billion to the nation's commercial trade balance last year. Without the favorable ratio of farm exports to imports, our balance of trade (payments) would have reached the crisis stage long ago.

But farmers are aware that their competitive position is in jeopardy—through no fault of theirs—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.

This is not only an export problem but a domestic one as well. We know from experience that a strike of this kind will seriously affect domestic transportation needed for internal shipments of agricultural commodities both during the strike and for a period following the strike. All forms of transportation—rail cars, barges and trucks—are tied up in the temporary storage of commodities loaded for movement to ports. Since these carriers cannot immediately be re-routed to domestic traffic, there follows a prolonged period of severe shortages of rail cars, trucks, and barges—even after the strike has ended.

This transportation and storage problem is especially difficult this year due to the large grain crops. Our marketing system is at present being called upon to handle large additional quantities of grain. Corn production, the largest

crop in history, is up 31 percent, sorghum 28 percent, and wheat 18 percent from last year. This increase in production would be hard to handle even under normal conditions, but the situation is critical now because of the uncertain conditions and work stoppages in our nation's ports.

During the October-December quarter we normally ship about 28 percent of our annual exports of agricultural products, \$2.2 billion last year. About two-thirds of our exports move out of East and Gulf coast ports which are now either closed or under the threat of being closed by strikes. These ports are especially important outlets for the major export commodities, including wheat, corn, sorghum, rice, soybeans, soybean meal, cotton, tobacco and animal products, especially hides and skins. Closing of these vital arteries would cost the American farmer \$100 million per week in export sales. Some of these lost sales would be recovered after the strike, but it is certain that many will be permanently lost. This is a year when unusually large supplies of feed grains, wheat, rice, protein meals and oils are available from other countries.

Even in our concessional export sales program under Public Law 480 the effect of the strike is severe. While the concessional terms tend to assure that many of these buyers will eventually take the commodities, that is not always the case. A strike that is unduly prolonged creates scheduling and supply problems for recipient countries that can cause them to buy elsewhere. During the 100-day Pacific Coast strike, for example, we know of scheduled Public Law 480 shipments of both white wheat and rice that were lost.

Throughout the West Coast strike substantial tonnage of Public Law 480 cargo was lying in Pacific ports awaiting shipment. Presumably most of it has moved since the Taft-Hartley action, but the future is uncertain.

Normally, approximately 1,800,000 metric tons of agricultural commodities would have been shipped under Public Law 480 during the October-December quarter from the Pacific, Gulf and East coasts, most of it wheat, feed grains, cotton, and tobacco. With the strike situation as it is, this quantity is almost certain to be drastically reduced, contributing to the clogging of transportation channels that is hurting farm marketing conditions and prices.

The West Coast stoppage showed in a dramatic way what a dock strike can do to our farmers. On the West Coast between July 1 and early October agricultural exports were cut by over \$200 million from a year earlier level. While the West Coast accounts for less than 20 percent of our agricultural exports, it is a vital outlet for certain key commodities.

Western wheat growers this year harvested a near record crop. Transportation and storage facilities from farms to Pacific Coast ports are still clogged as a result of the West Coast strike. At the peak of harvest about 30 million bushels were on the ground in the Pacific Northwest.

Northwestern wheat is produced largely for export. So, the impact of the strike on those farmers is especially great. During the July-September period last year our sales of wheat and flour off the West Coast were 58 million bushels. During the same period this year they were less than one million bushels. The bulk of this wheat normally moves to Japan. Since Japan prefers to buy its wheat from West Coast ports, those sales were immediately affected by the West Coast strike.

The Japan Food Agency has just released figures on its purchases of wheat for the April-October period, which includes the three months of the West Coast stoppage. Purchases during that period totaled 2.8 million metric tons, about the same as last year. The tragedy for the American wheat grower is that last year more than 58 percent of these purchases were U.S. wheat, while this year the percentage dropped to 42 percent. This is a decline of approximately 15 million bushels, worth roughly \$25 million. All of that business went to Canada and Australia, our major wheat competitors.

The Japanese are beginning to question the dependability of the United States as a supplier. In recent bilateral discussions with the Japanese, we learned that they are sending missions to other supplying countries to urge that they increase their output especially of grains in order to reduce Japan's dependence on the United States.

We also suffered losses in other agricultural products due to the West Coast strike. Rice exports were down from 157,000 metric tons to 35,000 metric tons. Cotton exports were down by 85 percent. Fruits and vegetables were down 55 percent. In addition to losses in sales, we are witnessing a decline in the quality of our products offered for export, and this is directly attributable to the strike.

California alfalfa producers are an example of what can happen to a small but important industry when a dock strike occurs. Exports usually account for about two-thirds of the California output of alfalfa meal. But during the longshoremen's strike, 10 alfalfa meal dehydration plants in California were closed as a direct result. This led to the domestic market being flooded with alfalfa that normally would be dehydrated for exporting. Furthermore, alfalfa pellets and cubes destined for export and held by the strike were exposed to the sun, which reduces carotene content to no more than that of ordinary hay. As a result, their value dropped to \$30 per ton compared with the pre-strike price of about \$50 per ton.

In other areas too, the dock strikes have played havoc with our agricultural markets. During September most of the grain port facilities in Chicago were on strike. This was a period when the harvest of soybeans and corn began, a time when all marketing and storage facilities were desperately needed to handle the large incoming crop. Thus, the lack of an outlet for corn and soybeans in Chicago, the major terminal market for this area, became extremely serious. Grain backed up through the heart of the corn belt, and prices were well below what they otherwise would have been. As an example, the normal spread between Chicago corn December futures and Central Illinois cash prices is about 8 cents per bushel. The differential this year jumped to 18-20 cents. This increased spread in prices reflected the storage and transportation tieup caused by the strikes. The Chicago strike has important overtones, especially for soybeans and corn, because Chicago is the basing point for prices both for domestic and for international trade in these commodities.

The same problem has been repeated in the Gulf. We are informed that the strike has backed up 800 barges of grain and soybeans in the New Orleans area. Because of the strike and consequent stoppage of barge unloading and the shortage of barges, there has been an increase in grain barge rates from Peoria to New Orleans from 11 cents per bushel in mid-September to 13 cents in mid-October. In that area, the crushing of soybeans for meal and the exporting of oil have come to a virtual standstill. Meal is not easily stored for extended periods and consequently these sales are not being made.

Farther East, we understand that soybean producers in Northwestern Florida and Alabama are hard hit by the shutdown of the Port of Mobile. Soybean farmers in these areas have little storage available and are dependent upon sales through Mobile to move their soybean crop.

Soybean farmers have a particular reason to be anxious as they survey the loss of export outlets. Soybeans are the big success story of recent years in the U.S. farm export picture. In this fiscal year, we have been counting on soybeans and products to provide about one-third of all commercial exports of U.S. farm products. But time is an important element.

In general, the most favorable export demand for U.S. exports of soybeans and products will exist during the months immediately ahead. As the season progresses, supplies of both oils and meals from other countries will become increasingly plentiful. Thus, the best potential for U.S. exports of soybeans and products, both in volume and price levels, is in the early part of the current marketing season.

These are some of the problems which farmers face due to the dock strikes. There are many other segments of our economy which are dependent upon agriculture and which are also offering economic losses. The small town businessman who is dependent upon the cash flow from agriculture, the trucker who is dependent upon seasonal business, and many others are sharing the farmer's pain. The dock workers themselves are a vital part of the system and are also dependent for their livelihood on export sales of agricultural products. At a time when we are desperately trying to get our nation's economic house in order, we all need to work together instead of pulling apart, in order that we may all benefit from a strong economy and a unified nation. It is for this reason that the Department of Agriculture urges an immediate end to the dock strikes and their threat to the agricultural economy.

AFFIDAVIT

CITY OF WASHINGTON)
)
DISTRICT OF COLUMBIA) ss:

I, J. Phil Campbell, being first duly sworn depose and say as follows:

1. I am the Acting Secretary of Agriculture of the United States. The matters stated herein are based upon my own knowledge, upon information available to me in my official capacity, and upon conclusions reached in accordance therewith.

2. A strike of the International Longshoremen's Association on the Atlantic and Gulf Coasts, thus joining an ILA strike already in existence against certain grain elevator companies in the Great Lakes area, has prevented and will continue to prevent the loading and unloading of United States-flag and foreign-flag vessels at United States ports. Such strike will materially affect shipments of agricultural commodities from the United States. At stake is the growth in agricultural exports that this Department has achieved in the past two years--at great expenditure of effort in building markets overseas. Now--with farm exports taking the produce of one acre out of four and providing one of the few plus factors in U.S. trade balance--a major share of this market is being lost with a consequent adverse effect upon United States balance of payments, American agriculture and otherwise upon the domestic economy as a whole. Also at stake are imports of certain agricultural commodities, such as sugar, which are of significant importance to the economy of the United States.

3. The Department of Agriculture carries out numerous activities to promote the commercial exportation of a wide variety of agricultural commodities by domestic firms. These activities include, among others, the payment of subsidies on exports of certain commodities under authority of the Commodity Credit Corporation Charter Act, market development activities abroad pursuant to Section 104(b) of the Agricultural Trade Development and Assistance Act of 1954, as amended (7 U.S.C. 1704), the Export Credit Sales Program pursuant to the Commodity Credit Corporation Charter Act under which the Corporation finances commercial exports of agricultural commodities on a deferred payment basis for periods up to a maximum of 36 months, and the barter program of Commodity Credit Corporation under which agricultural commodities are exported in connection with offshore procurement of materials and services needed by the Department of Defense, the Agency for International Development, and other agencies, pursuant to authority of the Commodity Credit Corporation Charter Act. For the period October through December 1971, it is estimated that there would be exported, in the absence of the strike, a total of 520,000 metric tons of agricultural commodities under the CCC Export Credit Sales Program and 790,000 metric tons under the barter program.

4. The Commodity Credit Corporation is a federally-chartered agency, created by the Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714, et seq.), within the Department of Agriculture, under the general supervision and

direction of the Secretary of Agriculture. The by-laws of the Commodity Credit Corporation provide for the Secretary of Agriculture to serve as Chairman of its Board of Directors.

5. American agriculture in recent years has made a consistent and important contribution to the U.S. balance of payments. In fiscal year 1971, United States commercial agricultural exports exceeded imports by \$1 billion.

Exports in the fiscal year ended June 30, 1971, accounted for the output of 1 out of every 4 acres harvested or 72 million acres of U.S. cropland. The foreign market took over half of the rice, wheat and soybeans produced; nearly two-fifths of the cattle hides, over one-third of the tallow, tobacco and cotton produced; about one-fifth of total feed grain sales by U.S. farmers.

In the fiscal year ended June 30, 1971, \$7.8 billion of agricultural products were exported by the United States, including about \$6.8 billion of commercial sales. Of this total, \$5.2 billion--two-thirds of the total--were exported through East and Gulf Coast ports. Exports of principal agricultural commodities through East Coast and Gulf Coast ports in fiscal year 1971 were as follows: soybeans and soybean products, \$1.6 billion or 86 percent of total soybean exports; feed grains \$875 million or 75 percent of the total; wheat and flour \$732 million or 61 percent of the total; cotton \$302 million or 61 percent of the total; rice \$218 million or 76 percent of the total and tobacco \$567 million or 99 percent of the total. Exports of agricultural

commodities from the United States would be expected, in the absence of a strike, to total in October through December over \$100 million weekly from Gulf and East Coast ports.

6. There is a critical danger that major portions of our export markets will be lost forever as a result of the longshoremen's strikes. Japan is beginning to question the dependability of the United States as a supplier of agricultural commodities. In recent bilateral discussions with the Japanese, we learned that they are sending missions to other supplying countries of the world to urge that they increase their output especially of grains so as to reduce Japan's dependence on the United States. In addition to losses in sales, we are witnessing a decline in the quality of our products offered for export which is directly attributable to the strike. American agriculture has already lost markets overseas from the strike on the West Coast. For the months of July through September, an estimated \$215 million worth of farm products, which would have moved through West Coast ports, could not be delivered. The strike at the East and Gulf Coast ports will multiply greatly the permanent loss in markets because of the larger quantity of exports which move overseas through these ports.

7. The only available export outlets for corn and soybeans which are currently open in the United States are the Great Lake ports. The Great Lakes will be closed to navigation for the winter in the next few weeks. It is not

possible at the present time to divert any corn or soybeans to Great Lake ports since facilities at these ports are overloaded.

8. The following are examples of losses to the economy which are occurring as a result of the strike on the East and Gulf Coasts:

(a) As of November 19, there were 25 ocean-going, grain-carrying vessels at port elevators at Gulf Coast ports. There are 21 more vessels due to arrive at Gulf Coast ports by the end of November.

(b) The grain elevators on the Gulf are filled to capacity and approximately 50-60 million bushels of corn, soybeans, and wheat are backed up on the Mississippi River and other approaches to the Gulf ports on barges and freight cars causing serious dislocation of transportation facilities.

(c) The back up of corn and soybeans has caused farmers to store their crop on the ground and in other forms of temporary storage giving rise to serious danger of deterioration in quality.

(d) The back up of corn and soybeans has also caused prices of these commodities to be discounted based on an examination of the normal spread between cash farm prices and Chicago future prices throughout the mid-West with a serious adverse effect on farm income. The discount in Central Illinois is running at 6 cents per bushel for corn and 5 cents per bushel for soybeans. The discount for soybeans is even higher in Southern States.

(d) Some soybean crushing mills on the Mississippi River are closed down while others are operating at sharply reduced

capacity. The October soybean crush was down sharply by 6 million bushels from a year earlier despite a record soybean crop. Indications are that the November crush will be down even more. The reduction in crushing activity by soybean processors results from the loss of export markets and the fact that soybean meal cannot be stored for any period of time without loss of quality from deterioration.

(f) The closing of East Coast ports has drastically reduced tallow exports. Stocks have increased by 55 million pounds and prices have declined by about 14 percent in large part due to the strike.

(g) Approximately 100 million pounds of tobacco on dock side and dock storage await export from East Coast ports. If this tobacco is not moved soon, the tobacco will require a reconditioning expense of about \$1 million.

9. The Agricultural Trade Development and Assistance Act of 1954, as amended (7 U.S.C. 1691, et seq.), has among its objects the following:

" . . . to expand international trade, to develop and expand export markets for United States agricultural commodities; to use the abundant agricultural productivity of the United States to combat hunger and malnutrition and to encourage economic development in the developing countries, with particular emphasis on assistance to those countries that are determined to improve their own agricultural production; and to promote in other ways the foreign policy of the United States."

Exports under Title I and Title II of this Act are additional to commercial marketings from the United States.

10. Under the provisions of Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (7 U.S.C. 1702), the Commodity Credit Corporation is directed, in implementing agreements negotiated by the President with friendly nations, to finance the sale and exportation of agricultural commodities for dollars on long term credit terms or for foreign currencies. Under such authority, the Department is presently carrying out numerous agreements that have been negotiated under the Act with friendly nations. It is estimated that, in the absence of the strike, approximately 1,200,000 metric tons of agricultural commodities would be shipped under these agreements during the period October through December 1971 from East and Gulf Coast ports to various foreign countries.
11. Under Title II of such Act (7 U.S.C. 1721), the Commodity Credit Corporation is directed to make available to the President such agricultural commodities determined to be available for disposition under the Act as he may request for export abroad to meet famine or other urgent or extraordinary requirements, to combat malnutrition especially in children, to promote economic and community development in friendly developing areas and for needy persons and nonprofit school lunch and preschool feeding programs outside the United States. Commodity Credit Corporation has been requested to make various agricultural commodities available for the purposes of this program for export shipment from the United States in the next several months. More than one billion pounds of commodities are

expected to move through U.S. ports during the period October through December 1971 of which approximately two-thirds would be exported through East and Gulf Coast ports.

12. Every day of the strike causes U.S. farmers to lose business and to suffer a tragic loss in income from prices that are depressed because their products cannot move to market. As products pile up, they add to the burden of supplies that seek an outlet here at home and thus depress U.S. farm prices. It is particularly hard on farm prices and farmers now when the nation's farmers have record harvests to move to market.

The strike has also had the effect of increasing Government expenditures under its domestic agricultural programs. The Department conducts a program under which Commodity Credit Corporation makes loans and purchases available to producers of wheat, rice, feed grains, soybeans, cotton, tobacco, and certain other commodities. The program is carried out under authority of the Agricultural Act of 1949, as amended, and the Commodity Credit Corporation Charter Act. As a result of the strike and inability to make exports through East and Gulf ports, the quantity of commodities acquired by CCC under this program has already increased this year and can be expected to increase substantially in future months. If the strike continues and causes a permanent loss of export markets, increased acquisitions by CCC can be expected to continue in future years. It is reasonable to anticipate that CCC will acquire in its inventories under the support program stocks of commodities which cannot be exported and which are in excess

of domestic needs. Such acquisitions contribute to added Government costs through losses incurred in the acquisition, disposition, storage and handling of the commodities.

13. Based on previous experience of the Department of Agriculture, a widespread strike in the maritime industry will for the duration of the strike and a period thereafter seriously affect domestic transportation facilities needed for internal shipments of agricultural commodities. The marketing system is being called upon to handle unusually large quantities of grain this year. Corn production, the largest crop in history is up 35 percent, sorghum 28 percent, and wheat 18 percent from last year. All forms of transportation vehicles, rail cars, barges, and trucks will be tied up in the temporary storage of commodities loaded for movement to ports. Vehicles must be re-routed to make them available for needed domestic movements, and, after the strike has ended, there follows a prolonged period of severe shortages of rail cars, barges, and trucks needed to carry both export and domestic movements.

14. The strike will also have a serious impact on imports of certain agricultural commodities needed for the domestic economy. Under the Sugar Act of 1948, as amended (7 U.S.C. 1100, et seq.), quotas for movement of raw sugar from offshore domestic and foreign areas for the calendar year 1971 were established. Within this quota framework approximately 1.2 million tons of offshore raw sugar is expected to be shipped to mainland cane sugar refineries during the period October through December. Of this total, about 900,000 tons would be expected to be brought into East and Gulf Ports in this period.

Total U.S. imports of farm products were \$5.8 billion in fiscal year 1971, of which \$2.1 billion were for products that are not produced in the United States. The largest item is coffee--\$1.2 billion. Imports of bananas were almost \$200 million.

Import requirements for coffee in October-December are estimated at 3.5 million bags, having a value of about \$200 million. About five-sixths of coffee imports are generally through Gulf and East Coast ports. For bananas, about 80 percent come through Gulf and East Coast ports. The import requirements for October-December are estimated at a value of close to \$50 million.

15. For the foregoing reasons, it is my belief that this strike imperials the national health and safety.

In witness whereof, I have hereunto set my hand and seal this date.

J. Phil Campbell

Subscribed and sworn to before me, a Notary Public, in and for the District of Columbia, this 24th day of November 1971.

Sela B. Maysden
Notary Public

My Commission Expires Sept 14, 1974

Senator TAFT. Mr. Secretary, we have not gotten to discussing a revision that is perhaps a little aside from the emergency strike situation but is included in S. 2959, because I felt that in many instances the national emergency strike situation was a result of work rules disputes and that I would like to ask a few questions with regard to the work rules section. I know you are familiar with it.

Is it not true that disputes related to work rules have been a part of the recent railroad strike and the recent dock strike?

Secretary HODGSON. A minor part of the dock strike, a very significant part of the railroad strike. But in that connection, through collective bargaining in the negotiation of the recent principal settlements in the railroad industry, major gains were made in productivity improvement areas. There were quite a number of changes.

Senator TAFT. I take it you mean that unproductive work rules that are not related to health and safety have been a retarding factor in the American industry and run counter to the President's objectives in the field of productivity.

Secretary HODGSON. Well, with regard to your whole endeavor, as I see it, the provision that you have proposed, I just have to say some very positive things about it, that is, there is no question that this country needs productivity improvement such as it has not seen in some time.

Our international competitive situation, the deterioration of productivity improvement since 1965 in this country means that we ought to really get with it and push up the productivity improvement measures again. We also know that there are some union contracts that contain outmoded work rules and we know that there has been some resistance to changing.

Those are all in favor of this but there are several things that give us some hesitation. The first would be that to put a provision such as you are suggesting into the statute would result in a concession that collective bargaining really has been a failure in this area. I guess I am just not willing to concede that yet, particularly because I think just in recent years we have really started to come to grips with it.

The railroad settlement has some major productivity features in it. Some of the construction industry's productivity limiting features—the brush instead of the spraygun and that sort of thing—those things have been ironed out.

The problem in the steel industry where in the recent settlement they came up with some major initiatives in productivity improvement at the plant level—these all seem to me to testify that collective bargaining is starting to address this subject and is making headway in doing so, and I don't want to take it out of collective bargaining just yet for that reason.

Also I find some technical problems in there—questions of measurement, questions of formulas. The definition question, timespan question, productivity versus safety and things of this kind.

I am worried about the kind of thing that occurred in England, where they had some provision that was a little bit like this and where a management and the union would get together and negotiate some restrictive work rules, and then the next time around would pay a price for taking those work rules out. It was a very slick way to get around wage and price controls.

Senator TAFT. You bring that out here so somebody may pick it up.

Secretary HODGSON. Believe me, the people that do this sort of thing are ingenious enough to do it without my telling them. What I would like to do is have the Department prepare an analysis for you and the committee, if you would, of this particular feature and see if we can bring a little more understanding to it and particularly its effect on collective bargaining.

Senator TAFT. I very much appreciate that. In addition to that, Mr. Chairman, I ask leave to submit a list of questions relating to this work rules area to the Secretary.

The CHAIRMAN. Yes, that may be done.

(The information subsequently supplied, follows:)

RESPONSES TO QUESTIONS SUBMITTED BY SENATOR TAFT TO SECRETARY
HODGES IN CONNECTION WITH WORK RULES PROVISIONS OF S. 2959

- Q. Is it not true that disputes relating to work rules have been at the heart of the recent railroad strike and the recent dock strike?
- A. The recent railroad strike by the United Transportation Workers Union did center on the issue of work rules. Work rules were not a serious problem in either the brief strike by the Brotherhood of Railway Clerks or the Railway Signalmen's strike.
- In the recent dock worker disputes, work rules relating to steady men and union jurisdictional disputes were important issues on the West Coast. On the East Coast an issue of key importance involved the income guarantee payable under the New York Labor agreement.
- Q. Do you believe that unproductive work rules that are not primarily related to the health and safety of employees, retard the productivity of American industry and run counter to the President's objectives?
- A. An increase in the productivity of the American economy is indeed an essential part of the President's economic program, and a National Commission on Productivity has been established for the purpose of exploring the means of achieving an increase in our productivity growth rate. Work rules which are inefficient and unjustifiable in terms of our economic or social objectives should be eliminated and we are hopeful that the Commission

will assist in defining the means by which this can best be achieved. However, it is important in any discussion of this subject to recognize that there is considerable disagreement as to what, in fact, constitutes an "unproductive work rule." By the same token, it is frequently difficult to conclude that a work rule is "not primarily related to health and safety of employees." Such terms are not readily definable in such a way that they may be commonly applied to the various segments of the American economy.

- Q. Do work rules that require more men than are needed for safe and efficient operation reduce the efficiency of industry and thereby require higher charges for consumers and lower wages for employees?
- A. Work rules which require more than adequate numbers of employees for a specific operation are inefficient, and it is likely that costs are thereby raised. However, there is the problem of deciding how many workers are necessary for safe and efficient operation.
- Q. Do you believe that management and labor should have a common interest in eliminating unproductive work practices?
- A. Yes. Productivity should play an increasing part in collective bargaining because of the need to further national growth, avoid inflationary pressures and keep unit labor costs from rising to such a degree that markets are lost to foreign competition.

- Q. Is the American standard of living a function of the productivity of American industry?
- A. Yes. We are fortunate in having better natural resources than most countries, but the productivity of our industrial system also has been extremely important in making standards of living in the United States among the highest in the world.
- Q. If we eliminate unproductive work rules would this contribute to a higher standard of living for the American people?
- A. Any increase in efficiency due to the elimination of unproductive work rules may ultimately redound to the benefit of the American people in terms of a higher standard of living.
- Q. My bill, S. 2959, would give management the authority to eliminate unproductive work rules that are not primarily related to the health or safety of employees on two conditions: (1) no employee could lose his job as a result of the change in work rules and employment could be reduced only by attrition; (2) management would have to pay to the non-supervisory employees an amount equal to one-half of the savings derived through the elimination of the work rule. Do you believe that this is a fair formula for both management and labor?
- A. The proposed formula for eliminating what some parties might consider "unproductive work rules" may well create uncertainty and confusion in the entire collective bargaining environment and could negate the very productivity increases it is designed to promote. As indicated earlier, there are wide differences of

opinion over what constitutes an "unproductive work rule," and over what work rules are necessary or desirable to assure employee health and safety.

These differences are now resolved through the collective bargaining process. This approach is fundamentally sound. Both labor and management have considerable expertise to bring to bear in determining these complex issues. The collective bargaining process is the appropriate medium for their discussion and resolution.

S. 2959 would, in effect, remove a wide variety of matters from collective bargaining. Management would be free to institute unilaterally any work-rule changes where such rules did not "relate principally to the health and safety of employees." The term "work-rule" is quite broad and imprecise. It might be deemed to encompass a wide spectrum of terms and conditions of employment. Removal of these issues from bargaining would profoundly alter the entire structure of our labor laws which, overall, have proven successful in resolving labor-management differences and assuring industrial peace. While the bill would not preclude bargaining on such issues, it would permit unilateral changes without bargaining and thereby encourage unions to adopt techniques other than bargaining for the purpose of opposing changes.

One particularly disturbing aspect of S. 2959 should be emphasized. The bill would permit unilateral changes only in rules which do not relate principally to health or safety. Failure to bargain about rules which do principally relate to such issues would remain an unfair labor practice. As indicated above, strong differences of opinion frequently exist about the degree to which a work rule involves health and safety. Thus, unilateral imposition of work rules is likely to be followed by the institution of unfair labor practice charges in which unions allege that the rules in question were "health or safety" rules and therefore outside the ambit of S. 2959. The net result of the bill would therefore be the removal of these complex questions from collective bargaining to the National Labor Relations Board and the courts. In our judgment such a result would be profoundly counterproductive.

In addition to the basic objections to the proposed formula expressed above, the rigid conditions imposed by the formula upon all employers in American industry are arbitrary and may prove unworkable or inequitable in particular instances. Although fair and equitable arrangements should be made for the protection of employees affected by work rule changes unilaterally imposed by the employer, the specific details of such arrangements should be worked out in the light of the specific circumstances.

Also, as the proposal recognizes, the determination of cost savings is fraught with difficulty and, despite the provision for CPA arbitration, could be a factor in generating further discord between the parties.

- Q. Do you believe that a formula such as this would give management and labor a common financial incentive to eliminate unproductive work practices and thereby increase the profits of industry and the buying power of the American worker?
- A. As indicated above, the formula set forth in S. 2959 is not likely to achieve the positive results which are its intended objectives and may have seriously adverse consequences.
- Q. Have you made any study as to the economic costs to our economy of unproductive work rules?
- A. The Department of Labor has made no study as to the economic cost of unproductive work rules. Such a study may not be feasible in view of the difficulties inherent in defining what work rules are nonproductive.
- Q. Do you believe that the collective bargaining process has adequately dealt with the question of unproductive work rules?
- A. The collective bargaining process has generally proven a successful mechanism for resolving industrial disputes over work rules, for structuring those disputes in a manner which would promote long term stable industrial relations, while at the same time allowing technological innovation and change to occur. Of course more remains to be done to improve the collective bargaining process as it relates to productivity questions as well as in a number of other areas.

- Q. In some industries are the benefits of automation partially or wholly lost through unproductive work practices?
- A. While there have undoubtedly been instances where the benefits of automation have to some degree been lost through unproductive work rules, we are not aware of any comprehensive study in this area. Perhaps the work of the National Commission on Productivity will shed some light on this matter.
- Q. Do you know how many newspapers in this country set bogus type because of work rules?
- A. The number of newspapers using "bogus", we understand, is not very large and declining. According to a 1960 survey conducted by the International Typographical Union (AFL-CIO), 65 percent of the reporting newspaper locals indicated that this practice had been abandoned, 20 percent admitted utilizing it, and 15 percent stated that they had not performed bogus work during the survey month. The 1967 convention of the ITU passed a resolution permitting local unions wide latitude in the negotiation of bogus clauses. A further step was taken in 1969 when the ITU eased the bogus rules by allowing local unions to relax or eliminate this practice in exchange for other contract improvements.
- Q. Do you know the cost of setting bogus type to the American newspaper industry?
- A. The cost of this practice, to the extent that it is still being followed, is not known.

Q. Do you know how many jobs exist in the American Railway industry as a result of unproductive work rules, and the cost to the industry of maintaining these jobs?

A. We do not know how many jobs exist in the American Railway industry as a result of unproductive work rules. We do know that employment in the industry has declined by more than 50% over the past two decades, even though revenue ton-miles have shown a substantial increase over the same period. We have no estimate of the cost to the industry of maintaining any jobs which may result from unproductive work rules.

Q. Do you know how many jobs on the nation's water fronts are maintained because of unproductive work rules and the cost to the industry as a result of these jobs?

A. We do not have the information to answer this question. The Department of Labor conducted a study of Manpower Utilization and Job Security in ten major East Coast ports during 1963-64. As a result of the information developed through that study certain unproductive jobs were eliminated in the labor agreements effective October 1, 1964. Another study would be required based on current conditions to determine the extent of unproductive work rules. The parties on the West Coast, in their labor agreement of 1961, established a modernization and mechanization plan to eliminate unproductive work rules. That plan was continued through the 1966-71 agreement. We have no data on which to base a judgment

- 9 -

concerning the cost to industry as a result of possible unproductive work rules which may continue in effect on either the East or West Coast.

- Q. Do you believe that existing employees should be retained if work rules are changed?
- A. The Department believes that when work rules are changed to eliminate the need for certain jobs, intensive efforts must be made to minimize the effects of such dislocations and provide equitable arrangements to assure that the burden of the changes does not fall solely on the workers.
- Q. Do you believe that employees should have a direct share in the benefits of increased productivity?
- A. Sharing in benefits is an incentive for employee cooperation in efforts to increase productivity.

Senator JAVITS. Will you yield for one question, Senator?

Senator TAFT. Yes, certainly.

Senator JAVITS. We were fortunate enough to get by the unanimous vote of the Senate phase 2 of the bill to provide for productivity councils for World War II experience. Would you wish to make any comment upon that, Mr. Secretary?

Secretary HODGSON. Well, the principal comment that I would make is that I have found myself going around the country the past year and a half making speeches about the need for enhancing productivity in the country for about three reasons.

Number one is that our productivity deteriorated badly in the period from 1965 through 1970 with what had been a prior average of 3-plus percent a year for 20 years, it suddenly went down to an average of 2 or less percent and in 1969 got down to less than 1 percent a year.

We have started to bring it back up a little bit but we have got to go forward with productivity if we are going to maintain the kind of expanding economy we need to have.

Second, we need to do it for international competitive reasons. We are falling behind internationally, the productivity of other economies of the Western World is speeding ahead of ours. We have got to realize that, we have got to measure up from that standpoint.

Finally, in this country we want a lot of the good things in life. We want to make qualitative improvements in our economic system. The only way we are going to pay for them is through improved productivity.

So, for all these reasons we ought to get with it and use every device and measure that we can to accomplish it.

Senator JAVITS. Mr. Secretary, with Senator Taft's indulgence, would it be an imposition on you if I asked you to give us a memorandum as to the practicality of the Productivity Council idea based upon the National Productivity Council which is the way that amendment reads.

The reason I say that is that one of the most persuasive things of the Senate in voting this in the bill was a letter from the Chairman of the Federal Reserve Board emphasizing and saying that from their inquiry those Councils had worked well and it seems to me that this is very much more in your line than it is in the Federal Reserve Board.

Secretary HODGSON. Let me ask you, considering in whose line it is, would you want me to transmit that request to the chairman of the President's Productivity Commission, Mr. Shultz, who is our productivity czar in the administration?

Senator JAVITS. I think that, frankly, we were very unhappy, that was another argument that went very heavily with the Senate. They have been in existence some time and have not done anything.

Secretary HODGSON. That is because you are looking at the tip of the iceberg, Senator. Some day I will send you up a package about 4 feet high of what they are doing.

Senator JAVITS. Instead of doing it 4 feet high, would you and Mr. Schutz collaborate in giving us some statement on this subject?

Secretary HODGSON. We will be glad to.

Senator JAVITS. If you are going to address yourself specifically to the work rule thing and collective bargaining contracts, why not also deal with this question of what can be accomplished on a voluntary basis?

Secretary HODGSON. Yes.

Senator JAVITS. Thank you.

Senator TAFT. I thank you, Senator Javits. I certainly concur in this area and it is one I think that is of vital importance. Apparently there is misunderstanding about the lack of progress that has been made to date and, if this can be clarified, it would be helpful.

Mr. Secretary, have you had occasion to read the record of the Federal Railroad Administrator, dated November 11, 1971, on the impact of the railroad industry of the United Mine Workers' strike and the International Longshoremen's strike.

Secretary HODGSON. Yes.

Senator TAFT. Isn't it the conclusion of that report that the closing of the coal mines was having a large adverse impact on the railroad industry resulting in the layoff of more than 20,000 railroad employees?

Secretary HODGSON. I think, number one, railroads, and, number two, steel, and then there were a number of others affected, particularly community enterprises, that were rather modest in size, and they don't always get counted but there was a tremendous effect among those.

Senator TAFT. Mr. Chairman, at that point then, I would like to insert in the hearing record the report of the Federal Railroad Administrator dated November 11, 1971.

The CHAIRMAN. Without objection, so ordered.

(The information referred to follows:)

The Secretary

November 11, 1971

Federal Railroad Administrator

INFORMATION: Impact on the Railroad Industry of the United Mine Workers Strike and the International Longshoremen Association Strike.

Attached is a summary of the impact of the UMW and ILA strikes on the railroad industry. The analysis is based on information obtained from the Interstate Commerce Commission, the Association of American Railroads and ten individual railroads. The data indicates that, as of November 12, 1971, the strikes have cost the railroads more than \$165 million in lost freight revenues of which \$140 million is attributable to the closing of the coal mines and \$25 million to the dock closure. The strikes have forced the layoff of more than 20,000 railroad employees. As the strike continues, the report will be updated.

JOHN W. INGRAM

Attachment

IMPACT ON THE RAILROAD INDUSTRY OF THE
UNITED MINE WORKERS STRIKE
AND THE
INTERNATIONAL LONGSHOREMEN ASSOCIATION'S STRIKE

On October 1, 1971, the 100,000 member United Mine Workers of America struck the Bituminous Coal Operators Association, closing down soft coal production in 20 states. On the same day, the International Longshoremen Association went on strike, closing port operations along the Atlantic and Gulf coasts. These two strikes have immediate and severe implications for many of the Nation's railroads. However, the closing of the coal mines is having the largest adverse impact due to the extent of the railroad dependence on coal revenues and because the courts have ordered strikers back to work at several ports.

During 1969, all-rail movements of coal accounted for approximately 54 percent of the tonnage of bituminous coal shipped, and railroads participated in a majority of the remaining movements. Thus, the coal industry depends heavily on the railroads for the movement of its output and, in return, nearly 11 percent of the annual freight revenue of the Class I railroads is derived from coal traffic.

Table I indicates the ten most important bituminous coal carrying railroads (as indicated by their share of total

railroad coal traffic) and the portion of the freight revenues of those railroads which was derived from this coal traffic. These ten railroads account for over 70 percent of the net tonnage of the bituminous coal moved by rail. The severity of the financial impact of the closing of the coal mines is indicated by the extent to which these railroads depend on coal movements for revenue. The implications are even more severe for the financially troubled railroads such as the Penn Central and the Reading Railroads. More detailed statistics relating to the dependence of these ten railroads on coal traffic is contained in Appendix A.

The impact of the Longshoremen's strike is more difficult to ascertain due to the lack of readily available statistics. In an effort to estimate that impact, the ten most important coal carrying railroads (which include the major Eastern and Southern railroads) were asked for statistics relating to traffic and revenue losses, and employee layoffs resulting from both of the strikes. The results of the survey appear below along with an estimate of the industry-wide impact which was provided by the Association of American Railroads (AAR).

The AAR reported that, as of October 27, 1971, the Mine Workers' and Longshoremen's strikes were costing the railroad industry \$3,923,000 per day in reduced revenues. Of the total \$3,330,000 is attributable to the closing of the coal mines and \$593,000 to the dock closure. Furthermore, the strikes had resulted in layoffs of more than 20,000 railroad employees. While these data indicate the existence of a serious situation, the effect is not equal among all railroads.

Table 2 contains estimates of the impact of the strikes of ten railroads. The data indicates that six Class I railroads are suffering the majority of the financial loss. The Penn Central has lost an estimated \$28.2 million in revenue since the start of the strikes, for a weekly loss of \$4.7 million. Penn Central has not yet assessed the full impact of this revenue loss on cash flow. It is apparent that the loss of revenues may have a serious impact on Penn Central's cash position. The loss of \$2,388,000 in revenue carries similar implications for the Reading.

The existence of financial problems is not limited to these two railroads. The loss of \$4.65 million in revenues has forced the Western Maryland into a deficit net income position. The continued loss of a substantial

portion of their revenues may well have serious implications on the N&W and could logically affect the B&O and C&O.

The data indicate that more than 20,000 railroad employees are without work as a consequence of these two strikes. The majority of the layoffs occurred on the Penn Central, Norfolk and Western, and the C&O-B&O systems.

Table 1 - The Ten Most Important Coal-Carrying Railroads as Determined By the Percent of Railroad Coal Traffic Carried and the Percent of Their Freight Revenues Derived From Coal.

Railroad	Percent of Railroad Coal Traffic Carried, 1969 ^a	Percent of Freight Revenue Derived From Bituminous Coal, 1970 ^b
Penn Central	15.6	15.3
Norfolk and Western	15.1	40.6
Chesapeake and Ohio	10.9	48.5
Baltimore and Ohio	7.6	23.2
Louisville and Nashville	6.9	25.4
Southern	4.3	13.5
Illinois Central	3.9	14.5
Seaboard Coast Line	2.9	5.7
Reading	2.6	27.3
Western Maryland	2.3	34.6

^aSource: Coal Traffic Annual, published by the National Coal Association.

^bSource: Annual Freight Commodity Reports provided to the Interstate Commerce Commission by the Individual railroads.

Table 2 -- Estimated Weekly Traffic and Revenue Losses and the Resulting Impact on Railroad Employment as a Consequence of the Strikes Against the Soft Coal Mines and the Atlantic and Gulf Coast Ports.

Railroad	Coal Traffic Losses				Port Merchandise Traffic Losses				Railroad Employee Layoffs		
	Carloads		Tons		Revenue		Carloads/Tons			Revenue	
	Carloads	Tons	Revenue	Carloads	Tons	Revenue	Carloads	Tons		Revenue	
Penn Central	21,250	1,593,500	\$4,250,000	1,500	90,000	\$450,000				4,000	
Reading	2,000	144,000	265,000	1,000	56,000	133,000				800	
W. Maryland	4,250	297,500	750,000	750	35,000	125,000				600	
N&W	29,850	2,238,750	6,000,000	1,750	100,000	345,000				4,600	
L&N	4,000	300,000	850,000	750	40,000	225,000				NA	
C&O/B&O	30,000	2,000,000 ^{a/}	6,000,000 ^{a/}	--	--	--				5,000 ^{c/}	
IC	7,250	564,500	1,084,000	2,500	174,000	575,000				NA	
SCL b/	--	--	--	--	--	--				--	
Southern	8,000 ^{c/}	600,000 ^{c/}	1,061,500 ^{c/}	NA	NA	NA				NA	

a/ Data includes the impact of both strikes

b/ No significant impact

c/ FRA staff estimate.

APPENDIX A

Traffic and Revenue Statistics For The Ten Largest Coal-Carrying Railroads, 1970^a

	Traffic Originated and				Traffic Received From				Connections and		Gross Freight Revenue
	Terminated on line		Delivered to		Terminated on line		Delivered to		Connections		
	C/L	Tons	C/L	Tons	C/L	Tons	C/L	Tons	C/L	Tons	
PC	Bituminous	394,462	29,873,352	205,930	15,893,383	446,480	31,759,662	205,984	15,720,596		222,521,154
	All Coal	401,499	30,375,127	207,652	15,957,038	454,634	32,266,572	210,112	15,985,405		226,004,535
	Total C/L	1,794,978	87,784,589	1,264,050	54,735,058	2,067,514	104,220,925	595,172	34,959,071		1,477,466,729
NGW	Bituminous	627,955	48,658,955	402,689	50,721,414	129,420	9,813,165	15,869	1,114,357		293,523,195
	All Coal	627,935	48,658,955	402,691	50,721,536	131,315	9,940,299	18,574	1,279,470		294,349,046
	Total C/L	963,171	64,555,534	964,175	54,313,385	586,968	28,877,393	402,076	16,278,169		225,705,530
C&O	Bituminous	339,910	25,336,723	455,644	33,925,442	44,003	3,812,540	144,034	10,222,580		214,036,950
	All Coal	339,910	25,336,723	455,644	33,925,442	44,137	3,820,895	144,089	10,225,409		214,067,982
	Total C/L	490,751	32,355,919	791,200	47,152,990	408,664	20,936,306	344,728	18,949,531		441,110,269
B&O	Bituminous	161,680	11,165,062	354,278	24,853,189	107,656	7,773,940	61,002	4,283,213		109,708,743
	All Coal	161,695	11,166,140	354,312	24,860,554	108,576	7,835,194	64,065	4,474,029		110,333,067
	Total C/L	489,963	27,816,301	783,457	42,221,689	691,951	31,100,684	314,501	14,677,863		474,732,898
L&N	Bituminous	252,976	19,165,750	413,885	28,983,523	11,686	844,651	11,111	1,085,164		96,633,370
	All Coal	252,976	19,165,750	413,885	28,983,523	13,844	989,487	11,143	1,087,110		97,093,449
	Total C/L	587,119	37,454,234	851,067	48,577,094	383,341	17,626,831	236,725	11,238,068		381,544,448

APPENDIX A (Continued)

	Traffic Originated and			Traffic Received From			Connections and		Gross Freight Revenue.	
	Terminated on Line		Delivered to	Terminated on Line		Delivered to	Connections			
	C/L	Tons	C/L	Tons	C/L	Tons	C/L	Tons		
South- ern	Bituminous	93,882	9,735,230	34,957	3,233,797	136,867	10,380,171	65,596	5,467,829	50,977,649
	All Coal	93,883	7,735,325	34,957	3,233,797	137,301	10,406,779	66,308	5,512,016	51,205,189
	Total C/L Traffic	425,653	31,075,114	480,096	22,713,234	645,340	34,781,603	405,716	19,697,978	379,538,015
IG	Bituminous	180,427	15,496,281	121,333	10,112,094	10,739	742,104	2,085	152,829	47,503,550
	All Coal	180,427	15,496,281	121,333	10,112,094	11,041	759,175	2,096	153,308	47,552,607
	Total C/L Traffic	569,696	36,138,766	513,187	27,613,879	337,405	16,155,691	139,610	5,560,436	327,415,577
SCL	Bituminous	47	3,405	2	144	193,293	14,264,548	47,717	3,554,919	26,804,140
	All Coal	49	3,531	2	144	193,525	14,276,513	47,730	3,555,596	26,865,919
	Total C/L Traffic	41,010,743	63,497,827	504,193	24,767,781	860,998	43,595,329	226,530	11,266,411	473,499,880
Read- ing	Bituminous	7	443			88,928	6,274,983	119,302	8,506,873	20,297,274
	All Coal	17,928	1,275,304	27,019	1,714,577	90,250	6,361,451	130,433	9,223,199	27,169,852
	Total C/L Traffic	133,105	9,251,097	155,924	7,253,360	241,565	13,355,083	379,196	18,897,054	97,755,964
W. Mary- land	Bituminous	26,053	1,866,775	69,842	4,860,422	16,372	1,141,967	109,132	7,670,798	18,110,670
	All Coal	26,053	1,866,775	69,843	4,860,422	16,663	1,159,596	114,050	7,990,200	18,360,320
	Total C/L Traffic	57,063	4,329,567	134,442	8,435,115	76,990	3,983,891	273,666	14,881,350	53,006,230

Source: Interstate Commerce Commission, Bureau of Accounts, Freight Commodity Statistics for the Individual Railroad

Senator TAFT. I have no other questions of the witness. I certainly appreciate his answers.

The CHAIRMAN. Just one or two concluding observations or questions, Mr. Secretary.

The former Secretary Shultz, as you know, had a detailed and comprehensive study involving the longshore strikes which shut down the east coast and gulf ports during the 1960's and we are all familiar with the conclusions that these strikes had no visible impact on the economy as a whole, industrial production, retail sales, national income, or total employment.

He addressed himself to exports and said that there appears to be no evidence of a permanent loss of export markets because of the strike. He also concluded that there was no appreciable loss of the ability to repenetrate the markets once delivery again becomes possible.

Now your statement is at variance with that in terms of the impact of the longshore strikes.

Secretary HODGSON. Well, it might seem to be, Senator, and I would only like to restate what I think the report that you referred to prefaces and that is that the report considers strikes, as it says, which involved Federal action of the Taft-Hartley Act. There was no attempt, however, to measure their impact on either health or safety, which was the standard set up by the act and it was directed to national rather than local or regional impact. I think it was a general overall report, as I have described it, for macroeconomic purposes, not for the purpose of saying what the effect of the individual strike was on an individual community or at an individual time, not that kind of thing.

The CHAIRMAN. Well, are your conclusions or judgments the same when you are dealing with the national health and safety.

Secretary HODGSON. I don't think that you can make the kind of study that was made here until sometime, a long time after these things occur, where you can go back and total up how the recovery actions after the strike affected the economy.

The CHAIRMAN. That leads me into another generalized observation on a part of the legislation that you have proposed.

Well, let's back up. We have 11 bills before the committee. We have been in hearings on 8 separate days and, frankly, there is no windup date in sight because each time we do have a hearing new ideas come to us and several have this morning just as new legislation reached us last week. I think even changes in that were made this week.

Most of this legislation suggests profound changes in our society's rules dealing with labor-management relations, where there are disputes and where there are strikes of varying impact, and the measure of that impact is different in all of these bills.

Now, we have a long journey and I will say that part of your legislation that seems to me most worthy is title 3, establishing a Special Industries Commission. This would be a study panel in depth for 2 years, and deals with industries that are not part of your immediate legislative request dealing with transportation. It seems to me that there is a great deal here that we should consider.

Possibly if we are not prepared as a committee to recommend anything specific and final legislatively in the transportation held, this commission approach could also be used for our general study in the area that we have before us.

Secretary HODGSON. That would trouble me greatly, to set aside what I see as the clear, present need in transportation which, I think, has been demonstrated. It was for use beyond that demonstrable need that we would use the other device. The other device, I agree with you, is a very necessary and, I think, forward step to take but I believe the Nation is going to be pretty upset if we don't do something about these recurring emergencies in transportation.

My feeling is also that the Congress itself is getting upset about having to dispose of these things on an ad hoc basis, and I would very much urge that we get with it and get some permanent legislation into effect so that we don't have to do that. Otherwise what I am worried about is that one of these days we will have another ad hoc circumstance come up here to Congress and everybody is going to be so outraged about it they will rush into effect with some instant legislation in a 48-hour period, or something like that, and we will have it for 25 years thereafter.

Now that is not the way to get good legislation, it seems to me. I would like to work with this committee to get legislation and accomplish it in 30 or 60 days and get it on the books so we can deal with these problems as they come up. I don't think the time to do it is overnight or the time that the next major crisis outrages everybody to such an extent that they are willing not to proceed in a deliberate manner.

Senator JAVRS. Mr. Chairman, I would like to identify myself with the Secretary in that position, we may differ as to what should be covered but I certainly believe he has studied this enough and we have enough experience and we are at a very dangerous time.

I would hope, Mr. Chairman, that we could do as the Secretary suggests.

Senator TAFT. Mr. Chairman, I would like to also associate myself with the remarks and particularly to ask the Secretary if he thinks that a commission study as to all or part of this is really going to do much good.

I do not feel it will. If we are going to do anything about this problem, there must be changes in the labor laws in this controversial field; I do not think any commission report is going to make a bit of difference.

I think it is going to be up to the Congress to get the information, and it has a good deal of it already, and then to face the problem of determining what is going to be done because I don't think the commission report is going to affect what the Congress is going to do.

Secretary HODGSON. Not in transportation, I would agree we have given it exhaustive study. In addition the American Bar Association Labor Law section has gone into this very deeply, and the extent to which their recommendations differ from our basic position is very minor. Most of the studies that I have seen at this time have produced pretty much the same kind of reaction.

So I think a study could be made but I don't think it would make more than a freckle of difference to the ultimate object.

The CHAIRMAN. I know you conclude that the American people demand legislation and legislation similar to what you have posed. It would certainly be helpful to this committee if we heard from this overwhelming public.

I will say, and this not facetious, you certainly are speaking for the most silent majority that has ever not been heard from. We have only

had support for your proposal from—correct me if I am wrong—the American Association of Port Authorities.

Secretary HODGSON. You won't get support from constituents that deal in a compulsive sense with this problem, I don't believe. That is the reason I say we are going to have to respond to what is a public clamor and a public demand.

I would suggest, though, that a reading of the editorial pages of all of the Nation's newspapers for this past year would reveal a fund of newsprint 7 miles long.

The CHAIRMAN. And they knew full well that their industry would never be included even under Senator Taft's proposals or under Senator Javits' proposal.

Secretary HODGSON. That is right.

Senator JAVITS. If the chairman would yield, the minute you get a strike and we begin to flap around here as to what we are going to do about it, whether we are going to lower the boom for 15 days or 30, or 45, we get thousands of letters.

Sure the public is not aware of that fact until they are in a crunch, but when they are in a crunch, they want to know what is on the books, what can you do about it, and then, when they find there is nothing you can do about it, you hear loud and clear.

So I think it is just a question of when they are talking about, certainly not now, but I have had tremendous mail on this thing when the crunch is involved.

The CHAIRMAN. I have 20,000 commuters on the New Jersey Central and I hear from everyone, certainly.

But here is our dilemma. These are very profound changes that are being discussed. We have 17 members on the committee, and almost that many bills. Many of our members have been putting in their own bills.

Senator JAVITS. I think, Mr. Chairman, also perhaps on the staff level some underbrush could be cleared away and I am sure this meets with Senator Taft's approval and the others on my staff that work with yours.

Let us see if we can sit down with the Department and what we can come up with. That does not mean you agree, it means at least you have some agreed upon legislative vehicle which we can try for. Even though you would not have to agree, except to give whatever help we can to the staff.

Secretary HODGSON. Senator, you notice in my testimony I tried to outline principles followed rather than say that we feel that we have got every last comma right in our bill. We are persuaded that our bill has been given a lot of thought, it has been checked out, it has been reviewed by widespread sectors of professionals that are familiar with this field. So we do have maybe a little pride of authorship, too, but we want to work with you because we realize that this subject is one that is going to result in legislation in one of two ways, either our doing it in a deliberate effective way or it is done on a quick and dirty way and there is some ad hoc precondition.

I would prefer to do it the first way.

The CHAIRMAN. Thank you very much.

Secretary HODGSON. Thank you.

(An appendix to the statement of Secretary Hodgson follows:)

APPENDIX TO

TESTIMONY OF SECRETARY OF LABOR JAMES D. HODGSON
BEFORE SUBCOMMITTEE ON LABOR OF THE SENATE
LABOR AND PUBLIC WELFARE COMMITTEE

December 9, 1971

S. 594 (Javits)

This bill would allow the President to utilize a range of procedures, in any combination he chooses, to prevent interruption of transportation services, and other operations and services essential to the health or safety of the Nation or a substantial part of its population or territory.

It authorizes the President to appoint a Board of Inquiry to report to him on the issues of the dispute and also to make recommendations if he requests. After receipt of the report, the President may direct that for a specified period, not to exceed 30 days, no change shall be made in the conditions of the dispute. During this period or thereafter, the President may direct the Attorney General to bring an action to enjoin the strike in any district court. If the court finds that the strike or lockout imperils the health or safety of the Nation or part thereof, it must enjoin the strike.

After the court order has gone into effect, the President must reconvene the Board of Inquiry which shall report to the President within 60 days. When the 60-day period has expired and no settlement has been achieved, the President may issue an executive order prescribing procedures to be followed by the parties to protect the health and safety of the Nation. If within 15 days the Senate or House rejects the order, it shall not take effect. The President would be authorized to invoke any traditional remedy to resolve the dispute, for example,

factfinding, extension of the status quo, seizure, mediation to finality and final offer selection.

The concentration of responsibility for detailed decisions and orders in the President seems inappropriate, the more so since inclusion of regional disputes in the bill would increase the number of occasions in which emergency procedures would be invoked.

In addition, the scope of S. 594 would not be limited to the transportation industry. The history of labor disputes that threaten the health or safety of the country strongly indicates that the transportation industry is the critical area where a new legislative approach to emergency disputes is needed. Under the Railway Labor Act, there have been four occasions in the past seven years, twice in the last year, when Congress has been forced to take action to avert Nationwide railroad strikes. Even under the Taft-Hartley Act there have been eight instances, out of the 29 in which the machinery was invoked, where a settlement was not reached within the 80-day cooling-off period, and all these instances of failure involved the transportation industries.

S. 832 (Williams-Kennedy)

The proposal amends section 10 of the Railway Labor Act.

It provides in subsection (d), that following the exhaustion of the procedures of the Act, in disputes where representatives of employees have proposed a change in an agreement affecting rate of pay, rules or working conditions, they may selectively strike any carrier without concurrently striking other carriers to whom such proposal was also directed.

In addition to affirming the right to engage in a selective strike, subsection (d) defines the limits of a selective strike. It provides that a selective strike can involve no more than three carriers in each region, and not more than 40 percent of the freight capacity in any region based on the tonnage in the preceding calendar year. The regions are defined in terms of the eastern, the western and southeastern, as used by the Eastern, Western and Southeastern Carriers' Conference Committee.

The bill provides in subsection (e) for partial operation of the struck carriers; that transportation requirements for the protection of the national safety or health including but not limited to, transportation of defense materials, coal for the generation of electricity, and the continued operation of commuter and other passenger service, must be provided. The determination would be left to the Secretary

of Transportation after consultation with the Secretaries of Labor and Defense.

Subsection (c) of the bill allows the carrier to put into effect its proposals, following the exhaustion of the procedures of the Act, subject to two exceptions, (1) if the changes proposed by the carrier are in response to, or are in anticipation of proposals made by the union, the carrier would not be permitted to put its proposals into effect, unless it were struck by the union, or (2) the carrier would not be permitted to impose its proposed change if the action is not permitted by other provisions of the Railway Labor Act.

In subsection (b) the bill states the general proposition that the carrier cannot diminish its transportation service in consequence of any labor dispute subject to this Act unless it is caused to by a complete or partial strike, and then only as permitted by notice and other provisions of an agreement.

Subsection (f) provides an assurance that nothing, except that which was specifically provided in the section, shall diminish the right to strike.

Section 2 states that the Act shall take effect when enacted.

S. 832 does not provide the President with a choice of options. S. 832 provides that a selective strike may be initiated -- subject to stated limits of its scope -- without any prior examination. After its initiation it would fall upon the Secretary of Transportation to limit it or to order partial operations, in the national interest. We believe that

the best way to regulate selective strikes to protect the public interest is for Congress to set up a permanent mechanism so that in each case there would be a determination as to the acceptable limits for the strike action.

Finally, S. 832 apparently creates a disequilibrium on the side of the unions by restricting work rule changes and barring lockouts when a selective strike is called. We believe any successful bill must create a balance of economic pressures which gives neither party an advantage.

Since the introduction of this bill, the Court of Appeals for the District of Columbia has ruled -- and the Supreme Court has refused to review the ruling -- that a union could not be enjoined from striking selected carriers to pressure all, with the goal of reaching a multi-employer settlement.

S. 2060 (Dominick)

The bill provides a mechanism for settlement of labor-management disputes in the airline and railroad industry, as well as a revision of other provisions of the Railway Labor Act.

Where the National Mediation Board fails to resolve a dispute, it must notify the Secretaries of Labor, Commerce and Transportation, who appoint an ad hoc transportation labor panel to recommend one of the following procedures:

1. take no further action,
2. appoint a fact-finding board to make non-binding recommendations,
3. refer the dispute to binding arbitration, or
4. submit it to final offer selection procedure.

The Secretaries must either accept the panel's recommendation or choose a different option.

The bill would also abolish the National Railroad Adjustment Board and set up a system of special boards of adjustment, prohibit any use of the ratification procedure as a condition precedent to a valid collective bargaining agreement, eliminate the secondary boycott and eliminate the requirement that the NMB proffer arbitration as a last resort.

Experience under both Taft-Hartley and the Railway Labor Act indicates emergency disputes in all transportation industries, not only the two covered by this bill, may be troublesome and protracted.

S. 2060 would repeal the emergency disputes provision of the Railway Labor Act (section 10) which authorizes the NMB to notify the President when a dispute threatens substantially to interrupt interstate commerce so as to deprive any section of the country of essential transportation services. It would replace it with a system which would be invoked automatically whenever the NMB failed to resolve any dispute in the railroad or airline industry. Thus every dispute that remains unsettled, regardless of whether an emergency is involved, would be subject to the revised section 10.

Although S. 2060 provides an arsenal of weapons, the inclusion of compulsory arbitration exerts an adverse influence on the bargaining positions so that the anticipated arbitrator's compromise will be favorable.

S. 2369 (Senator Fannin)

This bill would amend the LMRA to provide that the Attorney General would be required to move for discharge of an emergency disputes injunction only after a settlement of the dispute had been reached.

We think new emergency disputes legislation should be limited to disputes in the transportation industry. The present structure of the Taft-Hartley Act has worked well in national emergency situations in other industries, and we see no compelling reason to change it.

The bill relies exclusively on forcing the parties to go on indefinitely without change in the status quo until agreement is reached. This approach seems less likely to induce settlement than the more flexible options offered by other proposals, and raises other issues that would require study.

S. 2583 (Sen. Miller)

This bill would amend the national emergency provisions of LMRA to substitute a new test for coverage. The test would be whether a strike or lockout is in an industry affecting commerce and imperils the health and safety of the Nation or any major region.

This bill lacks many useful features present in other proposals, such as provision for a number of optional means to deal with emergency disputes.

S. 2655 (Stafford)

This bill would amend the Railway Labor Act by providing a mechanism for settlement of emergency disputes in the railroad and airline industry when a work stoppage "threatens substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation."

The mechanism would give the President three options, after a 60-day cooling-off period. The President could:

- (1) allow a selective strike, with the provision that transportation services that are essential to the national health or safety are provided;
- (2) extend the cooling-off period 30 days;
- (3) invoke final-offer selection, whereby a panel would select without alteration the most reasonable offer of the parties as a final and binding contract.

Initially, the President is required to use the selective strike option unless such a strike or strikes would endanger the health and safety of the Nation. However, the President is allowed to pyramid options, that is, use more than one option in an emergency situation.

S. 2655 provides a package of Presidential options.

This bill would amend the Railroad Labor Act rather than Taft-Hartley and it applies only to railroads and airlines.

We favor applying emergency disputes legislation to all transportation industries. A major shutdown in any of the transportation industries--rail, airline, trucking, maritime or longshore--could damage the very fabric of the national economy and bring economic life close to a standstill.

As recent events have indicated, maritime disputes as well as rail disputes are capable of disrupting our economy. We would conclude that no transportation industry is immune from this type of disruption.

Another significant difference is that S. 2655 provides that the selective strike option--with specific limitations on scope of allowable strike--must be used initially by the President, unless national health and safety would be imperiled by doing so. In my view, placing the selective strike option in a preferred position would detract from one of the basic purposes of providing options for the President--to create uncertainty as to the type of Government intervention. I believe a "partial operation" option as in the Administration bill, which include controlled selective strikes, allows a wider variety of possible economic pressure. I believe that the best way to regulate selective strikes to protect the public interest is for Congress to set up a permanent mechanism so that in each case there would be a determination as to the acceptable limits for the strike action.

With respect to the pyramiding of options which is contemplated in S. 2655, I think there is a consensus in Congress that no dispute should be referred to it for settlement, and accordingly will support provisions to guarantee that end.

I would note that Congressman Harvey has introduced in the House a series of bills similar to S. 2655.

S. 2836 (Inouye)

S. 2836 is directed to the State of Hawaii and its needs during strikes, lockouts, or other forms of labor strife or discord in either the maritime or longshore industry, or both industries, when the major seaports of Hawaii or the U.S. West Coast are disrupted.

Thirty days after the major seaports of either Hawaii or the West Coast are obstructed or closed, the Governor of Hawaii may request the President to provide remedial assistance to the people of the State.

The President is required to comply immediately with the request of the Governor.

Although we are very much aware of the failure of current law to meet Hawaii's urgent needs, we feel that this problem should be dealt with as part of a single piece of legislation dealing comprehensively with the emergency disputes problem. Since it is possible that the criteria that would generally apply for application of emergency disputes law would not be satisfied in situations where the harm to Hawaii clearly justifies relief, we would support provisions to accommodate such special situations.

S. 2959 (Taft)

This emergency disputes bill would amend the Taft-Hartley Act, making some fundamental changes and applying its provisions to all industries affecting interstate commerce. It repeals section 10 of the Railway Labor Act.

The bill eliminates the initial 80-day injunction in Taft-Hartley. It provides that the President can appoint a Board of Inquiry when the national or regional health or safety is imperiled. After the board reports, the Secretary of Labor may invoke one or more of the following alternatives:

1. a 30-day cooling-off period
2. partial operation of the industry concerned
3. final offer selection
4. an injunction similar to Taft-Hartley

The bill (similar to S. 1093 (Taft)) would permit an employer to amend or abolish work rules affecting operating employees without resort to collective bargaining, subject to the condition that cost savings be shared equally with the employees and that reduction of employees be accomplished by attrition.

The payment to the employees must be made no later than four months after the close of the fiscal year.

S. 2959 provides a package of options intended to stimulate bargaining during the initial phase of a dispute and provides a choice of tactics in each work stoppage.

The scope of S. 2959 would not be limited to the transportation industry. The history of labor disputes that threaten the health or safety of the Nation strongly indicates that the transportation industry is the critical area where a new legislative approach to emergency disputes is needed. Under the Railway Labor Act, there have been four occasions in the past seven years, twice in the last year, when Congress has been forced to take action to avert nationwide railroad strikes. Even under the Taft-Hartley Act there have been eight instances, out of 29 in which the machinery was invoked, where a settlement was not reached within the 80-day cooling-off period, and all these instances of failure involved the transportation industries.

In the context of broad coverage to reach certain disputes that are mainly confined to particular regions, it is probably preferable for the Secretary of Labor to be involved in the details of providing appropriate options rather than the President. However, I do not believe that this is a crucial point. Further, we believe that serious consideration should be given to providing an independent source of information and expert counsel concerning the appropriate choice of options to whatever official is making that choice.

While use of the Taft-Hartley 80-day injunction as a separate option rather than a condition precedent to invoking other options is an interesting concept, some technical aspects of this provision need more study before we can reach a final position on it.

With respect to pyramiding the options, we believe there is a consensus in Congress that unresolved disputes must never be referred to the legislative branch for settlement. Therefore, we would support provisions to guarantee the options will be carried to finality.

I also share the concern expressed in S. 2959 over Taft-Hartley's failure to deal with regional disputes. I am receptive to whatever changes may be necessary to clarify application of emergency disputes provisions to crises centered on particular regions, but having ramifications that extend much further in the Nation. In addition, some provisions should be made for special problem situations such as that of Hawaii.

Finally, the unilateral revision of work rules by employers, as provided in S. 2959, is a major step away from the traditional concept of collective bargaining. I am aware that many work rules still in effect have become outmoded by changing situations, and hamper efforts to achieve necessary productivity. However, until it has been proven that collective bargaining can not handle the problem of updating such work rules, I am opposed to removal of

that important area from collective bargaining negotiations. Further, I believe that adding this controversial provision to emergency disputes legislation would make it impossible to obtain the prompt action that the transportation labor situation clearly calls for.

BASIC DIFFERENCES BETWEEN S. 560 (ADMINISTRATION) AND S. 2959
(TAFT) EMERGENCY DISPUTES BILL

	S. 560	S. 2959 (Taft)
Industry Covered	All transportation industries, railroad, airline, trucking, maritime and longshore	Applies to all industries
Criteria for Federal Action	Workstoppage that imperils the national health or safety	Workstoppage that imperils national or <u>regional</u> health or safety or essential transportation services
Preliminary Federal Action	An 80-day injunction under existing law	Eliminates the preliminary 80-day injunction under Taft-Hartley
Alternative Options	<ol style="list-style-type: none"> 1. Additional 30-day cooling-off period 2. Partial operations 3. Final offer selection 	Adopts with some modifications, the three options of S. 560 but provides that the Secretary of Labor may invoke them. Adds an additional option-an 80-day injunction may be sought in Federal District Court to stop a strike or lockout. Permits pyramiding.
Employer Abolishment of Certain Work Rules	No provision	Permits the employer to abolish work rules affecting operating employees that do not involve safety or health with the proviso that the profit be shared equally with operating employees and that no job can be lost except by attrition
Railway Labor Act Reform	Provides for substantial revision	No provision

(Whereupon, at 12:05 p.m., the hearing was adjourned subject to the call of the Chair.)



