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NATIONAL EMERGENCY DISPUTES, 1971–72

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON
OR 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

March 3, 8, 14, 21, 28, 29, and April 6, 1972

PART 3

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

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
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U.S. GOVERNMENT PRINTING OFFICE

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NATIONAL EMERGENCY DISPUTES, 1971–72

FRIDAY, MARCH 3, 1972

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

The subcommittee met, pursuant to call, at 10:15 a.m. in room 4232, New Senate Office Building, Senator Harrison A. Williams, Jr. (chairman of the committee) presiding.

Present: Senators Williams, Hughes, Nelson, Javits, Schweiker, and Packwood.

Staff members present: Robert E. Nagle, general counsel; and Eugene Mittelman, minority counsel.

The CHAIRMAN. We will convene this Subcommittee on Labor hearing on emergency labor disputes.

Since our last hearing two new bills dealing with emergency disputes have been referred to this committee. These are S. 3232, introduced by Senator Packwood, and S. 3243, introduced by Senator Stafford. Both bills will be included at this point in our record.

(A copy of the bills referred to follow:)

92D CONGRESS
2D SESSION

S. 3232

IN THE SENATE OF THE UNITED STATES

FEBRUARY 24, 1972

Mr. PACKWOOD (for himself, Mr. ALLOTT, Mr. BAKER, Mr. BEALL, Mr. BELLMON, Mr. BENNETT, Mr. BROCK, Mr. COOPER, Mr. COTTON, Mr. CURTIS, Mr. DOLE, Mr. DOMINICK, Mr. EASTLAND, Mr. FANNIN, Mr. FONG, Mr. GOLDWATER, Mr. GRIFFIN, Mr. HANSEN, Mr. HRUSKA, Mr. JORDAN of Idaho, Mr. MCCLELLAN, Mr. ROTH, Mr. SAXBE, Mr. SCOTT, Mr. TAFT, Mr. THURMOND, Mr. TOWER, Mr. WEICKER, and Mr. YOUNG) introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Transportation Crisis Prevention Act of 1972".

CONGRESSIONAL FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds—

(1) that present procedures for dealing with national emergency disputes under the Railway Labor Act

tend to encourage resort to governmental intervention in such disputes rather than utilization of the collective-bargaining processes to solve labor-management disputes;

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

(b) The Congress declares it to be the purpose and policy, through the exercise by Congress of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare, to assure so far as possible that no strike or lockout in the transportation industry or a substantial part thereof will imperil the national health or safety or the health or safety of a substantial sector of the Nation—

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

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

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

(4) by providing the President with appropriate

means for dealing with transportation emergency disputes;

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

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

TITLE I—AMENDMENTS TO THE LABOR-MANAGEMENT RELATIONS ACT, 1947, RELATING TO EMERGENCY DISPUTES IN THE TRANSPORTATION INDUSTRY

SEC. 101. (a) Title II of the Labor-Management Relations Act, 1947 is redesignated as title II, part A.

(b) (1) Section 206 is amended to read as follows:

"SEC. 206. Whenever in the opinion of the President of the United States, a threatened or actual strike or lockout affecting 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, will, if permitted to occur or to continue, imperil the national health or safety or, when the strike or lockout is in an indus-

try subject to part B of this title, imperil the health or safety of a substantial sector of the Nation, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. Such report shall include a statement of the facts with respect to the dispute, including each party's statement of its position but shall not contain any recommendations. The President shall file a copy of such report with the Service and shall make its contents available to the public."

(2) Section 208 (a) is amended to read as follows:

"SEC. 208. (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 lockout or the continuing thereof and if the court finds that such threatened or actual strike or lockout—

"(1) 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

"(2) if permitted to occur or to continue, will (i) imperil the national health or safety or (ii), when the

strike or lockout is in an industry subject to part B of this title, imperil the health or safety of a substantial sector of the Nation.

it shall have jurisdiction to enjoin any such strike or lockout, or the continuing thereof, and to make such other orders as may be appropriate: *Provided*, That when such petition is sought to enjoin a strike or lockout in an industry subject to part B of this title it shall be heard and determined by a three-judge district court in accordance with section 2284 of title 28, United States Code."

(3) Section 208 (c) is amended by substituting a semicolon for the period at the end thereof and adding the following: "except that where the proviso in section 208 (a) is applicable, appeal shall be to the United States Supreme Court in accordance with section 1253 of title 28, United States Code."

(4) Section 209 (a) is amended to read as follows:

"SEC. 209. (a) Whenever a district court has issued an order under section 208 enjoining acts or practices which imperil or threaten to imperil the national health or safety, or imperil the health or safety of a substantial sector of the Nation, it shall be the duty of the parties to the labor dispute giving rise to such order to make every effort to adjust and settle their differences, with the assistance of the Service

created by this Act. Neither party shall be under any duty to accept, in whole or in part, any proposal of settlement made by the Service."

(c) Section 212 is hereby repealed.

SEC. 102. Title II of the Labor-Management Relations Act, 1947, is hereby further amended by adding a new part II B at the end of part II A to read as follows:

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

"APPLICABILITY OF THIS PART

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

"SEC. 214. (a) If no settlement is reached before the injunction obtained pursuant to section 208 of this Act is discharged, the President may, within ten days, invoke any of the procedures set forth in section 217, 218, or 219. The President may proceed under these sections in such sequence as he may deem appropriate until it is certified by the Secretary of Labor that the dispute is settled: *Provided, however,* That the President may only invoke the procedures of a new section immediately upon the termination of the procedures of the previously invoked section and that the procedures of a section may be invoked only once during a dispute.

"(b) The President may, if he deems it consistent with the purposes of this Act, terminate any procedures invoked under section 217 or 218. He may thereafter proceed under another of sections 217, 218, or 219.

"(c) If the procedure set forth in section 219 is invoked, the President may not, in the same dispute, invoke subsequently the procedures of section 217 or 218.

"SEC. 215. The President shall immediately notify the Congress of each choice of procedure, unless the Congress has adjourned or is in a recess in which such case notice shall be transmitted as soon as Congress reconvenes.

"SEC. 216. If the President does not choose to invoke any of the procedures set forth in sections 217, 218, and 219 of this Act, the President shall submit to the Congress a supplemental report including such recommendations as he may see fit to make.

ADDITIONAL COOLING-OFF PERIOD

"SEC. 217. The President may direct the parties to the controversy to refrain from making any changes, except by agreement, in the terms and conditions of employment for a specified period of not more than fifteen days from the date of his direction. During such period, the parties shall continue to bargain collectively and shall engage in no strike, lockout, or similar activity. The board of inquiry may continue to mediate the dispute with the assistance of, and in

close coordination with, the director of the Federal Mediation and Conciliation Service.

PARTIAL OPERATION

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

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

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

"(b) (1) If the board makes a determination that there are conditions under which a partial strike or lockout can take place in accordance with the criteria specified in subsection (a), it shall issue an order specifying the extent and conditions of partial operation that must be maintained. The board shall make reasonable efforts to assure that no greater economic burden is placed on any party than that which would be caused by a total cessation of operations.

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

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

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

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

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

"(f) Until the board makes its determination and during any period of partial operation ordered by the board no change, except by agreement, shall be made in the terms and conditions of employment, and no strike, lockout, or similar activity shall take place except as may be provided

by order of the board. If the board determines that the implementation of any particular term of the existing terms and conditions of employment is inconsistent with the conditions of partial operation, it may order the suspension or modification of that term but only to the extent necessary to make it consistent with the conditions of partial operation.

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

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

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

"(3) PARTICIPATION BY BOARD IN THE HEARING.—

The board, or any member thereof, may, on its own initiative, at such hearing, call witnesses and introduce documentary or other evidence, including a plan for partial operation, and may participate in the examination of witnesses for the purpose of expediting the hearing or eliciting material facts.

"(4) PARTICIPATION BY PARTIES IN HEARING.—The parties, the Government, or their representatives shall be given reasonable opportunity; (A) to be present in person at every stage of the hearing; (B) to be represented adequately; (C) to present orally or otherwise any material evidence relevant to the issues including a plan for partial operation; (D) to ask questions of the opposing party or a witness relating to evidence offered or statements made by the party or witness at the hearing, unless it is clear that the questions have no material bearing on the credibility of that party or witness or on the issues in the case; (E) to present to the board oral or written argument on the issues.

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

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

"(7) REQUESTS FOR THE PRODUCTION OF EVIDENCE.—The board shall have the power of subpena. It shall

request the parties to produce any evidence it deems relevant to the issues. Such evidence should be obtained through the voluntary compliance of the parties, if possible. In case of refusal to obey a subpena, the board may request the Attorney General to invoke the aid of any district court of the United States or the United States courts of any territory or possession within the jurisdiction of which such person is found or resides or transacts business and such court shall have jurisdiction to issue to such person an order requiring such person to appear or to produce evidence, if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

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

"(i) (1) Members of the Board shall receive compensation at the per diem equivalent of the rate for GS–18 when engaged in the work of the Board as prescribed by this Act, including travel time, and shall be allowed travel expenses and per diem in lieu of subsistence as authorized by law (5 U.S.C. 5703) for persons in the Government service em-

ployed intermittently and receiving compensation on a per diem, when actually employed, basis.

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

"FINAL OFFER SELECTION

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

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

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

"(b) The parties shall continue to bargain collectively for a period of five days after they receive the other parties'

offers. The Secretary of Labor may act as mediator during the period of the final offer selection proceedings.

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

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

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

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

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

"(2) the thirty-day period in which the panel shall complete its hearings and reach its determination shall run from the time that the President directed the parties to submit final offers, but in no case shall the panel close the hearing until five days from the date of its appointment as provided in subsection (c) herein.

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

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

"(i) The panel shall entertain applications for intervention from any persons asserting an interest because of a conflicting claim to all or any portion of the work involved in the dispute subject to these proceedings. Such application must be filed within five days from the time of appointment of the panel as provided in subsection (c) herein. The panel, thereafter, may, in its discretion allow such applicant to participate in the hearings, under rules established by the panel, solely for the purpose of presenting views in support of either of the final offers previously submitted.

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

"(k) The panel shall not compromise or alter the final

offer that it selects. Selection of a final offer shall be based on the content of the final offer and no consideration shall be given to, nor shall any evidence be received concerning, the collective bargaining in the dispute, including offers of settlement not contained in the final offers.

"(l) The panel shall select the most reasonable, in its judgment, of the final offers submitted by the parties and shall state, in writing, the reasons for its selection. The panel may take into account the following factors:

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

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

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

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

"(5) The views in support of either final offer of

any additional persons permitted to intervene in the proceedings as provided by subsection (i) herein; and

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

"(m) The final offer selected by the panel shall be deemed to represent the contract between the parties, except to the extent that any provision is determined, under appropriate procedures, not to be in accordance with applicable law.

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

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

"(b) A vacancy on any such board or panel shall not impair the right of the remaining members to exercise all of the powers of such board or panel. In the case of a vacancy due to death or resignation, the President may appoint a successor to fill such vacancy.

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

TITLE II—AMENDMENTS TO THE RAILWAY LABOR ACT

SEC. 201. Subject to the provisions of section 202 (b) of this title, the National Mediation Board is abolished, and its functions shall be assumed and carried out by the Federal Mediation and Conciliation Service and the National Labor Relations Board, as specified in subsections (f) and (g) of section 202 of this title.

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

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

"Seventh. No carrier, its officers or agents, or representatives shall change or seek to change the rates of pay, rules, or working conditions as embodied in agreements or arrangements except in the manner prescribed in such agreements and in title 1, section 6 of this Act, as amended."

(b) Section 3 first (i) of title I is amended by striking the period following the words "upon the disputes" and inserting thereafter: ": *Provided, however*, That all such disputes shall no longer be referred to the Adjustment Board commencing sixty days after the effective date of this amendment to the Act.

"All such disputes which are not so referred within such period and all such disputes arising thereafter shall be sub-

mitted to arbitration in accordance with the following procedure. Upon failing to reach a satisfactory adjustment at the level of discussion hereinbefore mentioned, the parties shall within five days seek to reach mutual agreement on the selection of an arbitrator. If the parties fail to reach agreement within such period, the Federal Mediation and Conciliation Service shall submit to the parties a list of five qualified arbitrators. Each party shall alternately reject a different arbitrator named on the list until one arbitrator remains who shall thereupon arbitrate the dispute. To the extent that the parties are unable to agree to the rules for arbitration, including the distribution of costs, the arbitrator shall make all necessary rules therefor.

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

"The aforementioned method of arbitration shall prevail with respect to such disputes until such time as the collective bargaining agreements between the parties contain no-strike, no-lockout clauses and provisions for grievance machinery terminating in final, binding arbitration.

"The Adjustment Board shall be dissolved after it has processed to completion all of the disputes before it or upon two years from the effective date of this amendment to the

Act, whichever first occurs. If all the disputes before the Adjustment Board have not been processed to completion by the time of the Board's dissolution date, all such disputes shall be removed by the grievant to the arbitration process hereinabove described.

"The National Mediation Board shall continue to carry out such of its functions and duties as are required by the existence of the Adjustment Board until the Adjustment Board has been dissolved as provided in this section. At such time the National Mediation Board shall be dissolved."

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

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

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

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

(e) Section 4 second of title I is amended by striking the word "mediation" in the third sentence of paragraph second and inserting the word "representation."

(f) Section 4 fifth of title I is amended to read as follows:

"Fifth. The National Labor Relations Board shall assume and carry out all functions of the National Mediation Board relating to the determination of bargaining representatives, including duties particularized in title I, section 2 eighth and ninth of this Act, as amended."

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

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

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

"Eighth. All unexpended appropriations for the operation of the National Mediation Board that are available at the time of the dissolution of the Board shall be apportioned between the National Labor Relations Board and the Fed-

eral Mediation and Conciliation Service by the President according to the relative needs of each based on the division of functions prescribed herein."

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

"SEC. 6. Carriers and representatives shall give the other at least sixty days written notice of an intended modification of termination in agreements or arrangements affecting rates of pay, rules, or working conditions. The party desiring such change or termination shall simultaneously notify the Federal Mediation and Conciliation Service of the existence of the dispute. Upon notification, the Federal Mediation and Conciliation Service shall commence appropriate mediation efforts. The parties shall continue in full force and effect, without resorting to strike or lockout or other economic coercion, all the terms and conditions of the existing agreement or arrangement for a period of sixty days after such notice is given or until the expiration date of the agreement containing the rates of pay, rules, or working conditions sought to be changed, provided such agreement exists, whichever occurs later.

"With respect to rates of pay, rules or working conditions for which there exists no fixed expiration date, the time for serving the sixty-day notice in the first instance, and the first instance only, shall be established by agreement of the parties to the arrangement; if they cannot

agree, the party seeking to serve the sixty-day notice may invoke the arbitration procedure prescribed in section 3 first (i), as amended, in order to fix the date on which such notice may be served. In making his decision, the arbitrator shall take into account the probable intention of the parties as revealed by custom and practice with respect to past adjustment of rates of pay, rules or working conditions. In no case, however, shall the arbitrator decide that the time for serving the first sixty-day notice shall be more than two years after the enactment of this amendment to the Act.

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

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

(j) Section 202 of title II is amended (1) by striking the words ", except section 3 thereof,", and (2) by adding the following language after the end of the first sentence therein:

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

(k) Section 204 of title II is amended by striking the period following the words "upon the disputes" at the end of the first sentence and inserting thereafter ": *Provided, however,* That if the parties, by mutual agreement elect to discontinue referrals to such adjustment boards and such election has been certified by the Secretary of Labor, no such disputes shall be referred to an adjustment board but shall thereafter be handled through arbitration in the manner specified in title I, section 3 first (i) as amended. Notwithstanding any other provision of this Act, the costs of adjustment board procedures and the compensation of all board members shall be borne entirely by the carriers and labor organizations involved and upon dissolution of the National Mediation Board, its responsibilities and functions in relation to the selection of members of adjustment boards shall be transferred to the Federal Mediation and Conciliation Service. Upon election of the parties to discontinue referrals to adjustment boards and certification of the Secretary of Labor as provided in this section, existing adjustment boards shall be dissolved after they have processed to completion all of the disputes before them.

TITLE III—SPECIAL INDUSTRIES COMMISSION

SEC. 301. The National Special Industries Commission is hereby established. The Commission shall be composed of seven members all of whom shall have a background by reason of education or experience in labor relations.

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

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

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

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

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

(3) the administration, operation, and possible need for revision of this Act and its effect on collective bargaining strikes, or lockouts affecting an entire industry or region or substantial portion thereof;

(4) the adequacy of current legislation in encouraging workrule arrangements that maximize productivity;

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

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

(e) In carrying out its duties, the Commission or any duly authorized subcommittee thereof, is authorized to hold such hearings or investigations, to sit and act at such places and times, to require by subpena or otherwise the attendance of such witnesses and production of such books, papers, and documents, to administer such oaths, to take such testimony, to procure such printing and binding, to make such expenditures as it deems advisable. The Commission may make such rules respecting its organization and procedures as it deems

necessary: *Provided, however,* That no recommendation shall be reported from the Commission unless a majority of the Commission assent. Subpenas may be issued over the signature of the chairman of the Commission or by any member designated by him or by the Commission, and may be served by such person or persons as may be designated by such chairman or member. The chairman of the Commission or any member thereof may administer oaths to witnesses. The cost of stenographic services shall be fixed at an equitable rate by the Commission. Members of the Commission, and its employees and consultants, while traveling on official business for the Commission may receive either a $50 per diem allowance or their actual and necessary expenses provided an itemized statement of such expenses is attached to the voucher.

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

SEC. 302. The Commission shall, within a period of two years from the date of the appointment of its members, report to the President concerning its findings. Such report shall also contain any recommendations for dealing with

problems caused by any weaknesses in the collective bargaining process, including any recommendations for legislation which the Commission deems necessary to the solution of such problems. The Commission may also recommend, if it deems if advisable, legislation to bring other industries within the coverage of part B of title II of the Labor-Management Relations Act, as amended.

TITLE IV—MISCELLANEOUS PROVISIONS

SUITS BY AND AGAINST REPRESENTATIVES

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

(b) Any representative of employees, as defined in the Railway Labor Act, and any carrier or common carrier by air, as defined in the Railway Labor Act, shall be bound by the acts of its agents. Any such representative may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against such representative in a district court of

the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

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

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

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

REPEAL

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

INAPPLICABILITY OF THE NORRIS-LA GUARDIA ACT

SEC. 403. The provisions of the Act of March 23, 1932, entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", shall not be applicable to any judicial proceeding brought under or to enforce the provisions of this Act.

RIGHTS OF EMPLOYEES

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

RAILROAD UNEMPLOYMENT INSURANCE

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

APPROPRIATIONS

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

SEPARABILITY

SEC. 407. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

92D CONGRESS
2D SESSION

S. 3243

IN THE SENATE OF THE UNITED STATES

FEBRUARY 25, 1972

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

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Railway Labor Act, as amended (45 U.S.C. 151), is hereby amended by redesignating sections 11 to 14, inclusive, as sections 14 to 17, respectively, and by inserting the following new sections 11, 12, and 13:

"SETTLEMENT OF EMERGENCY DISPUTES

"SEC. 11. (a) (1) If the parties to a dispute do not reach agreement during the thirty-day period following the

making of a report by a board appointed under section 10, the representative of the employees affected by the dispute may selectively strike any of the carriers or carrier systems to whom such proposal was directed without concurrently striking other carriers to whom such proposal was also directed and who may have been jointly or concurrently involved with the struck carrier or carriers in the previous handling of the dispute under this Act.

"(2) For purposes of this section, a selective strike in the railroad industry means (A) a strike of not more than one carrier operating in each of the eastern, western, and southwestern regions are struck, (B) a strike of two or more carriers or groups of carriers operating in a system in any one of the eastern, the western, or the southeastern regions are concurrently struck and the aggregate revenue ton-miles transported by all such carriers in any one region who are concurrently struck did not in the preceding calendar year exceed 30 per centum of the total revenue ton-miles transported by all carriers in such regions in such year. If only one railroad carrier is struck in any one region, the revenue ton-miles limitations shall not apply in that region. The eastern, the western, and the southeastern regions as used herein mean, respectively, the carriers represented by the Eastern, Western, and Southeastern Carriers Conference

Committees and any other carriers operating in the territories in which such carriers respectively operate.

"(3) For the purpose of this section a selective strike in the airline industry means a strike of two or more carriers whose total aggregate revenue-passenger miles do not in the preceding year exceed 30 per centum of the total revenue-passenger miles for the United States.

"(b) If the parties to a dispute do not reach agreement during the thirty-day period following the making of a report by a board appointed under section 10, the carrier or carriers to the dispute may make changes in terms and conditions of employment effective without agreement: *Provided,* That such changes were originally proposed in accordance with section 6 of this Act by such carrier or carriers.

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

"(d) In any dispute subject to the provision of this section, any agreements affecting rates of pay, rules, or working conditions between the employees or their representatives and any carriers which have been struck under this section shall be immediately offered jointly, without change, to all carriers who have been jointly or concurrently involved in the previous handling of the dispute under this Act. If all such carriers do not, within ten days after any such offer, jointly accept such agreements without change, the agreements shall be then offered, individually, to each such carrier. If any such carrier does not, within ten days after having received such individual offer, individually accept such agreements without change, the employees affected by the dispute may selectively strike such carrier, subject to the limitations specified in subsection (a) of this section.

"SEC. 12. (a) Whenever, in the opinion of the President of the United States, a threatened or actual work stoppage, if permitted to occur or to continue, will—

"(1) imperil the national health or safety; or

"(2) interrupt interstate commerce so as to deprive any section of the country of essential transportation service to an extent beyond that permitted by section 11(a);

he may direct the Attorney General to petition any district

court of the United States having jurisdiction of the parties to enjoin such work stoppage or the continuation thereof.

"(b) Upon the filing of a petition under section 12 (a), the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, subject to the limitations set forth in section 11 (a), and to make such other orders as may be appropriate.

"(c) In any proceeding brought under this section, the provisions of the Act of March 23, 1932, entitled, "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", shall not be applicable.

"(d) The order or orders of a district court of the United States issued under this section shall be subject to review by the appropriate United States court of appeals and by the Supreme Court of the United States upon writ of certiorari or certification in accordance with section 1254 of title 28, United States Code.

"SEC. 13. (a) Upon issuance of an order by a district court of the United States enjoining a work stoppage under section 12, the President shall issue an Executive order for the United States to take possession of and operate, in whole or in part, any carrier involved in the dispute in question, and prescribing the operating procedures to be followed by

the parties thereafter and any other actions which he determines to be necessary or appropriate to protect the health and safety of the Nation or that substantial part of the population or territory thereof which is relevant to such labor dispute. Such Executive order shall be in effect for the shortest period of time consistent with the emergency and a resolution of the dispute, and shall (1) provide for the maintenance or resumption of operations and service essential to the national or regional health and safety, (2) encourage resolution of the dispute through collective bargaining, (3) encourage and preserve future collective bargaining with industry affected, and (4) to the extent consistent with meeting the emergency, avoid undue interference with the rights of the parties to the dispute. Such Executive order shall be immediately transmitted to the Congress.

"(b) During any period of Government operation of the carrier under this section, the profits realized (by said carrier) as determined by the Comptroller General of the United States shall be placed in a Labor-Management Trust Fund and notwithstanding any other provision of law, only for carrying out the provisions of this Act.

"(c) The penalty imposed upon the unions directly involved in the strike with the industry shall be the loss of the right to retroactivity in pay and benefits for that period of operation invoked under subsection (a).

"(d) Upon the issuance of an order by a district court of the United States enjoining a work stoppage under section 12, no changes shall be made by the parties to the controversy in the conditions out of which the dispute arose, except by agreement, until the procedures set forth in this section have been completed.

"(e) Upon issuance of the order of the district court under section 12, the parties to the dispute shall immediately resume collective bargaining. The National Mediation Board shall give all reasonable assistance to the parties and shall continue mediatory action directed toward promoting a complete and final voluntary agreement.

"(f) When a voluntary agreement is reached, it shall be filed with the President and the district court having jurisdiction of the parties under section 12. The court shall forthwith issue an order dissolving any outstanding injunction or restraining order and order such other affirmative action as may be appropriate. The President shall take whatever action is necessary to return possession and operation of any carrier taken under section 13 to that carrier.

"(g) Nothing in this section shall be construed to limit the right of any employee to resign from his position of employment."

The CHAIRMAN. Our first witness is Mrs. Helen D. Bentley, Chairman of the Federal Maritime Commission.

STATEMENT OF MRS. HELEN D. BENTLEY, CHAIRMAN, FEDERAL MARITIME COMMISSION; ACCOMPANIED BY ROBERT HOPE, SPECIAL ASSISTANT TO THE CHAIRMAN, AND EDWARD S. JOHNSON, LEGISLATIVE ASSISTANT

Mrs. BENTLEY. Thank you, Mr. Chairman.

The CHAIRMAN. I don't apologize, but I might explain the lack of full attendance. Since the Senate has been in session for this second session, probably 99 percent of the work on the Senate floor has been legislation reported by this committee, including the Equal Employment Opportunity Commission legislation and higher education. We also had the dock strike legislation, and it might well be that members of the committee are catching up on the long overdue routine matters in their offices and other committees, too.

Mrs. BENTLEY. I can fully understand that, Mr. Chairman. I know what the burden is. I am indeed pleased to be here this morning, Mr. Chairman and members of the committee. I am accompanied by my special assistant, Mr. Robert Hope, on my right; and Edward Johnson, legislative assistant at the Federal Maritime Commission.

I am most happy to appear before this committe to offer my views on the need for emergency transportation legislation, a subject on which this subcommittee has already held rather extensive hearings.

I would like to give you a little of my background, Mr. Chairman, so that you will know I am more familiar with this labor picture in the transportation industry than would appear to meet the eye, as Chairman of the Federal Maritime Commission.

I began on the Baltimore Sun in 1945 as a general reporter, and in 1946, I was assigned to the labor beat, covering labor exclusively from 1946 to 1948. In this day of women's lib, it is a good thing to point out that I was the first woman reporter to cover an AFL convention in 1947.

Then I went to the martitime beat and, of course, the maritime industry always has been very full of labor strife and labor problems of all kinds.

During my term of exclusively covering the waterfront for about a decade, I had a great deal to do with the labor picture. Even though I maintained the title of maritime editor of the Baltimore Sun, in 1960 I was assigned not only to that beat, but also was covering the national labor picture for the Baltimore Sun as well as the national transportation picture.

So I have been all the way around the circuit, you might say, in this field, in the transportation picture and the labor picture, and it is one reason I have a deep personal interest in seeing that something is done, because I do feel that our transportation industry has been very hard hit by constant labor interruptions.

I understand that there have been referred for the consideration of this committee nearly a dozen bills to deal with the strikes which have plagued this Nation's transportation industry in one form or another for many years.

Without attempting to enumerate them all, during the past decade we have had major disruptions in the longshore industry in 1962–63 and in 1965, in 1968–69, and, of course, the recent two which commenced on the west coast in July of 1971, and later on the Atlantic and gulf coasts, all involving major longshore strikes.

In each instance, the U.S. Atlantic and gulf coasts have been tied up in the strikes. The west coast has been struck in the more recent transportation crisis. Additionally, lesser disruptions have occurred in the maritime industry, some of which consisted of disputes concerning the officers and crews of U.S.-flag vessels.

Even these latter, although admittedly of lesser impact on our overall economy, have significant adverse effect on shipping and other industries. I would like briefly to identify the principal maritime strikes, beginning in 1962 and up to and including the most drastic ones of 1971.

	Number of days	Nature
Mar. 16 to Apr. 11, 1962	27	Seamen, West Coast.
Oct. 1 to 5, 1962 [1]	5	Longshore, Atlantic-Gulf.
1964—Scattered walkouts commenced later culminating in a general walkout on Jan. 11, ending Mar. 13, 1965.	61	Longshore, Atlantic-Gulf.
June 16 to Aug. 29, 1965 [2]	75	Seamen, Atlantic-Gulf.
Dec. 20, 1968 to Feb. 15, 1969, to Apr. 13, 1969	57–115	Longshore, Atlantic-Gulf.
Nov. 17 to Dec. 21, 1969 [3]	35	Seamen, West Coast.
July 1 to Oct. 6, 1971 [4]	100	Longshore, West Coast.
Oct. 1 to Nov. 26, 1971 [5]	57	Longshore, Atlantic/Gulf.

[1] Interrupted by the Taft-Hartley injunction. The strike resumed on Dec. 24, 1962 and ran until Jan. 27, 1963, for an additional 33 days.

[2] That was the Officers Union. At that time, President Johnson said, "We have entered a new era in the maritime industry." The unions agreed there would be no more interruptions. Unfortunately, that didn't last too long.

[3] All American flag shipping on the West Coast was shut down over the issue of 1 fireman.

[4] The International Longshoreman's Warehouseman's Union on the West Coast.

[5] The Texas ports worked up until Nov. 14, during that period, partly because of the President's freeze, but the other reason was they were retaliating against East Coast Longshoremen for having gone back to work in 1969 when the Gulf ports were still out.

Mrs. BENTLEY. In each of these strikes an entire coast was affected. The first strike in 1962 was a seaman's strike and involved only U.S.-flag ships—therefore the consequential effects upon our economy were not as significant or as disruptive as most of the others, which involved longshoremen and accordingly for all practical purposes brought movement of our waterborne commerce, including both the foreign and domestic offshore trades to a virtual standstill on the affected coasts.

According to the Maritime Administration the recent strikes up to the time the Taft-Hartley injunction became effective have resulted in a loss of earnings in the seafaring and longshore segments of the maritime industry of $105,407,000, exclusive of fringe benefits.

In addition to these strikes, which I categorize as major disruptive ones, there have been numerous actions involving local transportation industries, such as terminals, warehouses, truckers, individual water carriers, and others. Although I have made no attempt to identify these, I do not want to leave the impression that they are not serious or that they do not have some significant impact on our economy. According to a table appearing on page 1247 of hearings before the House Committee on Merchant Marine and Fisheries held during 1963 on identical House bills 1897, 2004, and 2331, concerning strike legislation with respect to the maritime industry, there were 1,510

work stoppages in the water transportation industry during the period 1927 through 1961.

Of these, 667 occurred in the post-World War II period from 1946 through 1961, and idled during the 16-year period in excess of 12 million man-days. When you consider that these man-days are attributable only to time lost by the maritime industry alone and do not take into consideration lost time occasioned in other industries affected by these stoppages, you get some idea of the tremendous impact that strikes in our maritime industry have on our national economy.

I have consistently taken the position that work stoppages in the maritime transportation industry have serious and lasting adverse effects on our overall economy—and when we have such major disruptions as occurred in the Atlantic, gulf and west coasts in 1971, they have a direct and lasting adverse effect on our fourth arm of defense—the American Merchant Marine.

In a recent appearance before the Subcommittee on Merchant Marine of the House Committee on Merchant Marine and Fisheries, I stated that the creation and maintenance of a sensible labor/management relationship so that shipping services can be provided without the costly interruptions occasioned by strikes in the maritime industry is of the utmost importance. I pointed out the almost irreversible shift of shipper ties from American carriers to foreign-flag carriers and the adverse effect on our exports.

In support of its petition seeking an injunction under the Taft-Hartley Act against the International Longshoremen's Association in November 1971, the Department of Justice produced a number of affidavits which had been obtained from Cabinet members and other high-ranking Government officials. Without exception, these affidavits pointed out some of the very serious consequences which followed the ILA's October 1 walkout.

For example, Paul W. McCracken, Chairman of the President's Council of Economic Advisers, assuming a 2-month duration of the strike, estimated a decline from normal levels of exports through the east and gulf ports alone of $2.6 billion, while imports through the same ports would decline by $2.3 billion. Estimating $1.2 billion exports to be made up (or to have been shipped in anticipation of the strike) as against $1.8 billion of imports estimated to be made up or anticipated, Mr. McCracken comes up with a $1 billion unrecoverable adverse impact on our international trade balance.

As of mid-September it was estimated that the west coast strike had already created an unrecoverable loss of $100 million with an additional estimated unrecoverable loss of $80 million if the strike continued through October.

It should be noted that the principal impact from the west coast losses falls upon the agricultural industries. This is so because of a diversification program initiated about 3 years ago by the Japanese to reduce dependence on U.S. shipments and to expand outlets for Japan's manufactured goods. There are alternative sources of agricultural commodities in Australia and Canada.

In this respect I would like to quote in part from the affidavit of the Secretary of Agriculture:

> 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.

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.

In a footnote the Secretary points out that during 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.

Further evidence of the effect of these strikes on our trade balances is found in a telegram of November 24, 1971, to the Maritime Administration, from the president of the Gulfports Agricultural Export Association, which reads in part as follows:

The threat of dock strikes are heavily damaging dollar exports of agricultural commodities. Japan's normal corn and grain sorghum requirements of 777,000 tons per month are usually 70 percent supplied by the United States. On July 30, 1971. Mr. Nubuo Nikki of Marubeni—IIDA, speaking of all Japanese purchasers said:

We made a drastic change in the pattern of feed grain purchase. In case of corn, we covered our October and part of November requirements heavily from outside the United States. We bought 250,000 tons from Thailand, 90,000 tons from Argentina, and South Africa, and 75,000 tons from U.S. Lakehead instead of Gulf. Because of our bitter experiences in the past, we did not take [a] single bushel of corn from the gulf ports during the possible strike period this year.

At a recent Traffic Management Seminar, Mr. John P. Scalley, manager of export traffic distribution services, International Sales Division of General Electric, had the following to say concerning strikes:

One major reason for our overseas marketing problems is that we cannot be confident of our deliveries. We are continuously faced with transportation strikes, delays, uncertainties or congestion. I have a classic letter from an overseas distributor who says, "I've lived through your longshoremen's strikes, your transit strikes, your truck and rail strikes, when are you going to run out of excuses?"

A strike or even the anticipation of a strike, leads customers to consider purchasing locally or buying from the countries that can deliver during anticipated strike periods in the United States. These customers may never come back.

The threat of strikes cause some companies to attempt to build up expensive overseas inventories to ride out the duration of the strike in order not to lose the foreign markets they have been able to penetrate. This is illustrated in the following observation of Mr. Wilton B. Jackson, regional traffic manager, E. I. duPont de Nemours, Inc.:

There is too little recognition of what these waterfront and maritime strikes have really cost us. When you, an exporter, recognize the historic probability of an upcoming strike, you have to plan on an emergency basis to maintain your markets, to hold your competitive position. You cannot afford to lose a market. Therefore, we are all faced with supplying many of our products at a cost penalty of perhaps six to one.

Building inventories overseas involves severe working capital penalties, yet it is absolutely essential to protect the market.

The September issue of Traffic Management contains comments of some prominent companies concerning the effects of strikes—several of which I think are pertinent on this same point.

For instance the director of Export and Marine Services, International Paper Co., points out that although 3 years ago, customers in Europe would await settlement of the strike, today they would cancel out and order elsewhere. Accordingly the International Paper Co.,

maintains up to 2 months' inventory in Europe to preclude disruption in the flow of supplies.

Mr. Arthur Singer, president of Singer Products, Inc., exporters of automotives and electronics equipment, stated that the 1968–69 strike cost his firm a minimum of $1 million as a result of lost business and additional expenses. According to Mr. Singer:

> Much of the business diverted to foreign competition during that period never returned. * * * During that strike, competitors from Germany and Japan seized upon the opportunity to meet our prices, and they grabbed our business. Once they got a taste of it, they never let go—and we suffered that loss ever since.

The policy of the United States, as enunciated in the Merchant Marine Act of 1936, insofar as here pertinent is to foster the development and encourage the maintenance of a merchant marine sufficient to carry its domestic waterborne commerce and a substantial portion of the waterborne export and import commerce of the United States.

I do not believe that there has ever been any exact definition of the word "substantial"—it apparently differs according to the various trades which our ships ply—however, at the time the act was enacted there was aspiration toward a 50-percent goal. Millions upon millions of dollars in Federal aid has been poured into this merchant marine in an effort to achieve those goals.

And with what result? The portion of our foreign commerce transported in U.S.-flag ships, has declined from a very healthy share in the post-World War II period to approximately 5 percent today. We have allowed other countries to take over our trade. To what extent this has come about because of the impact of strikes on our transportation and manufacturing capabilities would be mere speculation—but I would venture to say that strikes have played no small part in this deplorable failure to carry a substantial portion of our export and import commerce in U.S.-flag ships.

In fact, I am sure of it, sir. I have received a number of letters as I have gone around the country talking about the merchant marine, trying to push it. I have had letters from shippers, exporters, and importers who write and say:

> We agree with you that we would like a healthy and viable American Merchant Marine but we have never been able to rely on the delivery of our goods if we ship them on American vessels. Therefore, we don't route them on American ships anymore. We have lost too much money over the years.

An attempt has been made to check the downhill trend of our merchant marine in the comprehensive maritime program envisioned by the Merchant Marine Act of 1970. This act contemplates additions to our fleet at the average rate of 30 new ships a year for the next 10 years—a total of 300 new ships. A goodly number of these ships will be of the new progressive types—the *Lash*, the *Container*, the *Seabee*—all requiring the outlay of a tremendous amount of capital—for both the ships and equipment.

These vessels can be built only if the money can be found to finance them. In the hearings on the Merchant Marine Act of 1970, prominent bankers testified that raising private capital for ship construction in this country is always difficult. Prospective lenders do not believe that American-flag shipping offers a sound investment.

They are concerned with service and stability which certainly is not in evidence in our strikebound maritime industry today.

And it isn't that the financial industry does not like shipping. In Chicago alone, financial institutions have on loan to the Norwegian shipping industry over $900 million for new construction. They do it because they know the Norwegian ships are going to sail.

There has not been a strike on the Norwegian-flag ships since 1921.

Many of our U.S.-flag operators are on the brink of disaster: they are continually fighting a losing battle. Strikes which cause them to lose their cargoes to foreign competitors certainly don't help them in financing new ships. A graphic illustration of this can be found in an article, which appeared in the Journal of Commerce, November 4, 1971.

That article pointed out that at times when certain ports in the Atlantic and gulf range were open during the ILA strike in October and November of 1971, because of sympathy actions of licensed deck officers of the International Organization of Masters, Mates, and Pilots, American vessels were immobilized while their foreign competitors freely moved, loading and discharging their cargoes.

According to the article, at least eight American companies were so affected. It is my understanding that, because of this refusal to work American-flag ships, even cargo which was reserved for carriage in U.S.-flag ships under our cargo preference laws was lost to foreign-flag ships.

Conservative estimates of the loss of revenue to U.S. operators on those shipments alone exceeded $1 million as of October 30. I don't know what the losses on commercial shipments amounted to, but I daresay they were substantial. And even more serious, once you lose a customer, it is always hard to get him back.

If we are going to allow our U.S.-flag operators to be continually pushed to the wall, we are not going to get those 300 ships envisioned by the Merchant Marine Act of 1970 built; there will be no private financing available to help.

I could go on and on and point out to you the many letters or copies of letters which I have received complaining of the strikes and pointing out the serious adverse economic effects on both individuals and to the national economy. Many of these same letters have been submitted to Senators and Members of the Congress, if not to members of this committee, and I assume that they have or will find their way into the record. If they haven't found their way into the record, I will be most happy to see that copies of not only those letters but also copies of the affidavits which I referred to are supplied for the record.

(The information referred to may be found in the files of the subcommittee.)

I believe that what I have recited here is ample to show the serious adverse effects which these strikes have on our economy and to the unfavorable balance of payments.

Every dollar in freight revenues lost by a U.S.-flag carrier to a foreign carrier helps to tip that balance further against the United States. Every dollar in exports lost to a foreign competitor—even if that competitor might be a foreign subsidiary of a U.S. manufacturer—further tips the scale against the U.S. trade balance. And don't forget: once lost, that foreign market is difficult if not impossible to recapture.

Going back to the longshoremen's strike of 1959 and 1956, Mr. Chairman, I can recall when the only concern was how much of the freight that we will lose now will move by air permanently, because it was then that everybody was concerned about what the thrust of airplanes was going to be, et cetera. There wasn't any concern that the United States was going to be bypassed altogether in the marketplace.

It was just how much we were going to lose to another mode of transportation. Nobody thought the day would come when the United States would be totally bypassed in the field of commerce, that they wouldn't have to come to the United States to buy our products.

But that day has arrived, and we are being bypassed every day because of work interruptions and the inability to deliver our goods.

Just one more point. When I was in Japan last year, I think what impressed me the most, aside from the diligence of the people, was that in the Toyota plant, for example, they only kept on hand a 4-hour inventory of components, because they knew those components would arrive. In the shipyards, they only keep on hand a 4-day supply of the big steel plates. Just think what that means in the low-cost production of their merchandise.

I am not going to take your time by trying to analyze and compare the various bills which you have before you. There have been and are expert witnesses who are better qualified to do this than am I. But I do want to emphasize my support for the administration response to this critical problem.

The flexible, multioption approach, which is at the heart of the administration's emergency dispute proposals, would prevent labor disputes in the transportation industry from escalating into crippling labor strife and would enhance the development of peaceful labor relations in the maritime industry.

I urge this committee to give them speedy consideration.

I am indeed sorry of two things on the House side, first of all, that in a bill which they considered they eliminated maritime transportation from the emergency legislation. The second is that the bill was voted down the other day. I think this has a most serious adverse effect on the transportation industry as a whole. I hope the members of this committee will take favorable action on the administration's proposal, by not only passing this bill but making certain the maritime industry also is included therein.

I hope that I have conveyed to you in some small way the extreme seriousness with which I view strikes affecting the national economy. Some measures must be found to deal with them, and I sincerely believe the administration's proposal provides the necessary basis. If I or any of my staff can assist you in any way, with your efforts in this matter, please feel free to call upon us. Thank you.

The CHAIRMAN. Thank you, Mrs. Bentley.

Senator Packwood?

Senator PACKWOOD. You made reference in your prepared statement to affidavits and letters. Could you make copies of those available for the record?

I know what you are talking about in terms of the overseas contracts. During the last days of the second phase of the west coast

strike, Northwestern firms entered into grain contracts with the South Koreans, which were later cancelled, and we lost one specific shipment of 90,000 tons which I know of.

Mrs. BENTLEY. This results in the agricultural products spoiling, too.

Senator PACKWOOD. You have made reference here to support of the administration bill or something like it. Can you picture any bill that will solve the problem, the problem being that we must guarantee continuity of transportation, can you picture a bill that will work without binding arbitration?

Mrs. BENTLEY. No, I can't, Senator Packwood.

Senator PACKWOOD. Any other bill we would pass with factfinding or recommendations but not binding would be nothing but window dressing.

Mrs. BENTLEY. That is right, because you always have the threat of a strike coming up. As long as you have that threat, you are not going to have merchandise moving. In the maritime industry, for example, right now we have a seamen's contract expiring June 15. Under normal conditions, and right now they are not quite normal, but about the 1st of March, American ships begin losing cargo every year in which there is a contract termination pending.

There is a long leadtime in routing cargo, so they are 3 months ahead, and if a strike does not come off, fine, if it does come off, they lose a longer period.

Senator PACKWOOD. This contract is nationwide, as I recall.

Mrs. BENTLEY. Yes, all seamen's contracts expire June 15. I will say this for the maritime unions. They did reach an agreement in Miami that there would be no work interruptions as long as negotiations were underway in good faith.

But there are a lot of qualifications there, too. I know that they feel the severe losses of what strikes have done to the American merchant marine, and I know their intention is good at this point. They really don't want to stop any more. But you always have problems when you are dealing with people. Somebody says negotiations are not in good faith, and there we go.

Who determines what is good faith bargaining? This is why I think they really need protection from themselves.

Senator PACKWOOD. I have no other questions, Mr. Chairman.

The CHAIRMAN. Mrs. Bentley, most of the burden of your statement deals with the effect on the economy of those stoppages in the shipping industry. When we talk about strikes in the shipping industry, they can be either the strikes by seamen, longshoremen, and there have been stoppages because of the executives aboard, the masters and the mates and the pilots; is that right?

Mrs. BENTLEY. We classify them as seamen, Senator.

The CHAIRMAN. The Taft-Hartley law applies to this; does it not?

Mrs. BENTLEY. There is a question whether it refers to the officers unions. When we had a strike of all seamen, the Taft-Hartley law was invoked against all the unions and they did go back to work. But there is still a question as to how much the Taft-Hartley law does apply to, does affect the officers unions, because they are considered management.

That has never truly been clarified.

The CHAIRMAN. Your chronological review of work stoppages starts with March 16, 1962, the seamen's strike on the west coast. You did refer to stoppages prior to that time.

Mrs. BENTLEY. Senator, in 1946 there was a seamen's strike on all coasts and a longshore strike on the west coast. In 1948 there was a longshoremen's strike and a seamen's strike on both coasts. The Taft-Hartley law was invoked then for the first time in the maritime industry, and was invoked against both the longshoremen and the seamen.

In 1951——

The CHAIRMAN. In 1948, if we could pause at that point, Taft-Hartley was invoked?

Mrs. BENTLEY. Yes; for the first time in the maritime industry.

The CHAIRMAN. The 80-day period ran and the strike resumed?

Mrs. BENTLEY. Yes; for 95 days.

The CHAIRMAN. Following the 80-day Taft-Hartley cooling off period?

Mrs. BENTLEY. That is right. That was the last longshore strike on the west coast until last year. They did have 23 years of peace there. Labor and management were progressive, and managed to get through.

The CHAIRMAN. Picking up in 1962 and running to date, how many times was Taft-Hartley invoked in the shipping industry?

Mrs. BENTLEY. I know it has been invoked nine times in the longshoremen industry. I think I am right. I am going from memory now. It was invoked against the seamen in 1962, it was invoked against the longshoremen in 1962. Then that longshoremen's strike resumed on December 23 after the 80 days had expired.

It was invoked in 1961—I am sorry. I am going backward. It was invoked against the longshoremen in 1965. It was not invoked in 1965 against the seamen, because that strike was exclusively by officers unions, and there was a question of whether they could apply it.

So they never went to the wall on that. It was invoked in 1968 against the longshore union. It was not invoked in 1969 against the seamen. That was not a contract strike. It was on one issue. It was invoked against the ILWU last year and against the ILA last year.

Prior to that, it was invoked in 1948, as I said, and also it was invoked in 1956 and 1959 against the ILA.

The CHAIRMAN. Dealing with the seamen part of shipping, it was invoked in 1948 for the first time, and the strike resumed after 80 days.

Mrs. BENTLEY. Yes; I am not clear on exactly what that was. That was a very botched up strike, because you had three segments going at one time. I would have to check that to have the record accurate, Senator.

I would like to do that.

(The information referred to follows:)

BRIEF HISTORY OF THE TAFT-HARTLEY ACT AS INVOKED IN 1948

The Taft-Hartley Act was first invoked in the Maritime Industry in June 1948 against west coast longshoremen, and several seamen's unions in a maritime labor dispute, affecting shipping on the Atlantic, Pacific, and Gulf Coasts and the Great Lakes. The parties participating in this strike were:

International Longshoremen's and Warehousemen's Union (CIO)
National Maritime Union (CIO)

National Union of Marine Cooks and Stewards (CIO)
National Marine Engineers Beneficial Association (CIO)
Pacific Coast Marine Firemen, Oilers, Watertenders & Wipers Association (Independent)
American Radio Association (CIO)
International Brotherhood of Electrical Workers (AFL)

The Board was created June 3, 1948 and issued its initial report June 11, 1948. Temporary 10-day restraining orders were issued June 14, 1948, in New York, San Francisco and Cleveland and again on June 22, 1948, at San Francisco and Cleveland.

Eighty-day injunctions were obtained June 23, 30, and July 2, 1948, at New York, Cleveland, and San Francisco, respectively.

The Board's final report was issued August 14, 1948. By ballot August 30, 31, 1948, the employers' final offer was rejected by the unions. The injunctions dissolved September 1, 1948 for the Atlantic and Gulf Coasts and September 2, 1948 for the West Coast.

Settlement was effected in part with the seamen's unions but the longshoremen resumed strike for three months, September 2 to December 5, 1948, on the West Coast.

Also, during August 1948, the Taft-Hartley Act was invoked against the Maritime Industry involving longshoremen on the Atlantic Coast.

Because of a threatened strike of the International Longshoremen's Association (AFL) on the Atlantic Coast, a Board was created August 17, 1948. Its initial report was issued August 20, 1948 and a ten-day restraining order was issued August 21, 1948, prohibiting strikes and lockouts at Atlantic Coast ports.

An eighty-day injunction was obtained August 24, 1948. The Board's final report was issued October 21, 1948. By ballots on November 4–5, 1948, the employers' final offer was rejected. The injunction was dissolved November 9, 1948, and strike followed lasting to November 28, 1948.

The CHAIRMAN. After that, has the Taft-Hartley Act been effective in this industry to bring settlement?

Mrs. BENTLEY. No, because every time you have had a resumption of the strike.

The CHAIRMAN. Among the seamen?

Mrs. BENTLEY. The seamen? I am sorry. In 1961 when it was invoked, you had a resumption of the strike by a couple of unions after the 80 days expired. Then in 1962 a settlement was reached. There again one union was involved at that time and settlement was reached during that 80 days of Taft-Hartley.

The CHAIRMAN. As far as west coast, now, shifting to longshoremen, the last strike, was this the first that the Taft-Hartley Act had been invoked?

Mrs. BENTLEY. No; in 1948 it was invoked, and they resumed the strike after Taft-Hartley expired and it lasted 95 days.

The CHAIRMAN. Were the longshoremen out with the seamen?

Mrs. BENTLEY. That is what I say. There was a three-part strike going on at that time and the exact dates of each one I don't recall exactly. But here there was an ILWU strike and an ILA strike and seamens strikes all going on, and they started on different dates. Two Taft-Hartleys were invoked, one against the seamen and one against the ILA and—three, I guess, one against the ILWU. That was a three-ring circus then.

The CHAIRMAN. The last strike on the west coast, how many days were the longshoremen out before Taft-Hartley was invoked?

Mrs. BENTLEY. One-hundred days.

The CHAIRMAN. From here, we wondered about that, and what the reasons for delay were.

Mrs. BENTLEY. Well, I think probably what happened after the Taft-Hartley expired, to explain why there was delay, there was

nothing concluded even after the Taft-Hartley had expired and beyond the 3-week extension that the ILWU had given. The timing was not right.

There just wasn't any time. If they had invoked it in July, you would probably have had a strike that began in October and went on for another 100 and some days.

The timing was not right, sir.

I was very close to that situation. I talked to the leaders of the union and management almost every day. I have known them so well for so many years. In labor situations timing is everything, and it would have been a waste of time. It would have been a wasted 80 days.

It was almost a wasted 80 days as it was.

The CHAIRMAN. There was a long period of delay before the Taft-Hartley was invoked?

Mrs. BENTLEY. Yes, it was not invoked for a hundred days.

The CHAIRMAN. Most of your testimony deals with the economic losses, really, that you attribute to these stoppages. On page 4 you indicate that work stoppages in the maritime transportation industry have serious and lasting adverse effects on our overall economy.

I will say that we have read opinion from eminent authorities to the contrary. Secretary of Labor Shultz in his report and analysis of 1970 has said that the longshore strikes which occurred on the east and gulf coast ports during the 1960's, "Had no visible impact on the economy as a whole, industrial production, retail sales, national income, or total employment."

You can see as we evaluate without the benefit of the massive analytical staff that is available to the Secretary of Labor, we see a certain inconsistency here from what you say.

Mrs. BENTLEY. I did not agree with that report when it was issued, and I don't agree with it today. I followed the longshore picture for a long time, and I know what the serious impact was. I am sorry that that report was ever published. I think probably others are, too. [Laughter.]

The CHAIRMAN. We also have had conflicting reports on just what the situation was with respect to the shipment of certain goods during the strike period. Information came to us here that the union made what was described as an honest offer to work on the grain so that the grain would not be tied up and it would continue in commerce.

Mrs. BENTLEY. Which union, sir?

The CHAIRMAN. The longshoremen.

Mrs. BENTLEY. Which one, the ILWU or the ILA?

The CHAIRMAN. The west coast.

Mrs. BENTLEY. During the 100-day shutdown the west coast unions did not offer to remove grain shipments. They moved the Pakistani grain for the relief of the refugees. They did that at my request.

They did not offer to move other grain.

The CHAIRMAN. I had heard they did make an offer to move commercial grain.

Mrs. BENTLEY. As a matter of fact, Mr. Bridges had to twist some arms to get the 29,000 tons of relief grain for Pakistan going. I asked him personally to do it, and he persuaded his group to do it, but in some of the ports, they did it very reluctantly.

The CHAIRMAN. I can recall testimony here that Bridges said that the offer was made to carry grain and defense materials.

Mrs. BENTLEY. During the hundred days he loaded Pakistani grain. That was the only grain moved, and that was the only offer, and I know the problem they had even getting that moving.

The CHAIRMAN. During the whole dispute, there was no offer to carry that? On February 4, Mr. Bridges sat here and said they had made this offer to carry grain.

Mrs. BENTLEY. It depends on the period you are talking about and it depends on what kind of grain you are talking about. They never made an offer to carry the commercial cargo during the hundred days.

I know the last period of time, when they went out on January 17, there was some talk of negotiating with the grain shippers—there was a move by the young turks within the ILWU—they wanted to teach the Pacific Maritime Association a lesson. They were going to negotiate a contract directly with the grain shippers. Well, those talks went by.

They lasted 1 day and went by the wayside. Nothing developed. But I know that during the 100 days, they did move Pakistani grain for the refugees. I asked them to do that, and they did. I did it in behalf of the Department of Agriculture.

But there was no offer made to commercial shippers. They did move defense cargo, that is right. Because they were moving defense cargo and there was so much going out of the west coast, you had about 35 or 40 percent of your longshoremen working all the time, and, therefore, they had enough money to keep them going to stay on the strike.

The CHAIRMAN. Then this offer to carry commercial grains, you suggest, was not clearly yes or no. On February 4, Mr. Bridges was here and said that this offer was, even at that point, outstanding.

Mrs. BENTLEY. This is when they were talking of negotiating with the grain shippers, sir, a special deal, and that never reached a conclusion. One of the problems is the fringe benefits funds of the unions. How do they get the benefits paid into the main fund if they are outside of the Pacific Maritime Association where all the funds are channeled.

They wanted to teach PMA a lesson, but they never reached a decision on that.

The CHAIRMAN. But the union offered to carry defense materials, and that was accepted by PMA, and they did move?

Mrs. BENTLEY. That is right.

The CHAIRMAN. So in these areas where there is agreement for partial operations, it takes two to make the agreement, the shippers and the unions.

Mrs. BENTLEY. Yes.

The CHAIRMAN. And that agreement had not been reached on grain.

Mrs. BENTLEY. No; that is right. I am not sure how clear the offer was on commercial shipments. But it never came to anything.

The CHAIRMAN. Just a few more questions that I would like to cover, Mrs. Bentley. The legislation you deal with, and I think all of the bills that have been introduced, basically would bring the Government into the picture where there are strikes or threats of strikes, where there is a peril to the national health or safety. Your statement did not deal with factors imperiling the national health or safety.

It dealt with economic losses, and I just wondered if you would comment on this.

Most of our proposed legislation has as its trigger the imperiling of national health and safety. One of the questions is whether a regional dispute can be considered imperiling the Nation in this respect.

Mrs. BENTLEY. It depends on what kind of a regional strike it is, Mr. Chairman.

The CHAIRMAN. First of all, before we get to the regional, let's just deal with your statement and the failure to use any reference to health or safety.

Mrs. BENTLEY. In my opinion, when the economy is hurt, our national health and safety are threatened too.

The Chairman. Are you dealing with economic health?

Mrs. BENTLEY. Yes, I am. Your public interest when the public interest is affected and the public is adversely affected, I think this, too, has to be considered.

The CHAIRMAN. This is reading into the definition of health the economic posture of the Nation, not in terms of its impact on physical, human health.

Mrs. BENTLEY. When we get to human health, we have areas like Hawaii and Puerto Rico which are affected because they can't get food.

The CHAIRMAN. Was there any evidence on this last strike——

Mrs. BENTLEY. Hawaii was badly hurt.

The CHAIRMAN. In terms of failure to deliver the goods needed for physical health?

Mrs. BENTLEY. Yes. In foodstuffs, Guam, I had the people from Guam and from Hawaii in my office a number of times. They were transporting some food by air. The prices were much higher on it.

The CHAIRMAN. Prices were higher, yes.

Mrs. BENTLEY. Because it was going by air transport. They were short, well, nobody died from starvation or anything like that, but I know that they were quite desperate, because they were lobbying all over Washington to get some ships, to get anything moving so that they could get their cargo cheaper. Their people were suffering.

The CHAIRMAN. In terms of what we had thought of as the meaning of the triggering device of national health and safety, we had no evidence brought to this committee of the health and safety of the Nation being imperiled, and we asked those who should have known, the Secretary of HEW, and the Secretary of Defense, who declined to come here and spell that out.

We were, I think, faced with the economic picture as we read it, and saw the economic loss, and therefore legislated, but it was not a question of national health and safety.

Mrs. BENTLEY. In this way it affects our safety, sir. Our defense is weakened when we have these strikes, and this in my opinion, does have an effect on the safety of our country.

The CHAIRMAN. Senator Hughes?

Senator HUGHES. No questions.

Senator PACKWOOD. Didn't we enter into the record when Mr. Bridges was here the finding of the District Court in California that indeed the national health and safety was endangered? That has to be decided before the injunction can be issued.

The CHAIRMAN. That was the conclusion of the court. We looked for the evidence behind that, and could not find it.

Senator PACKWOOD. But the court had to make a finding that the national health and safety was endangered.

The CHAIRMAN. Well, we did not ask the judge to come here, but we did not have anything on health or safety from the Secretary of Health, Education and Welfare or the Secretary of Defense.

Senator PACKWOOD. You did point out a problem that exists, and we might ask Mrs. Bentley. So we don't get into quarrels whether national health and safety are involved, would you favor including in the definition cases where regional health and safety are affected, or where a substantial portion of the regional economy is affected?

Mrs. BENTLEY. Yes, I do.

Senator PACKWOOD. I might point out here one of the problems with the west coast dock strike, the reason we went a hundred days, is that we had a difficult time convincing the administration the national health and safety were affected.

As far as the grain shipments on the west coast were concerned, what the longshoreman on the west coast decided to do was sign a separate contract if the grain companies wanted to break off from PMA. It was an offer to sign a separate contract, not to move the grain.

There were some very tentative negotiations, but I could not think that is quite the same as offering to move the grain until the strike is settled.

Mrs. BENTLEY. I was not clear on that offer. I knew they tried to negotiate.

Senator PACKWOOD. I have no further questions.

The CHAIRMAN. Just one further area I forgot to cover, and that is under the administration's bill, one of the available options would be the partial strike, permitting a strike except in those areas where there is a showing of peril to the national health and safety.

How do you approach that administration proposal, Mrs. Bentley?

Mrs. BENTLEY. I would not select that particular option, Mr. Chairman, because I think it would be very difficult, and would create some problems. I think it has to be the whole thing, in my opinion.

The CHAIRMAN. Senator Javits is here. We have had a very enlightening hour with Mrs. Bentley.

Senator JAVITS. Mrs. Bentley, would you do me a great favor? I have just arrived. Would you stand by for a few minutes and let me look over the statements, and I may want to recall you.

Mrs. BENTLEY. I would be glad to. Thank you, Mr. Chairman.

Senator JAVITS. Mrs. Bentley, thank you very much. I am sorry to have kept you. I know you can be helpful to us. As you know, I have offered these bills for years, and the time has finally come to catch up with the argument. I am pleased other members of the committee, especially Senator Packwood and Senator Taft are taking part in these hearings.

Mrs. BENTLEY. I have attended many hearings on the bills you have sponsored, Senator.

Senator JAVITS. Thank you.

I just have a question or two. First, I gather you go completely for the regional and as well as the national approach. That is, you can see a national interest in a regional dispute.

Mrs. BENTLEY. Very definitely, such as the longshore on the west coast.

Senator JAVITS. Yes. We agree with you.

You say that you favor the approach which is at the heart of the administration's emergency dispute proposals. I don't want to get you involved in my problems with the administration, but are you addressing yourself to the principle of a multioption approach or to the specific measures of the administration approach alone?

My reason for saying that is that it may be that I will differ with them on the range of those weapons, which I think is very important, but I would like to know from you whether your testimony is based upon the principle of multioption or whether you wish to be identified exclusively with the administration position?

Mrs. BENTLEY. The principle of multioption, sir.

Senator JAVITS. You mentioned what happened in the House Interstate and Foreign Commerce. They are apparently not going to do anything about it.

Mrs. BENTLEY. I am sorry to see that.

Senator JAVITS. You think we should act?

Mrs. BENTLEY. I do.

Senator JAVITS. You did refer in your answers to Mr. Williams' questions, and correct me if Mr. Mittelman's notes are wrong, but he told me you described the type of emergency qualifying for the remedies under this bill as including economic emergencies.

Mrs. BENTLEY. Very definitely.

Senator JAVITS. Economic emergency can imperil the public health and safety, or it can fall short of it, without imperiling national or regional health and safety. What would be your feeling on that?

In other words, would you set as a criterion heavy economic loss amounting to an economic emergency, which means people lose money, or would you set as a criterion an economic emergency amounting to a peril for the national or the regional health and safety?

Mrs. BENTLEY. The first one, sir.

Senator JAVITS. I have serious doubts as to that point. You don't have to worry about that, but we do. We will look into it. If there is going to be really heavy economic loss in the sense of jobs, money, et cetera, you would apply this law at that point even if it didn't fully go to the extent of endangering the regional or national health?

Mrs. BENTLEY. Yes, sir. I think it would endanger it.

Senator JAVITS. Thank you very much.

Thank you, Mr. Chairman.

Thank you so much, you were very kind.

Mrs. BENTLEY. I was delighted to do it.

The CHAIRAN. The chairman of the Transport Labor Committee of the Transportation Association of America, Mr. Henry E. Seyfarth.

STATEMENT OF HENRY E. SEYFARTH, CHAIRMAN, TRANSPORT LABOR COMMITTEE, AND TRANSPORTATION ASSOCIATION OF AMERICA, ACCOMPANIED BY PAUL TIERNEY, EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL

The CHAIRMAN. You may proceed as you would like.

Mr. SEYFARTH. Thank you, Senator.

Mr. Chairman, and subcommittee members, my name is Henry E. Seyfarth. I am senior partner in the law firm of Seyfarth, Shaw, Fairweather & Geraldson of Chicago, Ill., and chairman of the Transport Labor Committee of the Transportation Association of America. On my right is Mr. Paul Tierney, who is executive vice president and general counsel of the Transportation Association of America.

In the interest of conserving the subcommittee's time, Mr. James E. Isbell, Jr., of the Foote Mineral Co., Exton, Pa., representing the user members of TAA, will be mailing a written statement in lieu of appearing personally, and may I request that Mr. Isbell's statement be included as a part of the record of these hearings supplementing my testimony today.

The CHAIRMAN. Very good.

Mr. SEYFARTH. In appearing here today, Mr. Chairman, I speak for the Transportation Association of America. On behalf of TAA, I thank you and the subcommittee members for granting us the opportunity to express our views on amendments to the emergency dispute provisions of the Railway Labor and Taft-Hartley Acts.

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

The Transportation Association of America is a nonprofit national transportation-policymaking organization with the underlying purpose of preserving the best possible transportation system under private ownership.

The uniqueness of our organization lies in the broad base of its corporate and individual membership; 50 percent of which is composed of shippers or users of transportation; 20 percent investors, such as banks, insurance companies and brokerage firms; and 30 percent carriers of all forms—air, freight forwarder, oil pipeline, rail, highway, and water.

TAA represents the only established, continuing vehicle through which these diverse interests—in a constructive give and take atmosphere—can deliberate on major transportation issues, with the objective of developing unified policy positions.

The vehicle for developing policy within TAA is our 275-man "National Cooperative Project" composed of eight panels—six carrier, one user, and one investor.

With that brief background, Mr. Chairman, and turning to the subject matter under consideration by this subcommittee, the 115 man TAA Board of Directors at its meeting in January 1971, unanimously adopted the following policy positions:

In order to adequately protect the public interest in uninterrupted, economic and efficient service by regulated airline, trucking, deep water maritime, railroad and freight forwarder companies, immediate steps should be taken to repair

evident deficiencies in the Taft-Hartley and Railway Labor Acts dealing with transportation labor disputes. To this end, provision should be made for a suitable arsenal of weapons, including where necessary and with appropriate safeguards, final and binding arbitration machinery.

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

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

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

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

That the TAA board of directors reached unanimous agreement on an arsenal of weapons including final and binding arbitration for transport labor disputes serves to underscore the members' deep concern over the deterioration of the collective bargaining process under existing emergency provisions of the Railway Labor Act and the Taft-Hartley Act and the adverse impact of that deterioration on our highly interdependent economy.

I say this because in agreeing to final and binding arbitration, carriers have expressed a willingness, where the public interest requires, to relinquish to a third party the resolution of matters affecting highly important private economic interests.

The vital importance of uninterrupted transportation has long been recognized by Congress. The Railway Labor Act in 1926 contains provisions which have as their specific purpose the encouragement of labor and management to reach voluntary agreements through collective bargaining.

Originally applicable only to railroads, these provisions have also governed labor management relations of the airlines since 1936. The emergency provisions of the Taft-Hartley Act which govern the trucking and maritime industries as well as nontransport industries also have a similar purpose.

Vast and rapid changes occurring since the enactment of these measures—an explosive population growth, rapid technological advancements, urbanization and alteration of our system of distributing goods and commodities—have all combined to make uninterrupted transportation even more cruical then to the economic and social health of our Nation.

In more recent years, we have been experiencing mounting criticism of the emergency provisions of the Railway Labor and Taft-Hartley Acts—completely justified in our opinion—because of their failure to achieve the purposes for which they were designed.

They have discouraged meaningful collective bargaining. With increasing frequency, we are confronted with actual or threatened

strikes. In recent years Congress repeatedly has found it necessary to provide ad hoc interim resolution of transport labor disputes.

In our judgment, this vividly demonstrates not only that we lack machinery to deal effectively with transport strikes, but also that their staggering economic effects have become intolerable to the public.

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

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

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

Collective bargaining is unique in transportation.

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

However, collective bargaining is no longer a meaningful economic contest, probably more so in the transportation industry than in other industries.

The imbalance is so great in favor of organized labor that carrier management finds that it is totally unable to resist by itself demands irrespective of their size, irrespective of their adverse impact on carrier financial health and the economy generally, all to the ultimate detriment of employees of the transport industry and the public.

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

*** * * (The roots of the problem) lies in the nature of unions as institutions, and the framework—legal, political and social—in which they operate. "Unions are designed and structured to deal aggressively with employers by marshalling the power to deprive employers of a necessary resource on the premise that their chief mission is to press for "more" for their members against presumably strong employer resistance.**

Hence, by and large, they lack the institutional capacity for exercising much effective self-restraint if that resistance does not in fact materialize. Union leaders who lose the support of their constituencies cease to be union leaders.

The legal framework that our nation has adopted supposedly is aimed at achieving a balance between the power of unions to push and the power of employers to resist that will produce results that are both fair to the parties and economically sound—which means fair to the public as well. Unfortunately, it has fallen short of that aim.

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

Malcolm L. Denise, Vice President, Labor Relations, Ford Motor Co., before the Business Council, May 8, 1971.

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

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

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

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

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

In the railroad industry, the issue of firemen and outmoded work rules which had their origin in the steam engine era have been studied and reviewed for more than a decade by a series of independent presidential commissions and boards. Without exception, these fact finding bodies concluded that firemen on diesel locomotives were not necessary and that work rule revisions were required for more efficient rail operations.

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

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

Labor management relations developments in the maritime industry demonstrate the disastrous results that can flow from imbalance at the bargaining table, and huge capital losses occur when ships tied to the docks, earning no income, have forced capitulation to excessive and, in our opinion, even absurd union demands.

I refer to not only wage increases far exceeding productivity but also make work provisions that actually reduce productivity in hamstringing industry efforts to improve efficiency through reasonable exploitation of containerization.

That imbalance has created a financially weak shipping industry, and eroded its ability to compete with foreign operators, thus contributing to a loss of overseas markets and set backs in our balance-of-payments program. The imbalance has skyrocketed dollar costs and

diminished productivity, which as we have seen, are proving so harmful to the nation and all segments of its society.

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

In light of the unique circumstances affecting transportation we support the arsenal approach. The options we suggest ranging from a decision of nonintervention to final and binding arbitration, are sufficient, in our opinion, to deal with any type of labor dispute.

Because of the uncertainty as to which alternative the Government might pursue, there will be an incentive for both management and labor to reach their own agreement. On the other hand, with the availability of final offer selection or final and binding arbitration, the Government will have been provided the tools to resolve with finality those disputes endangering the national welfare.

Moreover, the necessity of these matters ending up in the lap of Congress and for ad hoc, interim resolutions will be eliminated.

We would also urge that corrective legislation clearly recognize that a dispute in a single industry or region, as well as those of nationwide dimensions, have the potential of affecting the national interest.

Certainly the Government should not be precluded from considering the potential inflationary impact of highly visible transportation settlements that is likely to be created by the unequal adversary processes of transportation collective bargaining.

Nor should the Government be required to stand idly by where a dispute, if left to the ordinary bargaining processes, would impair our international position. Our ultimate goal, should be settlements not only to the parties but also fair to the public.

In their proposal (S. 2060), the railroads and the airlines suggest that that goal can best be achieved by the elimination of any threshhold test for triggering the use of an arsenal. Although TAA has taken no position on that specific approach, I certainly believe it to be one worthy of Congress serious consideration.

May I comment briefly on S. 832 which would amend section 10 of the Railway Labor Act by explicitly authorizing selective strikes, prohibiting carriers not struck from locking out, and providing for partial operation when deemed necessary or essential to the national health and safety, by the Secretary of Transportation.

As I have previously emphasized, Mr. Chairman, there already exists an inequality at the transportation bargaining table which is producing economically unsound settlements contrary to the public interest.

To further aggravate that imbalance by authorizing selective strikes and at the same time prohibiting carriers from locking out would reduce collective bargaining to a farce.

To deprive carriers of defensive measures available to industry generally under our national transportation policy and further augment the power of labor unions affected would place the carriers in

a completely untenable position. We believe legislation along these lines would be a grievous error which Congress should studiously avoid.

As I have previously indicated, Mr. Chairman, TAA opposes partial operation.

It would appear that the provisions of S. 832 including partial operation apply only to the railroads.

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

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

In the latter connection, I should point out that railroads are the only industry which, under the law, is required to finance strikes against itself. Under the Railroad Employment Insurance Act, benefits paid not only to striking employees but also employees who refuse to cross picket lines, are financed entirely by railroads.

Incidentally, these benefits may begin the day the strike commences and continue for 2 years. During a 16-year period from 1953 to 1968, the railroads have paid out over $351½ million in benefits to strikers. Certainly all in fairness this anomalous requirement should be eliminated by corrective legislation.

In conclusion, for the reasons I have previously outlined, we respectfully urge that this subcommittee recommend the adoption of the arsenal of weapons approach, looking toward the elimination of transportation strikes so harmful to the Nation and the general public. May I again thank the subcommittee for the opportunity to present TAA's views on this critically important subject matter.

Senator HUGHES (presiding pro tempore). I was going to ask Mr. Seyfarth if he is going to complete the addendum to his statement.

Mr. SEYFARTH. I had not planned to, sir.

Senator HUGHES. Mr. Chairman, Mr. Seyfarth's statement, I believe, applies directly to the problem. Basically your thrust is that you believe the arsenal approach to settling these disputes is the approach the committee should take. Is that right?

Mr. SEYFARTH. That is right.

Senator HUGHES. I believe the implication in the transportation industry, as you testified, is that there is an unfair advantage on behalf of labor in dealing with carriers in these negotiations. Is that correct?

Mr. SEYFARTH. Yes.

Senator HUGHES. Could you again just briefly tell me what is unfair about it? I know you went through this in some detail in your testimony, but I would like you to amplify it. You repeatedly stated that they have the capability of forcing financial settlements that are beyond the range of industry to afford.

Is that correct?

Mr. SEYFARTH. That is right.

Senator HUGHES. And that in so doing, they impair the industry itself. Is that the implication?

Mr. SEYFARTH. That is the implication, Senator.

Senator HUGHES. Do you feel this is what has helped the deterioration of the railroads in the country?

Mr. SEYFARTH. Yes; we think it is certainly pertinent to their present plight and condition. We feel, even though it was not made a part of the resolution adopted by the Directors of the TAA, and adopted unanimously, we do feel this imbalance has been the chief engine of inflation in this Nation.

Senator HUGHES. I guess there is no reason to go back into that, but you mentioned two or three times the situation of the firemen on locomotives as being an example of the ability to force the industry to carry employees beyond their usefulness, is that correct?

Mr. SEYFARTH. That is correct.

Senator HUGHES. Is this a single burden, or are there other examples in other industries?

Mr. SEYFARTH. There are other examples in other industries Senator.

Senator HUGHES. Can you state for the committee what they are?

Mr. SEYFARTH. Well, I could state a provision in the last trucking contract which in certain circumstances prohibits the use of piggyback. Of course, in the maritime industries, there are contract provisions which are serious impediments to productivity gains.

As you know, in the airline industry, there have been constant issues raised with respect to the presence of additional personnel on aircraft. I think it is safe to say that probably with the exception of the pipelines, there is no form of transportation where these impediments to greater productivity do not exist.

Senator HUGHES. Is there any impediment in the opinion of the association on the financial operations of the industries themselves?

Is there any advantage in the industry? For example, the railroads over the years with their holdings of land and property and their financial dealings and the interchange of surplus funds may have drawn down the surpluses of the industry to the extent that they can't bear the burden, either?

Mr. SEYFARTH. That matter has not come before the Transportation Association, Senator, and I am reluctant to express an opinion on it.

Senator HUGHES. Is the railroad industry unique in this due to their mineral holdings, land holdings and so on, or are there other industries in transportation that compare—the airlines, for example, or the maritime industry?

Mr. SEYFARTH. Well, I think the airlines, some segments of the airline industry have diversified, attempted to go into other types of businesses in an effort, I think, to offset their vulnerability at the bargaining table.

Senator HUGHES. In the case of the railroad industry, the original charters granted property rights, including mineral rights, and vast areas of timber and other resources, and the proceeds were then channeled off rather than put back in the industry itself. It could have been

assumed, I suppose, that the proceeds would have been used for the basic support of transportation.

Mr. SEYFARTH. I am not in a position to answer that.

Senator HUGHES. This has always been a contention of railroad employees, that management was siphoning off the profits rather than maintaining their equipment and keeping it updated and improving the roadbeds to the extent that, in offsetting this, they were bargaining pretty tough on some of their questions.

Mr. SEYFARTH. I am sorry that I am unable to give you any further elucidation on that. I know some railroads have substantial land holdings, or did have at one time. There are others, of course, who are just plain operators of railroads.

Senator HUGHES. Do you believe it is possible to correct the law in such a way that it will equally apply to all transportation industries?

Mr. SEYFARTH. Yes, Senator. I feel that it is unfortunate that we have to resort to the arsenal of weapons approach and to compulsory arbitration. I speak now not as a representative of the Transportation Association, but as a practicing lawyer who has had probably 35 years experience in this business, who is in a law firm which is engaged almost exclusively in the practice of labor law.

We have seen a lot of water gone over the dam in many different industries, and I want to say to the committee that it is unfortunate that things have developed the way they have, but there are inherently unsound labor laws which have been badly administered over the years.

Collective bargaining has degenerated. I think there is a chance to save collective bargaining as a process to achieve economic justice for employees, but if it is to be saved, I think there must be some very thoughtful labor law reforms. But we know, of course, that those things do not occur shortly, or quickly. They are usually the result of many years of deliberation.

In the meantime, to keep the Nation from deteriorating from an economic point of view, we do think that the arsenal of weapons approach, particularly with respect to transportation is essential.

Senator HUGHES. I am one of those who believes we must do something, also. I am not opposed to trying to do something, but in trying to find out what we should do is where the difficulty arises.

You have heard the testimony of the previous witness, in which I think Mrs. Bentley very clearly stated that she was interpreting the word "health" as I have never heard it used for before—as economic health rather than the physical health and well being of the Nation.

We have also heard it stated, I believe in response to a question by the Senator from Oregon, that regional economic health as well as national economic health should be considered in the major decisionmaking process of whether to invoke Taft-Hartley.

In reference to grain shipments out of the west coast ports, only about 1 percent of the corn exported no soybeans go out through the west coast ports, because most of it goes out through the gulf ports or the Great Lakes regional areas.

Yet, the regions involved from the Mountain States and West, are very seriously affected, not only in grain, but in citrus fruits and all the agricultural products, as well as manufactured goods.

To face this problem squarely, then, we are coming up with what seems to be the consensus of at least two witnesses that we are facing a new definition of health, and you stated in your last sentence, I think, that the economic well being of a region or nation is in your mind of prime importance in our decision.

Mr. SEYFARTH. I think it is. I think the lower the threshhold test, the more effectively Congress will be able to deal with this situation.

Senator HUGHES. I think that is all now, Mr. Chairman.

The CHAIRMAN. Before we turn to Senator Packwood, you refer to the arsenal of weapons. What are the weapons within the arsenal that you recommend for the settlement of disputes?

Mr. SEYFARTH. I recommend, or the Transportation Association recommends, an arsenal of weapons in the administration's bill.

The CHAIRMAN. Selective strikes?

Mr. SEYFARTH. No. That was in my statement that we are opposed.

The CHAIRMAN. You name it. What are the weapons in the arsenal?

Mr. SEYFARTH. First is do nothing. The second is mediation. The third is final offer selection, and we would favor compulsory arbitration as an addition to that arsenal.

The CHAIRMAN. You don't equate final offer selection with compulsory arbitration?

Mr. SEYFARTH. There is a difference between the two, Senator. One goes probably a short step further than the other.

The CHAIRMAN. The final offer is compulsory arbitration with limited choices to the arbitrator; is that right?

Mr. SEYFARTH. Precisely.

The CHAIRMAN. Senator Packwood?

Senator PACKWOOD. You indicated you practiced labor relations law for upwards of 35 years. Can you envision any kind of a law that we can pass that can guarantee continuity of transportation services without some form of arbitration or final offer selection, or something that is binding?

Mr. SEYFARTH. Yes, Senator, I could visualize complete labor law reform to bring about equality at the bargaining table. That is a very complex matter.

Senator PACKWOOD. How would equality at the bargaining table guarantee there would be no work stoppage?

Mr. SEYFARTH. It would reduce the number of work stoppages, because the compulsions on either party to the collective bargaining process, the rewards and the detriments would be such that we would not reach these absurdly high settlements.

Senator PACKWOOD. But there would be no guarantee that we would not have a strike or a lockout.

Mr. SEYFARTH. There would be no guarantee, but here the chances are it would be diminished.

Senator PACKWOOD. I have no further questions.

The CHAIRMAN. Senator Nelson?

Senator NELSON. Would you describe what would cause management and labor to reach an agreement?

Mr. SEYFARTH. Senator, one of the most difficult parts of the bargaining process is the knowledge on the part of the employee that the

hurt has been taken out of the collective bargaining process. Employees who elect to go out on strike are able to get food stamps that come out of taxpayers funds. In many jurisdictions they are supported by unemployment compensation.

There are strike benefit funds. So that really there isn't too much hurt so far as the employees are concerned, and it just means that the employer is unable to assume the terrific losses that accompany a strike, and hence he submits.

The collective bargaining process is no longer viable and useful as a tool to accomplish what the laws had intended that it accomplish. The pendulum has swung over too far the other way, as I stated before, the process has now become inflationary, and you have to sit in a negotiation in order to get a full appreciation of what goes on.

The employer hopes for leniency, and the union waits for capitulation. That is what it amounts to today.

Senator NELSON. You recite that food stamps, unemployment compensation, and strike funds are available. What are the jurisdictions that pay unemployment compensation to people out on strike?

I think that would be a very small minority of jurisdictions in the country; would it not?

Mr. SEYFARTH. I do not have the statistics at hand. However, they are——

Senator NELSON. Isn't it the case that only New York and Rhode Island pay unemployment compensation to railroad workers? So that point would only apply to railroad workers. Then your next observation has to do with strike funds. I don't suppose that it would be appropriate for Congress to tell the associations of workers that they can't raise strike funds out of their dues; would it?

Mr. SEYFARTH. No, it would not, Senator, however, during the course of the last Teamsters strike, there is evidence of the fact that the Federal food stamp program was administered out of some union offices in the Midwest area, and there are other forms of public welfare, of course, that are brought into play in the strike situation.

Senator NELSON. I doubt that food stamps are a significant factor, and you have only two States that pay unemployment compensation and then only to railroad workers. I don't know how significant a change it would be if those benefits were not available.

Mr. SEYFARTH. Well, it means to the average working man, who in this day and age often has to live from paycheck to paycheck, it means that a strike does not bring about the economic harm and disaster that it once did.

Senator NELSON. What I am saying is this: that listening to what you have to say, I am not impressed that food stamps or unemployment compensation are significant factors in this picture, except for two States that pay unemployment compensation to railroad workers—New York and Rhode Island. All I am saying is that these factors do not strike me as being significant in the big picture, except possibly, I suppose, in the railroad industry.

Mr. SEYFARTH. Of course, in the railroad industry, as you know, striking members receive unemployment benefits.

Senator NELSON. I say except for the railroads.

Mr. SEYFARTH. Well, the liberality with which relief programs of one kind or another are administered have, in my experience, taken a great deal of the hurt out of the economic bargaining processes. There is no longer the reluctance to go into a long strike that there used to be.

Senator NELSON. Let me ask this question: Is a strike like the west coast dock strike a more critical factor with respect to the health and economic well being and welfare of the Nation than a steel strike or an auto strike?

What I am trying to get at here is that, if the principle which you support were passed into law, based on the proposition that the general welfare of the Nation is significantly involved, then don't you have to go a lot further and support the concept that again in any kind of a strike in which the economic welfare of the Nation is at stake, you have to cover it with legislation?

The west coast strike went on, I might say, for 98 days before the President invoked Taft-Hartley. Despite that, the administration was attacking the Congress all over the country for not passing the legislation. Then the legislation went to the President and he had it sent to China and signed it over there. He let the strike go on 10 more days after attacking Congress as being responsible for not passing the law soon enough, when in fact Congress came back into session on the 18th of January and the President sent the bill up on the 21st.

The chairman of this committee called a hearing as fast as it was feasible to do so and get the witnesses here. Then we passed a bill on February 8, probably as expeditious an action as has ever been gotten on a piece of legislation of this kind in the history of Congress.

Yet Secretary Butz was running around the country attacking us, and a number of Senators on the Republican side were attacking us, even though the whole delay was on the part of the President of the United States.

When he got it, he sat on it another 10 days before signing it.

Now, what is more significant from the economic welfare standpoint of the country? A strike that went for 90 days—it was 3 months and 6 days—or a steel strike, closing down all the steel plants in America, for an equal length of time?

Are you able to say that the west coast dock strike had a greater impact than a steel strike closing all steel plants for an equal period of time?

Mr. SEYFARTH. Senator, it is difficult to equate those results. I think the facts will bear out that the precedents stem largely from the transportation industry and the construction industry.

Every time there is a settlement that is large and substantial in nature, it acts as a precedent which is almost like a decision in a court of law.

Senator NELSON. A settlement in steel, are you saying?

Mr. SEYFARTH. In any industry, sir.

Senator NELSON. My question is, what evidence do you have that a steel strike of the same length as the west coast dock strike is of less urgency—less critical to the health and welfare of the country—than the west coast dock strike?

Mr. SEYFARTH. I suppose when we talk about health and welfare, or health and safety, that we have to pay some attention to the economic consequences.

Senator NELSON. Whatever your definition is, by whatever standard you would trigger the invocation of a law requiring compulsory arbitration, whatever your definition of the standard should be, I am simply asking you to apply that to the steel industry and tell me what evidence you have that a strike closing down the steel industry for the same length of time as the west coast dock strike would have a less significant effect.

Mr. SEYFARTH. In a steel strike you have thousands more employees out of work. I think in a transportation strike such as the recent one on the west coast, the dock strike, I think you have some side effects that maybe are equally deleterious.

It is hard to form a basis of comparison, sir.

Senator NELSON. Legislation is proposed based on the concept that the transportation industry is peculiar, that the impact of a strike there is distinguishable, significantly distinguishable, from the impact of a strike in a basic industry like steel.

That is the ground on which the legislation is proposed—those are the grounds on which it is argued that we should have legislation of this kind applying only to the transportation industry—I think then it is incumbent upon those who support that proposition to come in with some evidence that strikes in basic industries are of less consequence, by whatever standard you use, than those in the transportation industry.

Mr. SEYFARTH. I understand your point, Senator. It is difficult to explain and equate many things that happen in the realm of labor management relationships.

I think probably we have to deal with the subject on a sort of a piecemeal basis. I personally regret that it has to be dealt with on that basis, and I would much rather see, if it were possible, to have an across-the-board revamping process of collective bargaining, legally, so that it would be reconstituted so that it would become the meaningful, viable process that I think it has the capabilities of being, and at one time was.

But it has lost those characteristics, and if we have that, if we have equality at the bargaining table, I don't think there would be the necessity to talk here today.

Senator NELSON. May I say that I don't wish to indicate to anybody by my questioning that I have a position of my own that I am satisfied with. I don't know what the answer is, but I see some serious problems, and I think they have to be looked at.

If in concept it is viable here, then perhaps—I believe it is Senator Taft's position, and I don't want to speak for him—but I believe it is his position that he would cover all strikes of national or regional significance.

I believe that is his position. If that is the case, if that is the direction in which you are going, you move to the next question. Because as you know, we are then placing in the hands of an arbitrator the authority to decide wages and working conditions. And the next implication is profits, because the arbitrator certainly should not be giving an increase in a bankrupt company, but an arbitrator can't really rely on a company's assertion.

So what you are really getting to next if you do this is the demand that the employer open his books. I don't think any employer in the country wants to do that, but I think that that would be the demand, because people will say, "Now you are saying you can't afford this, but we are going to have an arbitrator decide this."

Then as a matter of equity, and because the welfare of the country is involved, "you must open up your books to show your profit."

Once you do that with a conglomerate—and that is what we will be doing with this, because everything is almost all conglomerate—that will open up the books of 747 companies around this country. We will have product line profit reporting, which we ought to have anyway. All of these are on the horizon, I think, if we go this route.

Mr. SEYFARTH. There are a lot of things on the horizon, Senator, in the area in which we are operating.

If I may just say a word about it, one of the items about compulsory arbitration that personally bothers me somewhat is that it places whoever is selected as the arbitrator in a very tenuous position.

Judges have the benefit of statutes and precedents, so that they can make their decisions on somewhat of an objective basis. But you take the poor arbitrator who has all of this responsibility and is called upon to make a decision, and he does not have anything in the way of laws or precedents to go by.

The closest thing that he has at the present time are the economic stabilization regulations, for whatever they are worth.

Senator NELSON. I mentioned the word "horizon," and you said lots of things are on the horizon.

You know, many people think when you mention horizon that you are talking about something a long way away. Since you are in the transportation business you know that out on the ocean the horizon is about one and a half hours away. That is the horizon I am talking about.

Thank you, Mr. Chairman.

The CHAIRMAN. I have a feeling that some of the associations that have appeared here on this subject matter have seen over the horizon, as Senator Nelson hoped we might explore for a moment what might be on the immediate horizon.

You know the Chamber of Commerce and the National Association of Manufacturers completely disagree with you, speaking in your representative capacity as a spokesman for the transportation industry.

Mr. SEYFARTH. I am quite aware of this.

The CHAIRMAN. You know of this, of course. It is their conclusion that collective bargaining and compulsory arbitration are—I think that their words were "incompatible bedfellows." You find collective bargaining and compulsory arbitration compatible, I take it?

Mr. SEYFARTH. Yes; to a degree there is some incompatability. I don't look upon them as being diametrically opposed.

I wouldn't be surprised someday if we had laws enacted by Congress which they may change from time to time which may set forth the ratios of wage increases to price increases. That may be the ultimate answer to this thing. We don't know.

But from where I sit at the present time, that is a very distinct possibility.

I think in the transportation industry, the consequences of a strike are so immediate, are so disastrous to the employer, and so quickly, that you find members of the industry grasping for straws, which I think they are entitled to do.

The CHAIRMAN. You suggest that as a unique part of your support for your argument here, you quoted at length from Mr. Denise, vice president, labor relations for the Ford Motor Co. These paragraphs you quote from were not directed specifically to the transportation industry?

Mr. SEYFARTH. No; they were not. I think they were made before a business council, sometime back.

The CHAIRMAN. It would seem to me that if these arguments were persuasive and compulsory arbitration has merit in certain circumstances, your statement would apply to an industry such as coal, where the national health is immediately affected if there is a strike and the stock piled coal runs down. In such case there is an immediate peril to the national health.

Your thesis, really, would run to all industry wouldn't it?

Mr. SEYFARTH. Yes; I think my underlying philosophy, and I speak as a person now, not as a representative of the transportation association, I think it must run to all industry, and I am a firm believer in the process of collective bargaining. I think it is worthwhile resuscitating. I think we ought to have it in healthy form. I think if we did have it in healthy form by reconstituting our basic labor laws and the administration thereof, I think there would be fewer strikes.

Maybe it is hoping for too much, but from what I have seen over the years it is my opinion.

The CHAIRMAN. Senator Javits?

Senator JAVITS. I just had one question, Mr. Chairman, and that is, I am very interested in this matter of the benefits paid to striking workers and those who refuse to cross picket lines.

I gather you attribute to that an important role in prolonging the transportation strikes?

Mr. SEYFARTH. Not only transportation strikes, Senator, but across the board.

Senator JAVITS. Well, there are only two States that have it across the board.

Mr. SEYFARTH. I mean across the board in all industry.

Senator JAVITS. I know, but it exists only now in the railroad industry and in two States.

Mr. SEYFARTH. I think you were out of the room, Senator, when I brought up the question of food stamps, and——

Senator JAVITS. That is welfare. I am talking about unemployment insurance.

Mr. SEYFARTH. On just unemployment compensation, you are correct, sir.

Senator JAVITS. The other thing I wanted to ask you is this: I don't get the consistency of your opposition to partial operation. You want final binding arbitration. You know, a man could rebel against that in a given situation. They have heretofore been patriotic and done what Congress required. But certainly once we make the decision that facilities ought to be operated, it seems to me that your recommendation de-

prives us of the very serious aspect of the national interest, just because it does not suit your private interests.

We have to protect the national interest, and if we are convinced that either of the last two options on arbitration, are not going to work, why should we be deprived of the authority to go ahead with partial operation where the national interest requires it?

Mr. SEYFARTH. Senator, as I stated before, there are certain administrative difficulties in partial operation of a carrier. There is a matter of sorting out traffic. There is a matter of keeping employees who really are not needed on the payroll in order to accomplish partial operation.

Of course there is the other practical aspect of this, too, that probably organized labor would center its activity on the carrier that was operating partially so far as demands upon it were concerned.

And along the line theree would be a settlement which was in keeping with the union's objectives, which probably would be a precedent other places, and there we go on to inflation again.

Senator JAVITS. I realize what you are saying, but that is your

Senator JAVITS. I realize what you are saying, but that is your pigeon, the employer. I am talking about us as Senators, having to do with the running of the country. I don't see how we can be deprived of that remedy, which might be as essential to running the country as any other.

Mr. SEYFARTH. I respect your opinion, sir.

Senator JAVITS. I am glad you go to the regional approach and I too think transportation is too narrow. It does not deal out, you could create a serious national emergency under given conditions with steel or any other part of the national economy. I think the administration in seeking to confine it to transportation may be confining it too much.

Once we decide to act in this field, perhaps we ought to act more broadly.

Thank you very much.

The CHAIRMAN. Senator Packwood?

Senator PACKWOOD. No questions.

(The prepared statement of Mr. James E. Isbell, Jr. follows:)

TESTIMONY OF JAMES E. ISBELL, JR., DIRECTOR OF PURCHASING AND TRANSPORTATION, FOOTE MINERAL COMPANY, TO THE SENATE SUBCOMMITTEE ON LABOR, MARCH 3, 1972.

My name is James E. Isbell, Jr. I am Director of Purchasing and Transportation, Foote Mineral Company, with Executive Offices at Exton, Pennsylvania, and a member of the User Panel of the Transportation Association of America.

I am making this statement on behalf of the user members of TAA who represent a cross-section of just about every type and size of industry in the United States, as well as the Committee on Strikes in Transportation (COST), a recently organized ad hoc group of hundreds of shippers, with the TAA User Panel as a nucleus. COST represents an expression of deep shipper concern with the most difficult problem of strikes in transportation, their eroding effect on our economic vitality and the clear need, in their judgment, for corrective legislation.

We support TAA's policy position on transportation emergency disputes described by Mr. Seyfarth in his testimony as the most effective and equitable means of protecting the public against the damaging effects of transportation strikes. I might emphasize that although we are convinced that final and binding arbitration should be one of the tools available to the Government to achieve finality in transportation labor disputes, we are not suggesting that it be applied to industry generally.

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

public interest.

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

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

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

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

Agriculture felt the impact quickly. Losses in California alone reached the multi-million dollar level per day. In the mid-west, as storage facilities soon became filled, huge quantities of grain were left on the ground. In the south, interruptions to the movement of feed grain threatened to destroy the poultry industry. In the north-west, the forest product industries were threatened with lasting damage to their industry as a result of a strike on one key railroad, the Southern Pacific, upon which eastern markets depend for products originating in the west.

Disruption of critical coal movements to electrical utility genera-

ting plants contained the seeds of a potentially disastrous impact on the nation.

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

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

These results are predictable since the individual railroads of the United States comprise an integrated system, even where only a limited number of carriers cease operations, the harmful effects expand in multiplier fashion within a short time.

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

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

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

With the large number of unions involved in the transportation industry, there is one critical strike deadline after another. While we may always have to face the ultimate possibility of a strike we should not have to live under such a constant threat. This constant threat makes it necessary for industry to carry larger inventories of both finished materials and raw materials than would otherwise be necessary, in turn resulting in sub-

stantially increased costs of production. The financial people in my company have determined the cost of carrying inventories is about 25 percent of the total cost of the materials.

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

The full impact of the recent dock strikes perhaps will really never be known. However, they can be fairly described as staggering economically. It is estimated that we lost at least $200 million in exports because of the strike on the west coast, with the distinct possibility that the loss of certain markets would be permanent.

Losses from that strike were calculated at $3 million a week for the shipping industry, $5 million for inland transportation companies, $20 million a week for wholesale and retail sectors and $45 million a week for industry and agriculture sectors.

An often overlooked but tragic impact of such strikes is the permanent loss of business. Of necessity, consumers of American goods must often in such times find substitute suppliers and most frequently after having done so, they do not revert to the previous supplier after cessation of the strike. These recent dock strikes have seriously affected my company's export business. In 1971 our export business only reached 65% of forecast due, to a large extent, to the longshoremen's strikes. Furthermore, our 1972 export business forecast reflects substantial loss of business to other suppliers in other countries to whom our customers turned during these dock strikes.

Surely at a time when we are so deeply concerned about the health of our economy, lagging productivity and balance of trade deficits, the urgent need for corrective action should be obvious.

In conclusion, Mr. Chairman, we are convinced that the complex social and economic structures of this nation cannot tolerate transportation disruptions. Adequate protection of the public requires corrective legislation.

The CHAIRMAN. Mr. Rodman Kober, general counsel, Louis Dreyfus Corp., representing the National Grain & Feed Association.

STATEMENT OF RODMAN KOBER, GENERAL COUNSEL, LOUIS DREYFUS CORP., ON BEHALF OF THE NATIONAL GRAIN & FEED ASSOCIATION

Senator JAVITS. Mr. Chairman, I can't stay for this particular witness, but I am well acquainted with their operations and the interest of American agriculture in the continuing operation of these facilities. I shall pay close attention to the statement.

Mr. KOBER. Mr. Chairman, and committee members, the National Grain & Feed Association is a nationwide organization representing every aspect of the grain and grain processing industry from the smallest country elevator to the largest grain and feed complex.

In addition, 51 State, regional, and specialized industrial organizations are affiliated with NGFA, representing over 20,000 grain, grain processing, and farm service firms throughout the United States.

Thus we believe that we speak for the wide spectrum of interests generically referred to as the grain and feed industry.

I am general counsel to Louis Dreyfus Corp. whose primary interest is the exportation of bulk grain and soybeans from the United States. In addition, I am chairman of the NGFA's transportation committee whose interest in the pending legislation is obvious. And I might add that as general counsel to Louis Dreyfus I have been involved in the negotiation of labor contracts, and also in the amelioration of grievances and in the arbitration of disputes.

Analogous to our interest as large scale users of transportation is the interest of the agricultural community whose ability to market its vast production is intimately related to the availability of adequate and reliable transport service. As a New Jersey resident who has commuted by train to and from New York City, I have a personal interest in the maintenance of those essential services.

It is characteristic of human nature that complaints are the likely response of those whose economic interests are disrupted by strikes.

In the context of the proposed legislation, however, much more is at stake. Can the national economy afford to forgo export sales of agricultural commodities because of interruption in our national distribution system?

Can our balance-of-payments account risk the adverse effects associated with port labor stoppages? Can we entertain erosion of our farmer's economic position because of price reversals associated with the farmers' inability to market their production?

Our sentiments are not intended as a general attack on organized labor and its right to bargain collectively. We do believe, however, that there are specific circumstances in which the effects of a work stoppage far exceed any potential benefits for the workers.

National transportation strikes and coastwide longshore strikes are particularly illustrative of such circumstances, where a single union can bring an important element in our marketing system to a halt under a contract or contracts that expire on the same date.

You may question whether transportation or longshore strikes can cause the loss of export sales of agricultural commodities or whether

such strikes merely cause the postponement of that export business. Our corn, grain, sorghum, wheat, and soybean exports are replaceable by similar grains and oilseeds produced in surplus in other countries.

In fact, our national position as a grain exporter can be characterized as residual, which means that lower priced supplies are usually available from other sources.

Foreign grain importers are quite sensitive to the possibility of crippling strikes in our distribution system, and the threat of a strike is often enough to cause America's agricultural export customers to look elsewhere for their supplies.

We lose tens of millions of dollars in export sales in this way, although no one has determined an accurate means of quantifying this loss.

I know from first hand information that Japanese customers of Louis Dreyfus Corp. specifically refused to purchase portions of their requirements unless we were willing to guarantee shipment in the face of a threatened dock strike.

Our experience here can be verified by every one of our competitors. These are dollar sales which are irrevocably lost especially in those instances where the exporter makes the sale with the option to ship comparable grain from some other country.

In 1970 the contribution of agricultural exports to our balance of payments was a record high of $6.4 billion. In view of its significance, any change in this factor must affect materially our balance-of-payments position. If balance in our international trading is an objective founded in the national interests, we can no longer afford the types of interruptions which the proposed legislation would seek to stem. I suppose I should amplify. We are speaking specifically to Senate bill 3232.

Existing legislation has simply failed in the transportation and stevedoring industries to provide the means of effecting collective bargaining agreements with a minimum of disruption to the national economy. In recent years, in fact, the Congress has increasingly been called upon to exercise its power to mandate ad hoc labor agreements when the parties appear on the verge of tying up a significant part of our distribution network.

One would think that Congress itself would welcome the opportunity of extricating itself from the politically sensitive task of mediating such labor management disputes.

Agriculture is particularly affected in an adverse manner by curtailment in rail service. Bulk grain and soybeans move in such vast quantities, both in interstate and foreign commerce, that alternate means of transport are simply not available to replace the capacity lost in a rail strike.

The price effects of this situation are ironic: Consumer supplies dwindle precipitating increases in end product prices. Whereas prices for the raw materials decrease as farmers find it impossible to move their produce to the marketplace.

As export sales of grain are lost, either due to a rail or longshore strike, we have unfortunately diverted substantial volume from commercial channels to surplus holdings in this country. The effect of dock strikes on American agriculture is particularly ironic since seldom do any of the issues that delay contract agreement relate even indirectly to the loading of bulk grain or grain products into an ocean vessel.

The best economic proof of the effect on the farm prices of a dock strike can be found in the recent experiences in the Pacific Northwest. The existence of or threat of a strike depressed grain prices artificially by up to 10 cents a bushel at a time when we sense a deepening national concern that farmers have been unable to maintain their relative share of our economy.

At the conclusion of my statement I will offer some specific evidence of what did happen with the Pacific Northwest grain prices relative to the existence or nonexistence of an actual strike situation.

We are competing for economic survival in a world whose notions of labor management relations are far different than ours. We must find some means of rationalizing adversary labor management positions in the transportation and stevedoring industries if we are seriously to compete effectively in world markets.

We believe that S. 560 and S. 3232 would achieve that objective while avoiding the consequences of a compulsory arbitration process in which third parties can dictate terms other than those proposed by either or both of the primary parties to a prospective labor agreement.

We believe that the last offer selection alternative proposed in S. 560 and S. 3232 has considerable merit with one reservation. We agree with those who have predicted that the last offer selection process would tend to cause the parties to formulate reasonable final positions.

Our reservation is concerned with the possibility that each party to a dispute might submit a final position that was reasonable in certain respects and clearly unreasonable in other respects.

Thus, it may be prudent to modify this portion of S. 560 and S. 3232 in this way—

(1) The parties should be directed to identify those issues on which agreement has not been possible; and

(2) The selection panel would be free to choose, without modification, the most reasonable final position on each unresolved issue from each of the final proposals.

If modified in this way, we believe that S. 560 and S. 3232 offers the best prospect of rationalizing labor negotiations in the transport and longshore industries with the least disruption to the bargaining process. It is in the Nation's interest that this legislation be enacted now.

With respect to the economic data that I had referred to, we made a study of prices particularly wheat, which is the major agricultural commodity that is exported through the Pacific Northwest elevators relative to the strike by the ILWU, which was recently concluded, and these prices represent real market prices.

In fact, they represent prices that were relied upon by the Commodity Credit Corporation on a daily basis to determine what it should do respecting subsidies to encourage the movement of grain out of this country, assuming you had the ability to export the grain.

We noticed that with respect to white wheat, which is grown in tremendous abundance in the States of Washington, Oregon and Idaho, that on the 29th of June, which was immediately prior to the ILWU strike, the price of white wheat was $1.62 a bushel. On the 15th of July, 15 days after the strike started, the price declined 5 cents to $1.57 a bushel. Only the 18th of August, about a month later, the

price had further declined to $1.54 a bushel, and on the 17th of September, again in the midst of the strike, it had declined to $1.53 a bushel.

On the 6th of October, when the ILWU had returned to work under the Taft-Hartley injunction, the price had gone from $1.53 to $1.55, and on the 15th of October it had further improved to $1.59 a bushel.

On the 11th of January 1972, when the market generally contemplated a voluntary extension of work beyond the 80-day period, the price was $1.60 a bushel.

On the 17th of January, the date the strike had resumed, the price had declined to $1.56 a bushel. On the 8th of February, with the announcement of a settlement the price was $1.55 a bushel.

On the 11th of February, the price improved to $1.58 a bushel, and on the 14th of February, when the ILWU members had actually returned to work, the price again stood at $1.58 a bushel.

Now I have also prices relative to hard wheat, which is grown in abundance——

The CHAIRMAN. What is the price today?

Mr. KOBER. The price today I don't know. The price yesterday was $1.59½ a bushel. I would assume it is about that. I would think that the market factors would dictate at least $1.59½ a bushel.

It might even be $1.60 because of the increased demand for white wheat apparent on the west coast. Could I give you comparable figures on the hard wheat?

If you were to look at the prices of hard wheat of ordinary protein content, you would see an even more marked disruption of pricing in the marketplace relative to the dates which I have already put on the record with respect to white wheat, but I won't burden the record.

The CHAIRMAN. Those are the daily prices. How about the future prices? Did they follow along?

Mr. KOBER. There is no futures contract which is comparable to the prices I revealed here; namely white wheat. The Chicago futures market relates to a variety of wheat grown basically in the States of Illinois, Missouri, and Arkansas, and the Illinois futures market reflects the future market value of hard wheat varieties basically in Kansas, Nebraska, and Colorado.

The CHAIRMAN. What is the wheat shipped from the west coast?

Mr. KOBER. It is primarily white wheat, a softer variety of wheat, which is grown in Washington, Oregon, and Idaho. There is also a large quantity of hard wheat exported through the North Pacific, but not at the same volume as the white wheat.

That is the primary export through the elevators there.

The CHAIRMAN. Through the Midwest comes the hard wheat?

Mr. KOBER. Yes. The hard wheat moved through the port moves from Montana, the Dakotas, and western Colorado.

The CHAIRMAN. That was the wheat that was held back because of the strike on the west coast?

Mr. KOBER. That is correct. There was no way to move it to the Pacific elevators pursuant to sales or making of new sales not yet on the books relative to movement of wheat out of the west coast.

The CHAIRMAN. How far east was there an impact on the shipping of wheat?

Mr. KOBER. Well, if you are talking about the hard wheats.

The CHAIRMAN. The hard wheat. As I understand it, the white wheat is a west coast wheat.

Mr. KOBER. As I have revealed, Mr. Chairman, the hard wheat exported through the Pacific Northwest ports largely originated in Montana, North and South Dakota, and Colorado, and on occasion, if no other source markets were available, some in western Nebraska.

The CHAIRMAN. That was the hard wheat?

Mr. KOBER. That is correct.

The CHAIRMAN. And the white wheat is the west coast wheat?

Mr. KOBER. That is correct.

The CHAIRMAN. What is the difference?

Mr. KOBER. Well, the baking quality and the uses to which the wheat can be put. The hard wheat has a substantial protein content which the white wheat does not have, and it lends itself to baking applications that the white wheat will not lend itself to.

I am not an expert on the ways in which the various types and qualities of wheat can be applied to specific production processes, but this is my general understanding, that the white wheat is a softer variety of wheat which does not lend itself to production of the same kinds of goods that hard wheat can be used for.

The CHAIRMAN. I don't know if it will ever be useful, but I am glad you enlightened me on that. Thank you.

Mr. KOBER. That concludes my statement. Of course I am open for questions.

The CHAIRMAN. Now, I will turn to the leading wheat expert of this committee, certainly. You come from white wheat country, Bob.

Senator PACKWOOD. That is correct, and that is what we are exporting, and that is why we had such losses. The explanation is very good.

The CHAIRMAN. It was very helpful to get the picture here. Wheat is not wheat, and regions of the country produce different wheats and we got a good picture of that which is exported out of the west coast.

Now, Iowa wheat goes South evidently, to the gulf ports.

Mr. KOBER. To the extent that any Iowa wheat would move for export, I think it predominantly would move through a lake port, either in an ocean vessel or for transshipment to one of the Canadian St. Lawrence elevators, and some might be going to the gulf ports.

Soybean production will move through either the lakes or the gulf ports, and almost no Iowa corn or soybeans to my knowledge move for export through the Pacific Northwest.

The CHAIRMAN. Senator Packwood?

Senator PACKWOOD. I have no questions.

The CHAIRMAN. I can say without any fear of successful contradiction that you are New Jersey's leading wheat expert. [Laughter.]

Mr. KOBER. If I may, there might have been some confusion earlier about the agreement of the ILWU to continue moving wheat for export. After we were well into the first 100 days of the strike, the ILWU locals who provide elevator labor as distinguished from labor to load the vessels, did come to the grain companies—Louis Dreyfus Corp. operates an elevator in Portland, Oreg.—and they said they would go back to work to unload barges and cars, but they would not load any ocean vessels.

That labor was used to continue unloading cars until the elevators were full, and at that time of course, since they refused to load ocean vessels, they were back on strike.

Senator PACKWOOD. It is true that you have only four companies in the Northwest having longshoremen doing that shore loading, and Teamsters have the jurisdiction in other elevator companies.

Mr. KOBER. That is correct.

The CHAIRMAN. The hearing is adjourned.

(Whereupon, at 12:35 p.m. the subcommittee adjourned, subject to call of the Chair.)

NATIONAL EMERGENCY DISPUTES, 1971–72

WEDNESDAY, MARCH 8, 1972

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

The subcommittee met, pursuant to notice, at 1:53 p.m. in room 4232, New Senate Office Building, Senator Harrison A. Williams, Jr., (chairman of the subcommittee) presiding.

Present: Senators Williams, Pell, Nelson, Javits, Packwood, Taft, and Stafford.

Staff members present: Robert Nagle, general counsel; and Eugene Mittelman, minority counsel.

The CHAIRMAN. The Labor Subcommittee hearing will come to order. We are resuming hearings today on emergency labor disputes legislation. There are now a total of 13 bills before the subcommittee which deal with various aspects of this subject.

With the great variety of approaches offered by these proposals, I am hopeful that we will find during these hearings the basis for satisfactorily resolving some of the problems that have become troublesome in this area.

We have two witnesses this afternoon who should be most helpful to the subcommittee. Our first witness is Mr. Al Chesser, who has just become president of the United Transportation Union, after serving here in Washington for many years as legislative director of that union and of the Brotherhood of Railroad Trainmen.

It was Mr. Chesser's union which last year obtained the first court decision upholding the legality of selective railroad strikes. As a consequence, a dispute which might otherwise have brought on a nationwide shutdown, was voluntarily restricted to a relatively few carriers, and was thereafter settled by agreement of the parties. I am sure that Mr. Chesser will have comments on the significance of that experience.

We will invite Mr. Chesser to the table for his statement.

STATEMENT OF AL H. CHESSER, PRESIDENT, UNITED TRANSPORTATION UNION, ACCOMPANIED BY LESTER P. SCHOENE, COUNSEL, CONGRESS OF RAILWAY UNIONS; AND JAMES R. SNYDER, NATIONAL LEGISLATIVE DIRECTOR, UTU

Mr. CHESSER. Mr. Chairman, I have with me on my left our attorney, Mr. Lester P. Schoene. On my right is Mr. J. R. Snyder, who is our national legislative director here in Washington.

Mr. Chairman and members of the committee, my name is Al H. Chesser, and I am president of the United Transportation Union. The United Transportation Union represents all the organized operating railroad employees in the United States—other than those represented by the Brotherhood of Locomotive Engineers—as a result of the merger, effective January 1, 1969, of the Brotherhood of Railroad Trainmen, the Order of Railway Conductors and Brakeman, the Brotherhood of Locomotive Firemen and Enginemen, and the Switchmen's Union of North America.

The bills that the committee has under consideration for settling emergency labor disputes were generally introduced in the forepart of last year or represent refinements and modifications of bills that were introduced at that time.

Suggestions on how to change the methods of dealing with national emergency strikes have been legion. Usually they have involved greater governmental interference with collective bargaining. These suggestions have ranged from government seizure of the struck facilities to fact finding boards and compulsory arbitration.

Labor-management disputes today frequently result from causes much more troublesome than are immediately apparent from the facts of any given dispute. Many recent disputes of national importance arose from a situation in which not only the terms and conditions of employment, but also the terms by which some would suffer unemployment were basic to the deadlock.

These issues are typically related to the displacement of labor as a result of technological change or the attempt to adjust traditional work rules and they have become all the more meaningful in a context of a high and persistent rate of unemployment in our total economy.

At the same time we are experiencing in our economy ever greater complexity and specialization of functions accompanied by a growing interdependence of its economic units, so that disruptions in one sector of our economy are transmitted to others at a more rapid and forceful rate.

There is little doubt that such interdependence has lessened our tolerance for the prolonged labor dispute.

Such conditions have understandably raised the question in the minds of the public generally: Can the collective bargaining process traditionally viewed as an institution based on private decisionmaking encompass the issues currently before it? I do not think it amiss to say that it is this climate that Congress considers labor-management legislation today.

Since the suggestions embodied in these bills before you were formulated, or resurrected, two events having a major bearing on those suggestions have recently occurred, and as our union was involved directly, I am in a position to testify to their effect firsthand.

These events were—

1. The courts have recognized the legality of selective strikes in the railroad industry with respect to disputes that have been the subject of previously national handling; and

2. The UTU has conducted a fair, responsible, and successful selective strike in the railroad industry. I shall devote the major

portion of my statement to a discussion of these events and their relevance to the issues this committee has under consideration.

The problem with respect to the legality of selective strikes arose solely from the fact that the railroads in the last couple years persuaded two district court judges in the District of Columbia that selective strikes after previous national handling of the disputes under the Railway Labor Act were illegal.

Consequently, whenever any railway labor union attempted to strike selectively under such circumstances, the District of Columbia courts would issue preliminary injunctions and before any appellate review could be had, there would be some other disposition of the dispute—usually a national strike followed by ad hoc congressional disposition.

In other words, Mr. Chairman, we were told by the courts "You cannot strike selectively," on the one hand, and on the other hand we were placed under injunctions and brought before the Congress and told we can't strike nationally. So we were lassoed and hamstrung without rights whatsoever, even to go to the bargaining table.

The disputes arising from the notices that the UTU served under section 6 of the Railway Labor Act on October 20, 1969, the carrier counterproposals of November 7, 1969, and the further notices of the UTU served on November 20, 1969, at one stage were headed for disposition according to this same pattern.

After these disputes had been handled on the individual properties and in national handling with the National Railway Labor Conference, both in national conferences and in mediation, they were investigated and reported upon—along with disputes involving the Brotherhood of Maintenance and Way Employees, the Brotherhood of Railway, Airline and Steamship Clerks, and the Hotel and Restaurant Employees and Bartenders International Union—by Emergency Board No. 178.

When negotiations following the report of the Emergency Board did not result in disposition of the disputes, the four unions called a national strike for December 10, 1970. To avert this strike, Congress enacted Public Law 91–541 in the early morning of December 10, 1970, and the strike was called off.

That legislation required the railroads to put into effect the wage increase which the Emergency Board had recommended for adoption in 1970 and required the parties to engage in further negotiations with any strike prohibited until March 1, 1971.

Before March 1, 1971, the other unions here that had been before Emergency Board No. 178 succeeded in working out an amicable solution because, I believe, the Emergency Board's recommendations for rules revisions, affecting almost entirely the employees represented by the UTU, were designed to save the railroads enough in operating expenses to offset the wage increases recommended for the employees represented by all the unions and in addition, failed to reflect any comprehension of the practicalities of railroading or protection for labor displacement.

In any event when we were unable to work out a settlement by March 6, 1971, we called a selective strike to begin on March 8 on the Burlington Northern and Seaboard Coast Line Railroads. When the railroads sought a restraining order and injunction against such a

strike on March 7, 1971, we voluntarily postponed the strike in order that the application for preliminary injunction might be heard in the U.S. District Court for the District of Columbia on March 10, 1971.

After the hearing, the judge, in accordance with the practice established for the past several years, issued a preliminary injunction against the strike.

Instead of allowing the matter to be resolved by the preliminary injunction route, this time we sought and obtained emergency consideration of an appeal to the U.S. Court of Appeals for the District of Columbia Circuit.

On March 31, 1971, the court of appeals decided unanimously that a selective strike was lawful, notwithstanding previous national handling of the disputes, so long as the purpose of such a strike was not the breaking up of national handling.

The court, nevertheless, delayed issuance of its mandate so as to permit the carriers to seek Supreme Court review by petitioning for a writ of certiorari. A petition for a writ of certiorari was denied on June 7, 1971. We were at last legally free to proceed with a selective strike, but we continued to negotiate through June in the hope that a settlement could now be negotiated in the light of the carriers' knowledge that we could strike selectively.

The opinion of the court of appeals had indicated that, as a manifestation of our good faith in seeking a national disposition of the dispute, notwithstanding the selective nature of the strikes, it would be appropriate to give 2 weeks' notice of the intention to strike. This is what we did.

On July 2, 1971, we notified the National Railway Labor Conference, the officials of the railroads involved, and the Government that on July 16, 1971, we would strike three named railroads, one in each of the three regions. Until the actual date of strike, we continued our efforts to dispose of the dispute through negotiations, without a strike.

The railroads bitterly resisted these efforts. They were apparently convinced that the welfare of the industry required them to fight us to the last ditch, no matter what harm the industry might have to endure or what hardship might result to the public for lack of railroad transportation.

Accordingly, it became necessary for us progressively to enlarge the number of railroads struck and to continue the strike for a period longer than might have been thought necessary at the beginning. In each instance of enlargement of the number of carriers struck, we gave the same type of 2 weeks' notice that we had given in the first instance.

Finally, effective August 2, 1971, we were able to make a national agreement disposing of the dispute on all the railroads involved, except for the Chicago & North Western, which had settled earlier under circumstances which I will relate later in my testimony.

I have recited these events now in some detail because I think they require reconsideration of the premises on which all the bills now under consideration by this committee were drafted. These bills are premised on the thought that whenever there is a national railroad dispute, a national railroad strike is an intolerable national emergency; hence some modification of the present law is needed.

The events I have recited demonstrate that it is now the established law that a selective strike is lawful, that such a strike can be conducted

fairly and responsibly, and that it will lead to a collective bargained disposition of even the most far reaching and bitter dispute.

Most of the bills that this committee has under consideration provide for some form of compulsory arbitration—if arbitration is understood broadly enough to embrace the imposition of rates of pay, rules, and working conditions not voluntarily agreed to by the parties, even though it may be disguised under such forms as "final offer selection."

I believe, though, that all or nearly all the members of this committee, and all or nearly all Members of Congress, including the authors of bills providing for compulsory arbitration, would agree that any form of compulsory arbitration is, at least to some degree, repressive of our traditional free enterprise system and specifically repressive of freedom of contract.

I think it follows that all or nearly all Members of Congress would prefer that solutions to disputes over rates of pay, rules, and working conditions in the railroad industry, and every other industry, be found through free collective bargaining, rather than through compulsory arbitration, no matter how it may be disguised.

Our experience this year suggest that this is now possible under present law.

In many respects, the experience leading up to the disposition of our dispute through the agreement of August 2, 1971, was about as severe a test of the efficiency of collective bargaining as one is likely to find. This is true for a number of reasons.

In the first place, the issues in dispute were very important and far reaching; the wage increases involved were of critical importance to our people at a time when living costs were rising rapidly, and our people had had no wage increases for a long time; on the other hand, the revisions of working conditions that the railroads sought were revolutionary—the railroads thought it was important that they should have them, and our people were equally determined not to suffer retrogression in their working conditions.

But the inherent importance of the issues was by no means the only reason that the dispute was a difficult one to settle. The carriers had great difficulty in reconciling themselves to the fact that selective strikes following national handling were now actually lawful.

This can be illustrated with what happened on the Chicago & North Western. That railroad was one of the first to be struck. The management wanted to avoid being struck but apparently could not persuade the national representatives of the carriers to make a national agreement on the terms that the C. & N.W. was willing to make.

Accordingly the C. & N.W. withdrew from national handling and sought a separate agreement with us. We were in doubt whether our engaging in separate negotiations with the C. & N.W. might be construed as indicating a purpose to break up national handling, which the Court of Appeals for the District of Columbia circuit had indicated would be an unlawful purpose.

We, therefore, petitioned the court for instructions: The C. & N.W. responded by seeking a mandatory injunction to compel us to bargain with them individually—and also for an injunction against any strike while this individual bargaining was going on—but the other railroads in substance said, "See, I told you so," and again tried to enjoin our

strike altogether, notwithstanding the previous action of the court of appeals and of the Supreme Court.

The District of Columbia courts denied any relief to anybody, but the C. & N.W., nevertheless, got an order from the Federal district court in Chicago commanding us to negotiate with them individually.

As a result of such negotiations, a separate agreement was made with the C. & N.W. but the greatest care had to be exercised in the conduct of these negotiations to avoid anything that the carriers might use as an excuse again to try to enjoin all strike action.

There can be little doubt that throughout the strike the railroads efforts were directed toward forcing a national strike and consequent congressional ad hoc disposition. This is shown not only by their persistent efforts to enjoin the selective strikes but also by the fact that they put their proposed rules changes into effect by unilateral promulgation on all the railroads, including those that had not been struck.

To avoid a national strike under these circumstances called for the highest order of discipline among our people. It meant that many thousands of our people had to work under working conditions that were not acceptable, that were brutal, and for earnings far below those normally associated with their jobs.

And when I say brutal, running a crew 250 or 260 miles until they ran out of time for 16 hours and then say to the crew, "get home the best way you can," maybe by bus or hitchhiking on the highway. It also meant that, before a final settlement could be made, not only the issues initially in dispute but also those arising from the rules promulgation had to be resolved and provision made for resolving the grievances arising from working under the promulgated rules.

I have no doubt that the circumstances I have described made it necessary in this instance to extend our selective strikes to a larger portion of the industry than would normally have been necessary in order to secure disposition of a less complicated dispute.

I recognize that many Members of Congress received many letters from their constituents beseeching them to do something about the lack of railroad service. No one could have hoped more fervently than we did for an early and satisfactory disposition.

If some of your other constituents considered it a hardship to be without railroad service, bear in mind that those of your constituents who are members of our union were either out of work and on the picket line or else were working for reduced earnings under intolerable working conditions promulgated by the railroads.

The Court of Appeals for the District of Columbia had suggested in its opinion that one way of spreading the impact of selective strikes without spreading the deprivation of railroad services to the public would be to resume service on some railroads while strike action on others was initiated.

Whatever merit this suggestion might have under other circumstances, its adoption was virtually precluded by the railroad's promulgation of their rules. To have asked people who were on strike to go back to work under changed working conditions could only have resulted in further complicating the settlement of an already complicated dispute.

What I want to make strictly clear here and leave no misunderstanding, this is exactly what we had decided to do.

The former president, Mr. Luna, of the United Transportation Union, who is in this room, discussed this with me personally and before any other railroads were to be struck, he was withdrawing strike action from some of those roads that were under strike at that time before we were to strike any other railroads.

I say that because I remember very well in the hearings here that many people kept intimating about the spreading of the strike and what the percentage of the railroads was, and there was never anything said about, "Well, there may be withdrawing of the strike from some railroads that had been struck." So their argument just does not hold water.

When you are weighing the hardships that some of your constituents were subjected to by lack of railroad service, I think you should also have in mind that, constantly throughout the strike, we said, and reiterated, that we were ready at all times on the struck railroads to perform any service necessary to protect the national safety and health. But we were never called upon to perform any such service since probably such a limited partial operation would not be profitable.

Now, that means just this, of all of the complaints that came to this Congress of destruction of the national health, the interest of the economy, the interest of the country, we stood willing, said to the press, said to you, said to the railroads, to all, that we would participate, we would work on those roads to haul that material or whatever they said.

But, gentlemen, not once, not one time were we called upon to haul any kind of material, defense or otherwise. They refused to transport it.

The CHAIRMAN. How did you make that offer clear?

Mr. CHESSER. We made that offer clear when we gave information regarding the strike to the White House, to the Labor Department, to the Secretary of Transportation, to the Secretary of Labor. That was in our notices that we intended to strike. We put that in the notice.

The CHAIRMAN. Did you indicate what authority you would look to on a decision as to what was essential to health and safety?

Mr. CHESSER. We did not leave any qualifications. We did not ask for qualifications. We expected them to be as fair to us as we would be with them.

The CHAIRMAN. What was the response to this?

Mr. CHESSER. None, not to this day.

The CHAIRMAN. From no quarter?

Mr. CHESSER. From no quarter, Mr. Chairman. There was a lot of wailing at the wall about products that needed to be transported. We were ready to transport them.

The CHAIRMAN. Products necessary for health and safety?

Mr. CHESSER. Yes, sir.

The CHAIRMAN. How about passenger service that in many areas is considered essential?

Mr. CHESSER. At that time, yes, we still operated all the commuter trains and troop trains.

The CHAIRMAN. I did not mean to interrupt but that was my first question, and you were dealing with it.

Mr. CHESSER. Yes, sir.

By the same token, it is easier to conduct a strike when operations are shut down entirely than it is when partial operations are carried on in the interest of protecting the national safety and health, but we were constantly ready to conduct such operations and we think that the railroads, as public service institutions, should likewise be prepared to carry on such operations even if they are not profitable.

While the selective strike was in progress, and from some comments I have heard since, one might gather that the selective strike gave us dictatorial and oppressive powers—that it put us in a position to enforce any demands we might make and bleed the industry white.

I submit that anyone entertaining any such notion does so in complete disregard of the facts. I have already alluded to the fact that conducting the strike was no picnic for our people. They were willing to undergo the sacrifices necessary to secure a fair settlement, but no workman is willing to undergo sacrifices for the sake of being oppressive.

Was the settlement fair? I don't see how anyone can dispute the fairness of the wage settlement. The wages we contracted for were exactly those which a Presidential Emergency Board had recommended for the duration of the contract they recommended, with only the addition of a modest increase at the end of that period, in consideration for an extension of the duration of the contract; they were exactly the same wage terms that a majority of other railroad employees had included in contracts that they recently made and that the railroads were offering us even before the strike.

With respect to rules, which was the heart of the problem, the settlement was a fair compromise. With respect to the interdivisional runs, about which there was so much publicity during the strike, we have made many agreements for them in the past on individual railroads and I have constantly expressed willingness to make such agreements to fit the precise requirements of individual railroad operations.

In our national negotiations, the negotiators for the railroads found, I think, that they couldn't write a national rule that their own people would find acceptable and the matter was remanded for disposition on the individual properties under procedures assuring that it will be disposed of there.

A number of other rules were involved and some of the rules changes we agreed to would certainly have resulted in hardships to our people if we had not also negotiated fair protective conditions to guard against these hardships.

Perhaps, the best evidence of the fairness of the terms is the testimony of the representatives of the railroad managements. I note that, when Mr. Stephen Ailes, president of the Association of American Railroads, was before the House Committee advocating the enactment of H.R. 9989, he said, "The purpose of the bill is not to protect the railroads from the railroad unions—the recent UTU strike should have made it clear that no such protection is necessary."

Another appraisal comes from Mr. Benjamin F. Biaggini, president of the Southern Pacific. Mr. Biaggini was the spokesman for the Western region in the negotiations that finally led to settlement and thus a well-informed participant.

The August 30, 1971, issue of Traffic World quotes extensively from a speech Mr. Biaggini made on August 16 to the National Association of Railroad Trial Council in San Francisco.

Mr. Biaggini explains in detail the importance of the rules dispute to the railroad industry, why the industry felt it necessary to make an all out fight on the matter, why the industry considered it necessary to let the users of railroad service suffer the hardships that they did, and he indicates that the settlement achieved well justified the suffering and made everything worthwhile.

Of course, he does not agree with the use of selective strikes as the answer to collective bargaining problems in the industry and would like to see Congress enact H.R. 9989.

I have indicated that I believe the two events I have discussed—judicial recognition of the lawfulness of selective strikes and disposition of a far reaching national dispute through a fair agreement resulting from selective strikes—calls for reconsideration by this committee of all the ideas that were current when the legislation was introduced.

This does not necessarily mean, however, that I now consider any legislation undersirable. I joined with the chief executives of all the other railway labor organizations and with the AFL–CIO in supporting the enactment of H.R. 3595, and S. 832, and I have no occasion now to diminish that support.

Senator JAVITS. The bills you just referred to that you supported have not become law, have they?

Mr. CHESSER. No.

Senator JAVITS. You supported them, but they did not become law.

Mr. CHESSER. No. I said our support had not diminished.

Senator JAVITS. OK.

Mr. CHESSER. The express declaration as to the lawfulness of a selective strike after national handling without predicating such lawfulness on the avoidance of negotiations with individual carriers who may wish to withdraw from national handling seems to me useful, notwithstanding the judicial recognition of the lawfulness of such strikes.

The prohibition of a national lockout converting a selective strike into a national emergency is probably essential at some time. I know that the industry considered that course during the UTU selective strike and I think they rejected it only because they thought it would put them into a bad light in the eyes of Congress when they came here for ad hoc disposition.

Senator JAVITS. Mr. Chesser, do these interruptions bother you?

Mr. CHESSER. No.

Senator JAVITS. I would like to ask questions, and I have to leave. I congratulate you as the new president and I have an urgent executive session, so with the indulgence of our chairman just one question.

The CHAIRMAN. There is no objection.

Senator JAVITS. I thank the chairman. The bills you just referred to would do what you say, "The prohibition of a national lockout converting a selective strike into a national emergency is probably essential at sometime."

Would your bills in your opinion do what this says?

Mr. CHESSER. They would.

Senator JAVITS. Thank you, Mr. Chairman.

That is fine.

Mr. CHESSER. I have already indicated that we were able to endure the railroad's promulgation of their rules changes but that the promulgation seriously complicated the making of a settlement; S. 832's pro-

hibition of the promulgation of carrier counter proposals by a nonstruck road would have facilitated settlement if it had been in effect, and further, those who feel that we pressed our selective strikes too extensively should take comfort from the limitations H.R. 3595 puts on the extent to which the industry can be struck selectively.

Finally, although I have indicated that we were always ready to perform any service of struck railroads that was necessary to the national safety and health, we were not called upon by the railroads to perform any such service. S. 832 would oblige the railroads, as well as the unions, to perform such services.

Now I would like to comment briefly on the administration bill, S. 832, and the railroad and airlines bill, S. 2060.

Let me address myself first to the administration bill's provision giving the President a choice of instrumentalities for dealing with a national emergency strike. The bill gives the President three choices:

1. Additional cooling off period;
2. Partial operation; and
3. Final offer selection.

I would like to eliminate No. 2, partial operation, first. We know from experience during the UTU strike that the railroads are unwilling to operate partially in order to provide service necessary to the national safety and health.

The inference drawn from that experience has been confirmed by Mr. Ailes' opposition before the House committee to that portion of the administration bill and I might say that includes the Defense Department and the other branches of this Government.

They never moved one way to induce partial operations.

The bill itself provides in section 218(b) that now in no event shall an order for partial operation place a greater economic burden on any party than that which a total cessation of operations would impose.

This makes it certain that there will never be any partial operation under this bill if it should be enacted; the railroads will not voluntarily operate partially and the Government is prohibited from ordering them to do so.

That is under this bill.

This leaves the alternatives of additional cooling off period and final offer selection. The President is given only one choice; he must select one or the other. Although the additional cooling off period may sometimes produce a settlement, as witness the experience of the Brotherhood of Maintenance of Way Employees, the Hotel & Restaurant Employees & Bartenders International Union and the Brotherhood of Railway, Airline & Steamship Clerks during the cooling off period imposed by Public Law 91–541. But there is no certainty that this will be its effects.

By contrast, final offer selection, the term the bill uses to disguise the compulsory arbitration, does assure that the dispute will be settled. In my judgment, the temptation to the President to select this alternative would be overwhelming.

I conclude that, notwithstanding the window dressing, this is simply a compulsory arbitration bill then and I am opposed to it, regardless of any other considerations. Indepth studies conducted by Government, such as the staff report on emergency disputes to the Subcommittee on Labor of the 82d Congress, or the President's Advisory Com-

mittee on Labor-Management Policy in its report on free and responsible collective bargaining and industrial peace during the Kennedy administration, rejected the idea that there should be any legal requirement that disputes be resolved through compulsory arbitration, such as, Australia and New Zealand, that I have heard referred to so many times by this committee how it works, it has not worked.

In fact, strikes in those countries are at an all time high. Contrast their experience to that of this country where more than 100,000 collective bargaining contracts negotiated every year, and the time lost due to strikes last year was one-fourth of 1 percent, less time than is devoted to coffee breaks.

I have many other grounds of opposition to this bill. For no reason at all it ignores approximately a hundred years of history of collective bargaining in the railroad industry and tries to force bargaining in that industry into the mold that has been established through bargaining in industries that have been more recently organized.

Worse, it would fasten on the railroad industry essentially the evils of the infamous Taft-Hartley Act that the reactionary 80th Congress succeeded in imposing on the rest of industry, over the veto of President Truman in 1947.

In addition it seeks to reverse the policy Congress has maintained since 1938 with respect to defining the conditions under which the Railroad Unemployment Insurance Act permits the payment of benefits to individuals unemployed on account of strikes.

The railroads have been trying for over 30 years to reverse this policy, but Congress after frequent reconsideration has always stuck to its original determination. The administration now proposes to do for the railroads what they have not been able to do for themselves in 30 years.

Little additional comment is needed on the railroad and airlines bill H.R. 9989. It includes all the vices of the administration bill, plus providing for straight out compulsory arbitration as another presidential choice, and providing a host of other revisions of the Railway Labor Act that the carriers would like to see made, which have no relevance at all to the handling of emergency disputes.

Mr. Chairman, since my statement is concluded, there has been another bill introduced, and I would like to make a few comments about that bill.

Since my initial statement for this committee was prepared Senator Packwood for himself and 28 other Senators introduced a bill on February 24, 1972, S. 3232.

Senator Packwood described this bill as being essentially an updated version of the administration bill, S. 560. He says that it is designed to correct some deficiencies in the administration bill and that his bill has even been accepted by the administration as a substitute for S. 560.

I regard this as a most tragic and misguided development.

The Packwood bill, S. 3232, is basically subject to all the criticisms I have made of S. 560. To be sure, there are some differences which Senator Packwood apparently thought were improvements.

Instead of prohibiting any partial operation order that would make partial operation more burdensome than total cessation of operations—which I have said makes S. 560 completely nonoperative so far as partial operation is concerned—Senator Packwood substitutes an injunction that the board is to make every reasonable effort that this will be the result.

Also instead of confining the President to a single choice of options. Senator Packwood would permit the President to use all options in any sequence, but only once per option.

These devices that are apparently designed to improve the bill merely disguise the devices that have been injected into the bill to make it more viciously antilabor than the original administration bill.

The original administration bill, S. 560, was directed toward national emergencies. Since that bill was first introduced, as I have related in my principal statement, we have established through expensive and time consuming litigation that selective strikes, even after national handling, are legal under present law and do not create a national emergency.

Consequently Senator Packwood's bill has been designed to make the coercive options available under S. 560 in cases of national emergency also applicable to selective strikes.

In other words, shackle them, there will be no strike of any kind in this industry, nothing to go to the bargaining table with, only your hat in your hand, and say, "Mr. Railroad, give me whatever you have got, we will have to take it, because we have got no weapon to fight back."

In other words, as soon as we have established that selective strikes are available as an instrumentality under present law for carrying on collective bargaining without causing national emergencies, Senator Packwood and his colleagues, propose to make the coercive procedures, which again the administration bill formerly restricted to national emergencies, applicable to selective strikes.

Gentlemen, we have been before this Congress, we have been dressed down for national strikes, we have been before the courts and dressed down for selective strikes, for even one strike. Now, what do you want to do with us?

The President might as well have brought Chou En-lai back with him and said, "We are going to build a fence around you, we will put you under different rules from now on."

By contrast, Senator Packwood would restrict the least coercive device, additional cooling off period, to 15 days, instead of the 30 days provided for in the original administration bill, S. 560.

Also Senator Packwood's bill would completely abolish the National Mediation Board, instead of leaving it the bare bones function of handling representation elections in the railroad and airlines industries as the original administration bill did.

I have pointed out in my principal statement that the original administration bill, S. 560, for no reason at all ignores approximately 100 years of history of collective bargaining in the railroad industry and tries to force bargaining in the industry into the mold that has been established through bargaining in industries that have been more recently organized.

Senator Packwood's bill, S. 3232, has the same vice. What I was referring to when I was speaking of the original administration bill was the uprooting of a system of bargaining under which contracts are continually in effect, subject only to modification of specified matters pursuant to 30-day notice, and the coercive substitution therefor of term contracts; the complete substitution of an alien system of grievance handling for that which has developed in the railroad industry in the past century; and the injection of the railroad industry into a system of mediation and conciliation that, in my judgment, has not proved itself to be more effective than that prevailing in the railroad and airline industries under the National Mediation Board.

This intrusion into the accepted and established collective bargaining traditions in the railroad industry, both S. 560 and Senator Packwood's bill, convinces me that neither is a good faith effort to address itself to the problem of national emergencies caused by labor disputes.

Both are bills that use such occasional national emergencies as an excuse for the attempt to enact the most vicious antilabor bill that has been considered in this century.

Gentlemen, I thank you for the time and opportunity you have given me to present my union's views on this legislation. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Chesser.

At this table, at this point, Senator Nelson, you are the only one who has no legislation in this area. Therefore in your pristine objectivity, I turn to you first. [Laughter.]

Senator NELSON. Thank you very much.

Do I interpret your remarks to indicate that you oppose this pending legislation? [Laughter.]

Mr. CHESSER. Senator, you are getting pretty close.

Senator NELSON. I may have some questions later. I will forgo my questions now. I have a few that may be esoteric as far as the pending legislation may be concerned.

The CHAIRMAN. I am the author of S. 382. I will rest upon your opinion of that at this time, Mr. Chesser. You favor this, which deals with partial operation and selective strikes, although you take a dim view of partial operation, because you have made the offer to carry goods essential for health and safety. You have been really not turned down, but have not been taken up on that.

Mr. CHESSER. Yes; we have been turned down.

The CHAIRMAN. Turned down?

Mr. CHESSER. We were turned down by a committee in the House.

The CHAIRMAN. I mean by the industry. That is why you were less than optimistic about it.

Mr. CHESSER. We have been turned down by the industry. Your bill would require the industry to carry out partial operations.

The CHAIRMAN. And would also codify the selective strike option which has now been found under present law to be legal.

Mr. CHESSER. Yes, sir.

The CHAIRMAN. I will turn to the author of S. 3232.

Senator PACKWOOD. Mr. Chesser, in your statement you speak about the prohibition of a national lockout. You say that converting a na-

tional strike into a national emergency is probably essential at some time. What do you mean by that?

Mr. CHESSER. The prohibition of a lockout by the industry.

Senator PACKWOOD. By legislation, if necessary?

Mr. CHESSER. A lockout by the industry, too.

Senator PACKWOOD. Did your statement mean a national lockout should not be allowed?

Mr. CHESSER. Yes.

Senator PACKWOOD. How would we stop this kind of a lockout?

Mr. CHESSER. I might have to defer to my attorney. There is a question, I think, of whether it would be legal under the Interstate Commerce Act. I am not certain about service to the——

Senator PACKWOOD. Are you saying as a matter of philosophy, that we should not let the railroad industry have the power to have a national lockout?

Mr. CHESSER. That is right. Mr. Schoene will address himself to that.

Mr. SCHOENE. May I address myself to that subject? Under the Railroad Labor Act, we have perennial contracts. They are always in existence. Either side may propose changes at any time on 30 day's notice.

Now if the unions propose a change in the contract, they go through the procedures in the Railway Labor Act and they fail to get a settlement, and they have a right to strike.

On the other hand, if the railways propose a change in the contract and they go through the procedures of the Railway Labor Act and they fail to get a settlement, they may unilaterally impose those changes.

Now, the bill that Senator Williams has introduced proceeds on the assumption that that is all the power they need. They do not need to lockout their people and deprive them of employment and deprive the country of railroad services.

Senator PACKWOOD. I think we are on the same track. I agree with you. The railway industry should not have the power to impose a national lockout.

Mr. SCHOENE. Or any lockout. There is no need for any lockout in the railroad industry.

Senator PACKWOOD. It is a power they should not have because they are going to deny the consumers railway transportation.

Mr. SCHOENE. And needlessly. When they come to the end of the road on their proposals, they have a right to put them into effect under the Railway Labor Act right now.

Senator PACKWOOD. Yes, I understand. We say conversely that the union should not have the power to impose a national strike on the railroads.

Mr. SCHOENE. We are trying to avoid any national strike. We believe that Senator Williams' bill would destroy any incentive for any national strike. It does not contain any provision for a prohibition of a national strike, because I don't think it is necessary.

Senator PACKWOOD. Should there be a prohibition against a national strike?

Mr. SCHOENE. I think not as a matter of principle. As a practical matter, it would make no difference.

Senator PACKWOOD. The railroads should be prohibited, but the unions should not?

Mr. SCHOENE. I don't make a distinction between national or non-national. I say the industry should not be permitted to engage in a lockout, even on one railroad, because when there is a dispute over the railroad proposal to put its changed conditions into effect, it does have the power to put those conditions into effect.

It does not have to lockout.

On the other hand, if the union proposes a change, it does not have the power to impose its conditions.

Senator PACKWOOD. But it does have the power to deny railway service to the people of the Nation if it chooses.

Mr. SCHOENE. It has the power to strike, and that is the only power it has.

Senator PACKWOOD. How do we draft a bill that will guarantee the public a continuity of transportation services or railroad services in particular, if you want to limit it to that?

Mr. SCHOENE. My own view, Senator, is that the bill that has been introduced by Senator Williams will do that. Now, it is not an absolute guarantee. It does, however, offer a relative assurance that based in my judgment of 30 years of handling these disputes, nationally and locally, would make a national railway strike absurd.

Now, as I told you, I rebel, naturally, as a matter of principle, against any prohibition of the right to strike, but I think it is absolutely unnecessary if you were to enact Senator Williams' bill.

Senator PACKWOOD. If it were to be absolutely unnecessary under Senator Williams' bill, we are going on your assumption that with the passage of that bill there would not be a national strike.

Mr. SCHOENE. That is right.

Senator PACKWOOD. There could be no harm in prohibiting a national strike, because there would not be one anyway.

Mr. SCHOENE. As a practical matter, I would have to agree that is so. I rebel personally.

Senator PACKWOOD. You are talking about certain lines being shut down and other lines operating. To the cities and States on the shut line, you might as well have a national railroad strike.

Mr. SCHOENE. I don't think that is so, Senator.

Senator PACKWOOD. They would have no rail service.

Mr. SCHOENE. I know of very few cities or States in this country who have only one railroad service.

Senator PACKWOOD. I can give you a whole string of them in Oregon. The only town that has more than one service is Portland. Every other town is served either by the Union Pacific or Southern Pacific, both of which you shut down with selective strikes last summer.

We had no real service in the State.

Mr. SCHOENE. I realize that, Senator.

Senator PACKWOOD. Most towns have access to only one railroad. If you are a principal city or a major railhead, you may be served by more than one road.

Mr. SCHOENE. I don't believe that is so, Senator. I really don't.

Senator PACKWOOD. From San Francisco to Portland, what railroad other than Southern Pacific serves that area?

Mr. SCHOENE. Well, the Western Pacific, the Burlington Northern.

Senator PACKWOOD. As far north as Portland.

Mr. SCHOENE. The Western Pacific comes into northern California. Now we are talking about Portland?

Senator PACKWOOD. I said what railroad operates between Portland and San Francisco other than the Southern Pacific?

Mr. SCHOENE. I think that the—that is the only one.

Senator PACKWOOD. What railroad operates east other than Union Pacific?

Mr. SCHOENE. I really don't know.

Senator PACKWOOD. None. So partial shut down means no service.

Mr. CHESSER. What do you mean?

You shut down the Union Pacific in your State and those things essential to the health and welfare of the Nation we offered to haul them.

Senator PACKWOOD. Except the employers wouldn't allow them to be hauled.

Mr. CHESSER. Certainly. That is no reason to say you can't strike. It was not our fault.

Senator PACKWOOD. I am not trying to place blame. I am saying the railroads shouldn't have the power and you shouldn't have the power to put a State or a country in that situation.

Mr. SCHOENE. Senator, I think it is important to observe that under Senator Williams' bill there would be a command to both the railroads and to the unions to conduct partial operations essential to the national health or safety.

And this is one of the things that we have pointed out as being good about this kind of legislation.

Senator PACKWOOD. I have no other questions for the moment.

The CHAIRMAN. Senator Taft?

Senator TAFT. Thank you, Mr. Chairman.

As I understand it then, you endorse the idea of having a partial operation provision. How does the provision in Senator Williams' bill differ from that in Senator Packwood's bill as far as you are concerned?

Mr. SCHOENE. That is a very important difference. Let me address myself to the administration bill, S. 560, which has a provision for partial operation, but a very specific prohibition that no partial operation shall impose a greater burden on anybody than the total cessation of operations.

As Mr. Chesser testified in his statement, that is an impossible condition.

Senator TAFT. I don't understand why. Why isn't that a practical standard?

Mr. SCHOENE. Because a partial operation always imposes a greater economic burden on both the railroad and the union.

Senator TAFT. How can that be? Suppose you are just told to operate one small branch line of the entire system? How can that be a greater burden economically? I don't understand the reference that was made by the witness earlier on that.

Mr. SCHOENE. For the simple reason that if you have one branch line operating you are making very little revenue.

Your expenses in operating that branch line, you have to maintain a terminal, you have to maintain crew headquarters. It is bound to be

more expensive than just shutting down the railroad all together would be.

Senator TAFT. I can't follow that at all, particularly a railroad that is operating at a loss. Penn-Central operating at millions of dollars of loss, I would think anything they cut out would result in their being in a better position.

Mr. SCHOENE. If you are talking about Penn-Central, now, I could perhaps agree. Shutting down any part of its operation might be better than operating it all. That is not the condition of most of the railroads of this country.

Senator TAFT. There must be some situations, though, that are similar to the airline situations where Northwest shut down its domestic operations on which it was losing money and continued its overseas, or had it shut down, continued its overseas operations and made more money, really, than when it had to operate its whole system.

You have some profitable lines and some nonprofitable lines.

Mr. SCHOENE. You are talking about a situation in which the operator makes the selection; you are talking about Northwest Airlines. Do you imagine for one moment, Senator——

Senator TAFT. Northwest didn't make that decision, I don't think.

Mr. SCHOENE. I think they did. They were not directed to keep their operations overseas in operation while they shut down their domestic operations.

Senator TAFT. They were struck domestically.

Mr. SCHOENE. Yes, but they had that choice. They were not ordered by the Government to conduct partial operations.

Senator TAFT. The point I was trying to make is that it seems to me perfectly clear under those circumstances that partial operations did not impose a greater economic burden. In fact, it was exactly the contrary.

Mr. SCHOENE. But the carrier was not ordered to do it.

Senator TAFT. Our bill does not allow the carrier to make the selection. What the bill does is give the Secretary of Labor, as I recall, the authority to determine what the partial operation would be.

Mr. SCHOENE. That is correct.

Senator TAFT. How does that differ from Mr. Williams' bill?

Mr. SCHOENE. Mr. Williams' bill does not contain any restructions upon the economic burden that would be imposed by partial operations. If Mr. Williams' bill results in a railroad being ordered to operate certain services and our being directed to provide those services, we will have to provide them even though it makes the conduct of the strike more difficult, and the railroad will have to provide them even though it is a greater economic burden.

Senator TAFT. You would be willing to accept that. I thought perhaps the saving provision was put in as much to prevent the partial operation order taking advantage of the union as it was making an additional economic burden on the management.

Mr. SCHOENE. I don't think that was its purpose, Senator, if you would excuse me.

Senator TAFT. If it wasn't, it was news to me.

Mr. SCHOENE. I would much rather have Senator Williams' provision, and I think it would be workable.

Mr. CHESSER. Let me also add there, I think you will find in partial operations, too, that the railroads form of strike insurance that they provide the struck railroad, they might not be able to draw that insurance under partial operations.

Senator TAFT. I don't know whether that would be true or not.

Mr. CHESSER. They might be better off struck.

Senator TAFT. It might be that if they had such an insurance provision——

Mr. CHESSER. All we know is that they have now got it, their insurance. Who provides it, I don't have the slightest idea.

Mr. SCHOENE. In that connection, Senator, if I may supplement Mr. Chesser's answer, a number of years ago the Order of Railroad Telegraphers struck the Chicago North Western Railroad for a period of over a month, and I know that they made more money through their insurance and the lack of expense than they were making operating.

Senator TAFT. They wouldn't have been in a different situation under Senator Williams' bill than Senator Packwood's bill.

Mr. SCHOENE. Yes, they would. This is the point. Senator Williams' bill would permit the Government to order them to operate partially, and this might have interfered with their collecting the strike insurance. It would have made a difference.

Senator TAFT. I don't know what—whether it would or not. They could write the policy differently.

Mr. SCHOENE. Yes; they could write the policy differently.

Senator TAFT. Let me move on to one other area, because I have never been sympathetic in any degree to compulsory arbitration. In fact, I have voted against this quite a number of times in the Congress, and once or twice when I have voted for it, I have only done so with a good deal of distaste.

But I don't feel that it is a solution to the problem generally. Yet in the testimony here today Mr. Chesser talked about how bad compulsory arbitration is, and then he says that this would fasten on the roalroad industry the infamous Taft-Hartley Act which the infamous 80th Congress imposed on other industry.

Mr. Chesser, where in the Taft-Hartley Act is compulsory arbitration called for?

Mr. CHESSER. It is not.

Senator TAFT. There is no such provision in it.

Isn't it true then in the hearings that the whole question of compulsory arbitration was discussed and it was decided they would not press for it because it would have the effect of weakening collective bargaining because neither party would put their chips on the table and bargain in good faith if they knew compulsory arbitration was going to be their goal at the end of the line?

Mr. CHESSER. I don't know. I have to say I was not here at that time.

Senator TAFT. The hearings would so indicate. The point I would like to make is that that argument, it seems to me, is directly contrary to the situation with regard to last offer selection. That is the broad philosophical difference that exists between compulsory arbitration and last offer selection.

Last offer selection, if it works, and I have talked to people about it——

Mr. CHESSER. Is that any difference from compulsory arbitration?

Senator TAFT. I think it is, because the parties have every incentive to try to put their cards on the table and arrive at a settlement, and if they finally get faced with the last offer, and if they are faced with it their motivation has to be to make the most reasonable offer.

Mr. CHESSER. You have told them in advance you are going to compel them to take it.

Senator TAFT. Not which one.

Mr. CHESSER. You don't give them much choice.

Senator TAFT. The pressures are the same on both sides.

Mr. CHESSER. I agree with you. I don't mind gambling my own money but I hate to gamble the whole membership's money and their life work.

Senator TAFT. Of course you do that when you go to a strike anyway, and the public's money, too.

Mr. CHESSER. Wait a minute when you talk about the public's money. You talk about the public money. We are the public. Well, when you talk about taxes, you have given money to the Penn Central Railroad. You are talking about tax money. When you are talking about tax money, you are talking about the people's money, and that is our money, as taxpayers, too, because you are going to find in the railroad industry that by and large the percentage of our membership, the employees on these railroads, the great, the huge majority of them pay a lot of taxes.

Senator TAFT. Admittedly. There is no question about that. Nobody is denying that, that employees in the railroads, or any industry, are part of the public. But those who are not directly in the labor-management relationship outnumber many times those on either side of the bargaining table, and when we get in the emergency strike situation, of course, that is what we are faced with considerably.

Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Stafford?

Senator STAFFORD. Thank you, Mr. Chairman. Mr. Chesser, I would like to ask you just one or two questions. I am rather new on this committee. If the Congress finds it is necessary to act on this type of legislation, would you have any suggestions and to what kind of pressure Congress could put on the carriers that might make them more eager to settle disputes?

Mr. CHESSER. Well, as I said, we would support Senator Williams' bill. I think that would do it, but I think you have a point there.

There has got to be some incentive for a settlement, and on that side of the table, and to say to us that we can't strike, Senator, you take away not only the one, but everything we have got.

That is the end of the road. We have hoed out the end of the road, and we are at the mercy, then, of the carriers, of the Congress, or whose ever lap you want to drop us in.

And that has been the case for several years. You can't point to one case where it was our fault. We did everything possible to avoid a national strike. You had us in such a dilemma—I say "you," the Congress and the courts—had us in such a dilemma, where do we turn?

We wait, wait, years, and let me tell you, this is not easy to do when your members are wondering why in other industries they can strike and nobody says anything—auto, steel. They make a settlement, and

they should have a right to strike in this country. Under our system of government they should have the right to strike, but not us.

So it left us in a dilemma. We could not strike one railroad, and then they say, "you can't have selective strikes, you have to strike nationally."

That is virtually what the court said. We did, and some midnight oil was burned up here over it, and don't think we were happy about it, not one bit.

I don't care if this Congress gave us the best settlement, even better than you asked for, you don't have anything, a labor leader or his union, you don't have anything to be proud of when you get it in this country where we are supposed to have a democracy, where we are supposed to have free collective bargaining. It is not a thing for the country to be proud of.

When this country gets to the place where it can't afford to strike, then we are in bad shape. The country is really in bad shape.

Senator STAFFORD. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Nelson.

Senator NELSON. One of the problems that puzzles some people that look at the business of a large strike, whether it is steel, or auto, or a large transportation strike, is the question raised by Prof. Kenneth Galbraith a number of times, with respect to the power of huge conglommerate corporations to set the price of their product, whether the price increase may be caused by wages, or a strike, or whether the price increase may simply be a determination of the ownership to increase the profits.

He raises the question of whether there is a real competitive situation, when two or three or four are so dominant in the marketplace that they don't have to worry about the price situation too much.

If we continue to see the tremendous role of the huge conglomerates in which a company can pretty much set their price because they control the market, when you reach that stage, and you reach it as Galbraith seems to think we might have in a number of areas, then you don't really have free collective bargaining in the historic sense that we have always talked about in this country, and there is, it seems to me, a third very important public interest involved.

This question is not only raised because there might be a strike, it is raised every day because of the dominance of the marketplace. That may be a whole lot more serious in the pricing situation than in a strike.

It seems to me Galbraith might say, "Let's treat these as public utilities." In the automobile industry, prices are set by General Motors.

We had that situation of Chrysler making a mistake by announcing a price increase before General Motors. When General Motors announced they were not going to have one, Chrysler withdrew theirs the next day.

So as things continue to grow, we may well be facing a situation where we are treating conglomerates as if they were a public utility. At least, that is, with respect to price setting and so forth.

Actually, in my judgment, they all ought to be broken up, including ITT, which has been getting some publicity lately.

But I ask this question: If you are going to have compulsory arbitration in some kind of labor disputes, and maybe we are someday, wouldn't it be necessary in the legislation, in order to maintain the integrity of the law and the confidence of the union members of the public in the process, wouldn't it be necessary to require that those responsible for setting the wages and working conditions and settling disputes, really have to have available to them the books of the company?

Because if the company is saying, say, we have compulsory arbitration because we can't afford to strike from the standpoint of the national welfare and we were looking at all the factors that affect labor, we know what the wages are, we know what the working conditions are, we know how they compare with every other situation in the United States.

The arbitrator does not know, and the public does not know whether or not the company in fact can afford a certain wage increase, because nobody has a look at those books, and if it is a big conglomerate, involving one of their dozens of companies, there is no way even for the IRS to tell whether or not one of those 50, or 60, or 100, or 200 companies they own is losing money, because they file a consolidated return.

So, wouldn't it arise that in all fairness to the public, especially to the public, but as well to the employees, that there be a public disclosure of the books of the company before the arbitrators are required to make a decision on the issue of prices and wages and working conditions?

Mr. CHESSER. Well, that has to be true but it goes further than that, Senator.

Senator NELSON. That is what we do with public utilities.

Mr. CHESSER. That is right.

Senator NELSON. They have to disclose to the Public Service Commission, or whatever commission it may be, and the commission says, "We will allow you a 6½-percent rate of return," and it is subject to public disclosure and public debate.

Mr. CHESSER. It is not new in history. Queen Anne set the wages. She told the people of England, the business that was there, how much money they should make.

Now if it comes to the point of what your discussion has indicated, and you are not too far wrong, we may not be as far from that as you think.

Senator NELSON. I am not sure we are far away from it.

Mr. CHESSER. If the conglomerates are allowed to grow as they are. How in the world can we live under the same system of government we can today? It will no longer be a democracy. I sometimes wonder if we really have a democracy here in this country today.

But it will change, and it will change fast. And you can change it with compulsory arbitration, and you can do it just like England has done it, if that is what you want, state owned, government owned. government ownership of the industries.

If that is what we want, let's get on with the business and let's get it over with. Because that is what you are going to have. That is how it is going to end up, as it did in England.

And it can go further. No, it is nothing new. That is exactly right. That is where we are headed right now, in that direction, and we had better be concerned about it. We had better be concerned about it. This Congress had better be concerned about it.

Senator NELSON. I think it is true that the nationwide transportation strike involving all the rails would dramatically affect the national welfare, and would before very long close industry all over.

However, the question that I have in mind is if there is going to be compulsory arbitration, is the case any more compelling in transportation than it is in steel or autos? That is to say, a nationwide strike, is it necessary?

A west coast strike would be enough. Is there evidence to determine or demonstrate that the west coast strike as such, going for 3 months and 6 days before the Taft-Hartley Act was invoked and starting again, is there any evidence that that strike would be covered by the bills, was it in fact more critical to the health and welfare of the United States than a general steel strike, or a strike of the whole auto industry?

Is the economic damage greater to the country by the west coast strike than it is by a basic steel strike? If it is not and I don't know, but if it is not greater on what grounds do we distinguish between legislation that applies only to the transportation industry and not to big steel and big auto?

Mr. CHESSER. Well, it all adds up to the same. Whether or not what you say—I don't know, it is according to whose economist you talk to. It is kind of like picking a horse at a race, what color you want. They can produce most any kind of figures for you.

But we have had those strikes. Now, I see by the Wall Street Journal that business made 12 to 14 percent more this last year than they did the year before. So they did not suffer too much. The economy did not really suffer that much. But my point really is, Senator, yes; we are going to have strikes.

Sure you are going to have strikes. But I say if this country can't take a strike, can't take that part that is built in our system of this Government, and when it gets to the point where we can't have a strike, or you can't have the possibility of one and nobody wants a strike, believe me, but when it comes to that point where you just shut them all down, then you are going to change your whole system of Government, whether you like it or not.

Senator NELSON. I don't have any more questions.

The CHAIRMAN. We have taken a great deal of time, and it seems to me we are just beginning some of the more profound and yet essential questions here, and Senator Nelson, we are grateful to you for opening up the discussion beyond the specific provisions of these various bills, 13, I guess, in all, before us.

There are just one or two general observations and questions, Mr. Chesser.

You referred to Queen Anne and even more recently, Queen Elizabeth. We have seen nationalization of coal over there. That nationalization did not remove the right of the coal miners, to strike.

Mr. CHESSER. No. It made it worse.

The CHAIRMAN. Nationalization is not, under our jurisprudence, the answer to strikes.

Mr. CHESSER. No, sir.

The CHAIRMAN. It seemed to me that the tolerance of the British people far exceeds the tolerance of the American people when faced with the deprivations that follows a national industry strike.

If we had a coal strike, we would not go 2 months without coal. I don't know how they did it. We could not operate. This Nation would be inoperative 3 weeks after a strike, unless there had been an unusual stockpiling in anticipation.

But we are faced with this lower point of toleration of strikes. We have been dealing with strikes that affect national health and safety, and we have legislative proposals, most of which assume that there should be a prohibition on strikes only when the national health and safety are concerned.

This Congress departed from that concept in the dock strike. No finding was made that the national health and safety were adversely affected, and we sought a judgment on that from those who should have known, the Secretary of Health, Education, and Welfare, the Secretary of Defense, and they found it unnecessary to come here to talk about it, because their areas had not been affected.

Let me ask you this: Faced with all this national concern, is there any inclination anywhere in industry, on either side of the bargaining table, to anticipate the insoluble clash, and by early agreement say that at some point we will submit to arbitrators that we select, not to interpret old rules, but to make new rules?

Is there any inclination that you see at all?

Mr. CHESSER. No, but I see something—I say no, I am not sure about this. But let me say this: I see something much brighter than that. We have had in the past, and I don't say with a great deal of pride about our industry, but we have had probably the worst labor-management relations of any industry in the United States, without doubt.

Now, we have recently said that until we have better labor-management relations in our industry, we do not intend to support any legislation, to support management in anything they might do, until we have better relations, so that we could work together.

It would do me no good today, when an employee despises railroad management for intimidation and some of the things that have gone on in this industry, to ask him to write to you as a Senator to pass certain legislation that is really needed.

I will be the first to say that it is really needed, several pieces of legislation in this industry of ours.

He would not write you. He would not write you, right or wrong, without arguing the merits of it, because you see he has had bad treatment and is in a bad frame of mind.

Now, here is the bright side. We have met with the presidents of some of the railroads as recently as the 20th of February to lay this problem right out on the table and talk about it, regardless of feelings, but to say the things that have needed to be said and to acknowledge at the same time what is wrong in our industry and what can we do to make it what it should be. It is not hard to answer that question, but it is the question of the relationship between management and labor, and I am happy to say that those present that we met with agreed.

They recognized here this problem. They have told us so and they have been back and met with the Association of American Railroads, and we now are in the process of appointing committees, top level committees, and we will be dealing with the presidents of some railroads, to further this program throughout the entire industry.

One or two railroads have already called meetings of their officials and our top negotiators, the general chairmen out in the field.

So I say that this is the brightest spot I have seen in the last 20 years. This will bring on better feelings. It will bring on, I hope, more trust in the industry. It will bring on a better atmosphere of negotiations.

I have appointed a committee of five of our vice presidents to a permanent negotiating committee that will meet periodically with the National Railway Labor Conference of Management.

They are enthused about this, if we can talk with them about some of our problems. Now, I say it is a bright side of this thing because I am enthused about it, and I have a lot of hope for it. We are asking very little. Just turn this thing around, that we can have good labor-management relations, and then let's go out and do something about this industry of ours that really needs to have something done about it.

So that is the bright side that I have talked to you about, but I don't even think about our compulsory arbitration. If you give up on collective bargaining, nobody has any ideas, either side, then you are not doing your duty. You are coasting. That is what I have said to the presidents, "We know what problems are. Let's do something about it."

I can say that as of this minute they have been cooperating with us, and I hope we continue to do it. I don't know what is going to come of it. I hope for the greatest. It will turn this industry around.

The CHAIRMAN. I appreciate that statement, Mr. Chesser. It is hopeful.

Mr. CHESSER. All I have to say to Congress is, "Be careful about the compulsory arbitration. You have the ax raised. Don't drop it. Don't think it is going to work. Don't get your hopes up about this compulsory arbitration." As I said, they had that in England. How does it work? No legal strikes. We asked them, we were at a conference over there, we asked some of the fellows—"You have not had any legal strikes. How about wildcat strikes?" He said, "Thousands." So I ask you, gentlemen, you have the ax raised, but I wish you would drop it before you let it fall this way.

Don't make the mistake of letting it fall forward.

Senator PACKWOOD. You mentioned England. You have had contracts with "no-strike, no-lockout" provisions. England until this year did not have anything close to the equivalent of the National Labor Relations Act. It was only passed this year. I don't think you can, by the greatest stretch of the imagination, equate their system of labor relations to ours. The two are as different as night and day.

Mr. CHESSER. They are not different between night and day, when you start talking about compulsory arbitration.

Senator PACKWOOD. England has not had compulsory arbitration.

Mr. CHESSER. They have not? What have they used?

Senator PACKWOOD. They have contracts with no terminal date and no provision for strikes. A wildcat strike was legal in England until this year.

Mr. CHESSER. I don't agree with you that the wildcat strike was legal. We were there and participated in a conference with the Government and the labor. They said it was an illegal strike.

Senator PACKWOOD. In private industries, which we are talking about, where you had no prohibition against strikes, wildcat strikes were legal.

Mr. CHESSER. It was set in a pattern there. They may be trying to stop it. I hope so.

Senator PACKWOOD. Do you agree compulsory arbitration would work if all the parties involved would agree to follow the law?

Mr. CHESSER. Would agree to follow the law?

First of all, I am not going to buy that cloak for compulsory arbitration, and if you were sitting in my chair, you would not either. You can wrap it up in any kind of a package and put a Christmas bow on it, and it still smells like compulsory arbitration.

Senator PACKWOOD. If the unions and management would agree to follow the law, not to strike if we had compulsory arbitration, it would work.

Mr. CHESSER. You are talking about taking over the unions and the industry, too, then.

Senator PACKWOOD. I am saying it would work to provide transportation services if the parties would follow the law.

Mr. CHESSER. You can make the law that says you can't strike and you must operate the railroad. I suppose the Congress has got the right to do it. You have done it before. I don't think you should be proud of yourselves for doing it.

Senator PACKWOOD. I would hope to pass a law that would prevent Congress from having to do it again.

Mr. CHESSER. You can, if that is your objective, and it looks like it is, but let me tell you: What I am saying to you is that I hope you and I live that long. It would not be very long until it will prove to you that it won't work, that it will not work, unless you want that kind of a government, unless you want to tie the hands of the people like that, and I don't think the people themselves in this country will stand for being tied up like that, any group of people, any group of people, professional people.

We are not that kind of people, that is not our background. That is why we had that big Revolutionary War. That is what it was all about.

Senator PACKWOOD. All I want to do is to guarantee that the train is going to arrive or the plane is going to leave, and I would be willing to put that issue to the people and ask what is their preference.

Mr. CHESSER. Well, we have got, as I say, all these years now, the courts have finally told us that it was lawful to have a legal strike. That was settled.

Now, why does everybody keep jabbing at us? That was settled and there was a settlement there. It seems to me now that the Congress is the one and the White House is the one that are not satisfied. We got the settlement. That is what you asked us to do, and we had the right to—we did not violate the law. We went much further than what the law, or not near as far as the law would have permitted us to go. We finished that. We just now finished another collective bargaining agreement in our health and welfare program.

Senator PACKWOOD. If you could promise to this Congress, both management and the unions, that we would not ever again face the situation of a shutdown, we would not be considering this legislation.

Mr. CHESSER. Senator, that is like asking me to promise you that it is not going to snow any more in Washington. You know that.

Senator PACKWOOD. I know.

Mr. CHESSER. I say pass compulsory arbitration and nationalize the industry. If we want a guarantee for all of your people over the country that we are not ever going to be discommoded, nobody is going to be upset, we will just make people do certain things by law, and if you have got your product there, don't you worry, we are not going to bother you a bit.

Senator PACKWOOD. No further questions.

Senator NELSON (presiding pro tempore). That is all the questions the committee has. Thank you very much.

Our next witness is Mr. William Simkin.

STATEMENT OF WILLIAM E. SIMKIN, FORMER DIRECTOR, FEDERAL MEDIATION AND CONCILIATION SERVICE

The CHAIRMAN. We are honored to have as our second witness Mr. William Simkin, who very kindly agreed to participate in these hearings at my invitation. Mr. Simkin has had wide and distinguished experience as a mediator and arbitrator, and served as director of the Federal Mediation and Conciliation Service from 1961 to 1969.

He has also been the permanent arbitrator for a number of industries, and his experience includes service with the War Labor Board and the Missile Sites Labor Commission.

The committee is very pleased to have you here, Mr. Simkin, and we appreciate it.

Mr. SIMKIN. Mr. Chairman, I am pleased to respond to the committee's request to testify in this matter.

As you have indicated, I have had a little experience, as a matter of fact, full time experience since 1939, either as an arbitrator or a mediator.

With particular relevance to the subject matter which is before this committee, it might be noted that during my tenure with the Federal Mediation Service, 12 of the 30 Taft-Hartley injunctions were secured in that 8-year period, and I was rather intimately involved both as mediator and administrator in most of those.

Also, during that period, our Labor-Management Panel which was established by the act, spent approximately 1 year studying this same general question, and our staff and all of us spent a great deal of time on the problems that are plaguing you today.

At the risk of being commercial, which I don't intend to be, I spent part of 2 years after I left Washington on a book, most of which relates to this subject. In one part of that book toward the end of a chapter, I made suggestions about legislation. If it is not improper, I might refer the committee and the staff to chapter 10 of the book and indirectly chapter 11, and to chapters 5 and 6.

Senator NELSON. What is the name of the book?

Mr. SIMKIN. "Mediation and the Dynamics of Collective Bargaining."

The basic premise, as I understand it, of our existing legislation both under Taft-Hartley and the Railway Labor Act, is that the only significant Government role in almost all cases is mediation.

Emergency disputes are the only exceptions. There are a very limited number of disputes, as we know, which come under this category. Even with respect to those at the present time, the right to strike is preserved after a cooling off period. That right to strike is subject only to the right of Congress, and nobody else, to prohibit that right after the cooling off period.

Now the problems are pretty obvious. There have been some chronic failures of bargaining in, primarily, a couple of industries. By chronic, I mean long run problems. These two industries are primarily railroad, and longshore—east and gulf coast. The objective as I understand it, the objective of your committee, is to find some way of trying to get bargaining back on the track, particularly with respect to those chronic offenders.

And to put it rather bluntly, I have a feeling that Congress is also interested, more than mildly interested, in getting some kind of a viable method which will keep disputes off Congress' door step when and as they arise.

Now I have a few observations about this. Number 1, and I give this top priority, I would be very concerned that anything that is done should enhance rather than belittle the mediation function. I think the mediation function is widely misunderstood, and substantially underrated by many people. There are an almost infinite variety of alternatives that mediators can exercise.

I will concede however, that there is the occasional dispute, and that is all we are talking about here, where even the most resourceful mediation may fail.

Now, I am going to limit my next remarks to the matter that is clearly before us as I understand it; namely, what to do about a strike or lockout which the Government feels cannot begin or be resumed for an extended period of time after a cooling off period.

I want to make it clear that that is all I am talking about for the next few minutes.

There is this choice of procedures or arsenals of weapons concept.

I think we sometimes forget that as matters now stand a President has almost unlimited options. Presidents can, and have, in this situation, utilized a variety of nonstatutory procedures without reporting to Congress. Second, when a President reports to Congress there is no inhibition in the law against a President recommending to Congress any kind of an option, those that you have considered or even that somebody has yet dreamed up.

The President at the present time has that right, to recommend any kind of an option.

There are a couple of notions about this choice of procedure or arsenal of weapons idea. One is you might say, "let's keep the parties off balance. If they don't know what is going to happen to them, they will bargain."

I think there is some validity to this notion. But as a practical matter, one of the problems we face right now is that we have not kept the parties off balance in the past with respect particularly to two industries.

Both in railroads and longshore, the parties have been able to predict with reasonable certainty what is going to happen if they don't settle, and they have wrapped that reasonable certainty into their own strategy. I don't need to amplify that. We know what has happened.

But I think there is a more important concept, or notion, about this choice of procedures idea other than this "keep people off balance" notion. That is that disputes vary very widely. This type of dispute varies very widely. No two of them are alike, so that if there is to be a choice of procedures, it seems to me the most important thing is to have procedures which are broad enough in scope to meet the almost infinite variety of disputes which can develop and have developed.

So it is that infinite variety of a dispute itself which I think is even more important than the off balance approach.

Senator NELSON. May I ask this: Are you referring specifically to the provisions in the pending legislation of the final offer selection?

Mr. SIMKIN. I will come to that in a moment if I may. I have seen all the important bills before you. General counsel sent me copies. I would say unreservedly that the major fault that I find with most, but not quite all of them, is that if we are going to set up by legislation a choice of procedures, that the choices presented that I have seen are too limited.

In other words, you are contemplating for the first time setting down in the law the alternate procedures which are to be available in contrast to the present situation where the President has an unlimited right to recommend anything he wants to you.

So that I would say that is a fault. I think there are one or two of the bills which do not contain that feature.

Senator NELSON. May I ask a question at this point?

The CHAIRMAN. Sure.

Senator NELSON. If the fault with the bills is that they don't provide an adequate spectrum of possibilities, that is necesarily a criticism that you would have to make of any bill, isn't it, that provided for final arbitration?

Mr. SIMKIN. I think, Senator Nelson, if I may be permitted to continue, this will come clear.

Senator NELSON. All right.

Mr. SIMKIN. The alternatives most discussed have been gone over before.

The additional cooling off period, 15 days, 30 days, I don't care what the time is. This is a very useful alternative, but we all know it is not the answer to many disputes.

Thirty days is nothing in a railroad dispute, compared to past practice. It is a very useful alternative, however, and it should be there. There are some cases where a little extra time is all that is necessary.

Second, there is partial operation or selective strike, whichever one you call it, and I think there are differences of concept as well as language—the essential differences between those two as I see it is whether you give the union the unreserved option to select who is going to be struck, or whether the Government in effect says where the strike can occur.

These are important distinctions. Now, I would agree these are useful devices that have not had enough exposure and experiment, and I think they belong in any series of options. There are some situations where this would be a useful device.

I might remark, however, something that we frequently forget, and that is that partial operation has already been with us, not only after 80 days, but during 80 days. We have had partial operation—one plant

of a multiplant company in certain aircraft engine disputes and the original case of American Locomotive. These were partial operations.

That was true during the 80-day period as well as thereafter, so it is, by precedent at least, not ruled out even now, not only for after 80 days, but for the 80-day period.

I concede that the Department of Justice did exercise a little ingenuity. If you look up the record on the General Electric (Evendale plant) strike, there is an industry called the Military Aircraft Engine Industry. General Electric was a substantial part of that industry. I don't think you will find that industry anyplace else in labor relations parlance. I don't want to belabor the point.

Now, final offer selection. This is an intriguing device. I agree with you it should be included, but I don't think it is any panacea. I would suggest that of the cases with which I have been intimately familiar, only a fraction—substantially less than half—would have been feasible cases for final offer selection.

Let me elaborate. It can be a Russian roulette device or, to use another illustration, it is sudden death. Now, when you have got Jack Nicklaus and Lee Trevino tied in a tournament at the end of 72 holes, sudden death has certain attractions. It finishes the tournament and it is considerably better than tossing a coin. It has some real attraction.

But let's change the picture. Let's assume we have a $50,000 pot, $50,000 or nothing, and without any adequate preliminaries, we take well, say Arnold Palmer and Vice President Agnew and we decide that on the basis of one hole, a par 3, and about 120 yards. You know, the Vice President might just win that one. This is an extreme analogy, but it may not be too extreme.

Now what are the practical problems as I see it, with final offer selection?

One problem, it is clear that it has to be a complete agreement. I spent a couple of weeks in 1967 in the Teamster negotiations. I recall we had a 3-day nationwide lockout during that period. Some people have forgotten it. Those negotiations involved 400 some odd thousand people. The group I was meeting with was considering certain key issues. Meetings were going on all over Washington. The final outcome was dozens of contracts and 25 major contracts. Many issues were in dispute in that case that I never even heard of, and I was the top mediator. I never heard of many of the important issues in that dispute. Some of those were settled after we settled the basic issues.

In my judgment, and you could ask the Teamsters, it would have been almost a physical impossibility for either the management or the union to have presented a complete contract in that case, within the context of what you mean as a complete contract. And if you don't have a complete contract, then if somebody wants to, it is easy enough to take some minor issue and make a major issue out of it. This is a very practical problem.

A second practical problem is that under this device, it is possible for somebody to slip in a sleeper. Let us assume that in a railroad case there is a work rule issue which everybody has agreed is going to be washed out, but is very dear to the hearts of the railroads. That issue could be slipped in in a final offer along with maybe a very attractive wage increase. It might fool some selection boards, but would not resolve the dispute.

Another problem that bothers me about these prescriptions for final offer selection is the restrictions, placed on the Board. I think I understand why they are there, but you are sort of hermetically sealing off the Board in a way just as effectively as you seal the offer. What I am afraid of is that you will hermetically seal off the Board from the realities of the case.

That can happen very easily, you know. I don't think I need to amplify.

Another problem is that union officers, union officials, are by necessity political animals. We don't hate them for it. This is part of the set up. What we are asking top union representative, by this method, is to submit in a sealed envelope a proposition which is better than anybody else knows about within the union. It has to be better, or it is not likely to do any good. This we are asking them to submit, this better proposition. Then it may not even make a deal.

Under most of the proposals, this union offer would become public at the time a Board meets. What are the members of the union going to say to the top officers of a union when they see the proposition which they presented, of which they are totally ignorant, and which does not even produce a contract?

This is a very serious practical problem for a union official. One of the bills, I think it is S. 2655, attempts to meet that problem by keeping the offers secret except the winning one, and identifying only that. The way that is done, as I read it, is to keep the sealed envelopes until the end of 30 days and then the Board picks those up and takes a look at them after they have done all the talking with the parties.

Well, that too presents a problem, because maybe an offer that is 30 days old is stale and no good after 30 more days of talk.

Well, these are some practical problems, and there are others. Now, let me raise another question. Why was it that in the recent longshore dispute, the administration did not propose final offer selection as a resolution of that dispute?

I think I know the answer but the administration came up with the same old chestnut of compulsory arbitration.

The CHAIRMAN. Why do you think they did not?

Mr. SIMKIN. I think part of it is the practical complications of the matter, but I was not involved in that dispute, and that might be speculation.

The CHAIRMAN. The third party aspect with the Teamsters in there had something to do with it.

Mr. SIMKIN. It may have.

The CHAIRMAN. At any rate, it was made clear that option could not be used in the dock strike.

Mr. SIMKIN. I don't want to belabor the point about something I don't know about.

Finally, let's not kid ourselves, this is compulsory arbitration. It is a form of compulsory arbitration. Nobody who knows anything about labor will call it anything else.

Now, I am talking pretty strongly against this. I want to be clear. I think it has possibilities. I think it is an intriguing device which has very real possibilities, but I feel with great sincerity that it is no panacea, that at best it is an answer to a fraction of our emergency labor disputes.

So to conclude that point, in view of some of the comments I have made before, I would strongly recommend that the notion of final offer selection, if there are options to be put in a new bill, that the basic notion be put in, but not too many specifics.

Let the specifics develop as the procedure is tried, and in terms of the facts of a particular case.

For example, this sealing off of the board. I would prefer that that be left out. Maybe there would be cases where that would be advisable, but at least if final offer selection does go into legislation, I would say make it a general notion, not too specific.

Let the President propose the specifics in terms of the case at hand.

Senator NELSON. Are you saying that you would support the concept of a final offer selection as part of——

Mr. SIMKIN. As part of a total package.

Senator NELSON. If it is there, it is compulsory arbitration; is it not?

Mr. SIMKIN. Absolutely, and I recognize that. I will come to another point that will amplify that later.

I would suggest without elaboration that if there is to be a package of options that serious consideration ought to be given to at least the following: Point 1, and it is in some of the bills, I think, no action at all.

Let the strike take place, and clear indications that nothing is going to happen. There are a few disputes at the end of the 80 days that are not resolved, but where a few days of strike is going to settle that dispute. There are a few of those, so I would say that is, and should be, one clear option—no action at all.

Senator NELSON. All your comments now are with respect to the post-80-day stage?

Mr. SIMKIN. Yes; post-80 days.

I would include seizure. I don't think seizure is any panacea, but I think it ought to be in there. It was used in wartime. I think it ought to be one of the options.

And much as I detest compulsory arbitration, in principle and, as to its overall workability, much as I detest that, as a realist I would include that, I think I would bite the bullet and put that in as an option.

By saying I am a realist, we have had some of these. Congress has had to reluctantly come to this point for want of a better option, and I am afraid that we may face some situation where this is the only feasible means.

To repeat, I would certainly limit it to this post-80-day thing. I would not favor any kind of compulsory arbitration before that for national legislation for disputes we are considering here and finally, I would use it with great reluctance as one of the options, but I would put it in as one of the options, bite the bullet and put it in.

The CHAIRMAN. Who would be the selectors of the arbitrators?

How would you frame that one?

Mr. SIMKIN. I think you would have to use the more or less conventional arrangement. The parties select, if possible. If they cannot—I would in general let the parties develop not only the names of the persons of the arbitrators, but also the procedures, to the maximum extent possible.

I think you would have to have a backstop that the President would appoint in the event that the parties cannot agree. I think you would have to have that as a backstop. But I would want to preserve the maximum to the parties to making their own selection.

Senator NELSON. So I understand: All of these options are options that you would permit, under the law, the President to select. Is that what you are saying?

Mr. SIMKIN. Yes, the President to select. I would personally prefer that the President make the recommendation and Congress approve, but I think this is too far behind us. I would not object to an arrangement where the President selects, with the congressional right of veto, under some appropriate procedure.

I would strongly oppose having any power, since compulsory arbitration is in this package, and seizure, I would strongly oppose an act where the President has unlimited power to select, without possible veto by Congress.

I think there ought to be that protection against abuse, and I am not talking about any individuals at present. I think it is a matter of policy.

Senator NELSON. What do you do about the time factor? Are you going to have an option at present and require by Executive order that at the expiration of 80 days, they return to work pending the approval of the option selected by the President and the Congress?

Mr. SIMKIN. There are some important mechanics here which would take a lot of time to talk about, but it seems to me that something of this order would be workable, and I intend to get into this a little bit later, but I might as well do it now.

One of the things that is most desirable is to get the full force and effect of the pressures at the end of 80 days, without any indication to the parties as to what is going to happen at the end of 80 days. In other words, the parties should not know and that gives the mediators, whoever they are, full use of that period.

We all know that the last few hours and the last few days before any deadline are the critical time. So I would propose something of this order without being too specific about it, that shortly before the deadline, without being precise about that, if the President intends to do nothing, he should say so publicly.

That puts the parties on notice, it puts everybody on notice, that this is going to be settled or there is a strike. So I think the president should say so. Then, if on the other hand he intends to exercise any one of these options, then I think mechanically you would have to have a period of 10 days, 15 days—I don't care what the time is as long as it is a reasonable amount of time.

The President should then announce shortly before the deadline so that if he wants to avoid a strike, so that work will not be interrupted, the President could simply announce "I am going to select an option. I don't know what it is going to be, but it is going to be an option, and I request a 10-day extension of work without a strike while I am developing this option," some kind of a mechanical device of this kind.

Senator NELSON. You said the President is not going to intervene and he will let the strike go on. I don't quite understand that. I am assuming we are talking about legislation here which would be passed

under guidelines which say that the national health and welfare is at stake.

Otherwise, you wouldn't use compulsory arbitration. In view of the fact that this is the guideline, how can the President ever take the position, "I am going to let you continue with your strike and not exercise other options"?

Mr. SIMKIN. There are few of these where at least a few days of strike would not make that much difference.

Senator NELSON. You didn't mean the President was going to say, "I won't intervene ever."

Mr. SIMKIN. No.

Senator NELSON. He leaves it up in the air on how long.

Mr. SIMKIN. But he could say positively, "I have no intention of intervening or doing anything else in the near future," in some cases.

Now, so much for this point, this post-80-day period. I have a few other points if you will permit.

Senator NELSON. Mr. Chairman, I have an appointment at 4 o'clock. I want to say that I think this has been the most helpful and creative testimony I have heard on this issue, and I regret that I have to leave for a 4 o'clock appointment.

The CHAIRMAN. Yes. We appreciate your being here.

You are not a resident of the Washington area, are you, sir?

Mr. SIMKIN. No; I come from Boston, and I have to get back sometime tonight. I think I can finish.

The CHAIRMAN. Does your work bring you into Washington on occasion?

Mr. SIMKIN. Yes, but I think if time permits, I can finish my observations in perhaps the next 10 minutes.

The CHAIRMAN. Fine. I want to know if we can reach you in an emergency if we need you.

Mr. SIMKIN. I will be glad to cooperate.

The CHAIRMAN. Very good.

Mr. SIMKIN. I see in very few pieces of the legislation any reference to the last offer ballot, which is now in the Taft-Hartley Act. This is counter productive. I know of nobody who gives any support for this. What it does is just muss up the negotiations and it is a vote of confidence in the union leadership and that is all.

I would strongly recommend that that be eliminated from the bill.

Second, and this would be more controversial. I would recommend that the board of inquiry be eliminated. I am talking now about the first 80-day period, that the board of inquiry be eliminated except as I shall state in a minute.

The fact of the matter is that I am personally ashamed of some of the administrative monkey business that goes on. We have had at least three injunctions that have been secured in their totality within 24 hours after the President named the Board of Inquiry.

Now, that includes getting the judge and getting the thing through the court. I don't have to elaborate to you gentlemen, to indicate that this is a farcical procedure when it is undertaken in that way.

The Board of Inquiry, with all due deference to the fine men who serve on them, serves no really useful purpose in getting the injunction.

I would eliminate that and substitute a Presidential request. That is a feature of the Railway Labor Act, as you know. I think in a great majority of cases the parties would honor a Presidential request with more willingness, or as much willingness, as they honor an injunction.

Now you would have to have a backstop, you would have to make allowances for the possibility that somebody will say "No" to the President. That is unlikely, but it could happen. More important than that, you would have to have a backstop in case some one of the parties legitimately and honestly feel this is not a national emergency and wants to test that, really test that issue, in the courts.

So I would want to have a Board of Inquiry and a court procedure as a backstop to be used only in the event that a Presidential request is not honored.

Now, there is a danger to this. One of the dangers is that Presidents might be more inclined to use the act when an injunction is not involved than when one is involved, but as long as there is recourse to the courts by anyone who honestly feels that the Presidential power is being abused, I think that that would take care of that problem.

There are some other questions that I don't think we have adequate time for this afternoon.

Who mediates during the 80 days? The present act says, the FMCS. period. It does not permit the Board of Inquiry to mediate. Two or three times, the President has allowed the Board of Inquiry to mediate. I think that matter should be clarified.

On the one hand there is the situation in which, I would concede, the Federal Mediation Service has realistically struck out, and where there is need, a real need, for new faces and new ideas. That is the one extreme where I think other people ought to be brought in.

The opposite of that is a parade of different faces and different boards and so forth, which can be very damaging.

Another point is the matter of recommendations during the 80 day period, a very controversial point. We have got really a sort of a funny situation now.

You know, when I was with the Mediation Service, there was nothing to prevent me from making a recommendation during the 80-day period, but a Board of Inquiry could not, under the law.

Now I don't think we ought to have, we certainly should not here have the certainty of a recommendation. That is partly what is wrong with the Railway Labor Act.

They know when they go into an emergency case they are going to get a recommendation. I have quite a few comments in my book about this recommendation device which some of the staff might want to study. But this is a problem. I won't say anything more at this point.

Finally, the definition of an emergency. My opinion would be that it should not be changed. I think there is enough flexibility the way the act has already been exercised by a number of Presidents to take care of any real-for-sure emergency, without broadening the language. I think that language is adequately fuzzy, and particularly the interpretations of this have been adequately fuzzy, that I think to broaden the language to increase the use of the emergency procedure would be unwise.

I think the combination of these five things I have mentioned might mean, might very well mean, that we would have a few more Taft-Hartleys than we have had. Some of the cases, I have frequently

characterized as near misses. They were almost Taft-Hartley, but not quite. Perhaps there was some nonstatutory procedure that was followed, and they might have gone the Taft-Hartley route if you had this possible authority to recommend and if you had the Presidential request. But I don't think this should lead to any major expansion.

Now, the question of transportation versus general legislation. To repeat, we have only had two chronic problems as far as industries are concerned in the last 25 years—railroads and longshoremen—East Coast and Gulf. They are the only really chronic, persistent industries.

If we were sitting here in the early 1940's, there would have been the coal industry. A little later, it would have been atomic energy. During the early 1960's, it would have been defense, as it was. With changing technology and what I sometimes label the yoyo theory we have had substantial changes in the source of emergencies.

If you look at most of these, you get a period of fairly good relations, and then you may get a period of bad relations. In any event, I think labor legislation has a habit of persistency for a long time, and if it is going to be changed, it should be changed for everybody, not just transportation.

The proposed inclusions in transportation are somewhat illogical. We have had bad strikes on Greyhound, just as bad as far as the public is concerned as a lot of airline strikes. Intercity bus transportation is not in the bills. My cynical comment might be that Government officials and maybe Members of Congress don't ride the buses. But it is transportation, and it is interstate transportation.

And what about trucking? We have never had, keep your fingers crossed, we have never had to exercise even the first 80 days for the trucking industry. So why do we throw them in the pot? So, in summary, it seems to me that legislation to meet problems as they may arise is more logical, rather than to try to say the transportation industry in its totality is a bad boy.

Now, a quick point on the elimination of the National Mediation Board which, as you know, is in some of the bills.

I suspect I could be guilty of personal bias on this. My work was with another agency, the Federal Mediation and Conciliation Service, as you know.

Second, my personal experience should be noted. Although I have handled as an arbitrator a good many new contract cases over the years as well as grievances, I have had only one railroad case of some significance. It was an important case, a nationwide rules case. And I had one new contract case on Western Airlines with the pilots after a long strike. Both were in the early 1950's.

Because I had only one in each industry I am not speculating whether the parties decided that they had had enough of Simkin, or whether that was a coincidence. But I don't claim to be an expert on railroads or airlines.

I will, however, make a few comments. It is a historical accident that we have two mediation agencies. The National Mediation Board was created in 1926 when the railroads and the railroad unions were prepared to go further than anybody else in the country. In fact, a lot of unions did not even exist in those days. So it almost had to be a separate program from the U.S. Conciliation Service which was in the Department of Labor at that time. But it is a historical accident.

It is a fact, little talked about, that there are more labor agreements and more employees in transportation covered by the Taft-Hartley Act than by the Railway Labor Act.

I think that a unified mediation agency, in theory at least, would have more status and would be a more efficient method of operation than to have two separate organizations.

As respects the three-member board set up of the National Mediation Board versus the Director of the FMCS, I think the one-man Director as head of an agency is administratively the best device, not because I think I had a reputation as a dictator, but because decisions had to be made, and made fast, in that kind of a job. It seems to me the three-man board is not administratively a good device.

I think there are great advantages of cross fertilization. Mediators working in a variety of industries can be more imaginative than when they limit their activities to one industry. So all of these points would favor the transfer to the FMCS.

There is a major potential problem, and I don't know the extent of that problem. What about the customers? If the railroads and railroad unions feel so strongly that they prefer their own separate agency, then I think this would be a great inhibition against making that change.

Weighing these various factors, I think the odds are in favor of making the change.

If it is ever going to be done, it ought to be done at the time the bill is changed. The chances are that this would be about the only opportunity to make that change if it should be done.

Now, in conclusion, and very simply, I don't think there are any panaceas for this problem which you face. I don't think and I will be very candid about it, I don't think that it is likely that you will ever be able to devise a bill which will absolutely guarantee that no labor dispute will not wind up on your door step.

I do think that there are very real possibilities for improvement in the present legislation.

Thank you.

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

Senator Pell?

Senator PELL. I am sorry I was not here earlier. I wanted to hear Al Chesser. I am sorry I missed hearing his testimony. I will read it.

I also got a dividend by coming and hearing Mr. Simkin, and I must admit I was struck by your thought that the definition of the national emergency should remain unchanged.

I think you are right, because a true national emergency has really not come before us as a result of strikes. You have what I call a national nuisance, which was the airline strike, where 6 percent of the traveling public between cities take the airplanes, Congressmen, Senators, and so forth.

But the rest of the country still manages to move between cities without taking airplanes. Or we have, like the strike on the west coast which was a regional strike.

I think the true national emergency, thank God, is one we have not yet had to face up to; for that reason, I find myself reluctant to see us move ahead into an opening up of Pandora's box, unless the occasion is right upon us.

I thank you, Mr. Simkin, and I am impressed with your background and knowledge of this field, and wish you well.

The CHAIRMAN. Senator Packwood?

Mr. SIMKIN. If I may comment briefly, I don't think that all Presidents have been completely consistent in defining a national emergency. Even the same President has not always been consistent. But I don't think consistency is an asset.

This Labor Management Panel that I referred to earlier of knowledgeable men working with the FMCS, we labored long and hard to try, as a lot of other people have, to try to develop a better definition of what a national emergency is. We failed to find a better answer than the words of the present law.

Senator PELL. Who was it that said "Consistency is the hobgoblin of small minds?"

I think it was Emerson.

Senator PACKWOOD. Mr. Simkin, you have recommended a bill that has a range of options. In your estimation here should we pass any bill at all that does not have something at the end of the road, compulsory arbitration, or final offer selection, or call it what you will?

Mr. SIMKIN. Well, I am not going to try to answer that question for the Senate or the House of Representatives. I don't think the country is going to go to pot if you don't do anything, but I think you will be faced with in the future—nobody knows when—you will be faced with in the future a crisis situation where the President comes to you again, as he has in the past, and says, "We have to have compulsory arbitration in this case."

Now, maybe that is better. You can argue that that is better than to have a whole lot of options spelled out in an act, one of which is compulsory arbitration. That is a debatable question.

But you are going to get those disputes occasionally. If you don't pass an act, and as I indicated earlier, even if you pass a new act you are going to get them once in a while.

Senator PACKWOOD. I am inclined to agree. Let me ask you this: You question the merit of singling out the transportation industries as opposed to other industry.

My bill and a number of others do single it out. Do you see no difference between the substantial effect of a 10- or 20-day railway or trucking strike as opposed to a 10- or 20-day steel or auto strike?

Mr. SIMKIN. I didn't say that, but the law does not say how long a strike may continue before it becomes a national emergency. A whole host of considerations have to be taken into account within the facts of the specific case. But suppose you contrast a 10-day national railway strike with an 8-month steel strike? Where do you come out there? I don't know the answer, but I suspect that you could say than an 8-month steel strike would be much more devastating to the country than a 10-day national railroad strike.

These are extremes.

Senator PACKWOOD. I think when you are starting to compare those situations, you are right. An 8-month steel strike or auto strike would have an extraordinary effect on the economy.

Mr. SIMKIN. The President has the option of letting a strike run until it pinches. That is a major consideration. How long can the strike that is in effect, how long can it run until it becomes a national emergency?

Senator PACKWOOD. We wouldn't go long in a national steel strike until the 80-day injunction was invoked.

Mr. SIMKIN. We had in 1959 a 104-day steel strike.

Senator PACKWOOD. What we are trying to do in this legislation is to interfere as little as possible in collective bargaining. I do take my hat off to the Mediation Service for their part in this process.

We are trying to pass a law that interferes as little as possible in mediation and collective bargaining, and in my mind that is where I would try to draw the line between transportation and other industries.

Ten days without trucks in this country would be devastating. You crossed your fingers when you spoke about that possibility.

Mr. SIMKIN. I had my fingers crossed in 1967 when we had a 3-day lockout. The Government kept its cool, and because the Government kept its cool, we did talk and the parties negotiated. Since we kept our cool, we got the lockout settled and we got it over with with a relative minimum of disturbances. That does not prove that the next time around, or sometime in the future, there may not be a trucking catastrophe.

Senator PACKWOOD. If we are going to pass a bill relating to transportation, there would be no harm in putting trucking into it. If they never present us with a problem, so much the better.

Mr. SIMKIN. Here you have an industry where we have not even invoked the first 80 days, and then we say, "You are subject to this other business after 80 days," when they have not demonstrated that they need it.

That is simply an aspect of my general feeling that rather than pick on particular culprits, if you want to call them that, or particular industries at any moment in time, that if there is a change it ought to be in terms of basic criteria which could be applied to any really troublesome and damaging situation.

The CHAIRMAN. This is a preventive reaction, that is what it is.

Senator PACKWOOD. I would hope we would never face it, but the potential for disaster is there. That is why I would like to have the law on the books rather than come to the situation, if it come to pass, and not have a statute and then come back to Congress.

Thank you, again. Your testimony was excellent.

The CHAIRMAN. You did not limit your suggestion to transportation, Mr. Simkin?

Mr. SIMKIN. No.

Senator PACKWOOD. No, he did not.

Mr. SIMKIN. I hope I have made that clear. To repeat, I would personally think that—it is none of my business—but I personally think it would be a mistake to limit it to transportation.

The CHAIRMAN. How broadly would you suggest that we concern ourselves with this?

Mr. SIMKIN. I would use general language similar to what is now in the Taft-Hartley Act. You will have to prescribe some additional language, perhaps, to come to this after the 80 day period to give a preamble to indicate that this is something that is not going to be used everywhere.

But let me repeat something. One of the options that would be important is to make absolutely clear that one of the options is to do

nothing. That has merit in a particular situation. It would have the practical effect in an industry of leaving the law where it is now.

Senator PACKWOOD. Is it not there implicitly?

Mr. SIMKIN. I would add it, I would put it in there to emphasize the fact that it is available. I don't think it is absolutely necessary from a technical point of view, but I think the psychology of that is good.

Particularly on some of the cases that I characterized as near misses, and I would rather not identify them by name, there have been some pretty important disputes that I personally got involved in in 8 years, where I was able to go to the negotiators either before the strike deadline, the original strike deadline, or in one or two cases at the end of the 80 day period. I felt confident in going to those negotiators and saying, "Look, I have checked around and you are not going to get Taft-Hartley. It is just not going to happen."

Well, it is amazing how that kind of information in the right set of circumstances, when you can honestly say it, will spur real bargaining at the critical moment, when it is needed.

Because if somebody feels that tomorrow, or a week from now the President is going to step in and take us off the hook, then you don't get the pressures at the strike deadline, or the end of the 80 days, which is a strike deadline. So that deadline pressure which is so important to the hard bargaining is not there.

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

(Whereupon, at 4:35 p.m. the subcommittee recessed, to reconvene March 14, 1972.)

NATIONAL EMERGENCY DISPUTES, 1971–72

TUESDAY, MARCH 14, 1972

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

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 4232, New Senate Office Building, Senator Harrison A. Williams, Jr. (chairman of the subcommittee) presiding.

Present: Senators Williams, Javits, Packwood, Taft, and Stafford.

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

The CHAIRMAN. The Labor Subcommittee will now resume its consideration of emergency disputes legislation.

At this point we have before us a total of 13 bills dealing with in a variety of ways what we know today is a most difficult and complex subject. To assist us this morning in our consideration of this legislation we have invited as our first witness one of the Nation's best known labor mediators and arbitrators, Mr. Theodore Kheel.

Over the years, Mr. Kheel has been turned to repeatedly by Presidents and other public officials to help out with some of the knottiest and most difficult labor disputes. We hope to obtain help from Mr. Kheel's insights into these problems. We have been looking forward to your presence here and your testimony, Mr. Kheel.

We are grateful and we are honored.

STATEMENT OF THEODORE W. KHEEL, LABOR MEDIATOR

Mr. KHEEL. Thank you, Senator Williams and members of the committee. I am indeed honored myself to be able to discuss with you this very important and difficult question. I think that we all share the same objective, and that is to figure out a way to prevent emergency strikes.

Nobody favors strikes. There is no virtue in strikes in and of themselves, except as they are an inseparable part of what has developed in this country, and I think uniquely in all countries of the world, as a very sophisticated system of collective bargaining.

However, it does not provide us with all the solutions that we want when, at times, there are disputes and conflicts that seem to threaten public health or safety, whether on a national or a regional basis.

Now, the simple way to prevent emergency strikes is to prohibit them, to pass a law saying they are illegal and they shall not take

place. There may be a question about determining whether or not the strike is an emergency or may become an emergency, but if the public interest is threatened, if public health and safety is indeed endangered, then I think what I would call the right to bargain collectively, to which the right to strike and the right to take a strike are incidental rights, then those rights will have to be subordinated to the superior public interest.

However, when we say that, we must recognize something that sometimes gets a little confused in the course of our discussions. When you prohibit a strike, and you nevertheless recognize the right of working people to be represented by spokesmen who seek to resolve differences over wages, hours and working conditions, you pose a problem as to how those differences can be resolved. In a dynamic society wages, hours, and working conditions are constantly in change, as people get older and retire, as new forms of technology are introduced, as the economy changes, as the business of the company changes. Changes have to take place, and these changes can only take place in one of three ways; the changes can be made alone by the employer, which is the circumstance where the company is unorganized. They can be made jointly by the employer and the union, or the workers through their representatives, which is collective bargaining, or joint determination, or they can be made by a third party.

Now, where there is a union and you ban a strike, for good and sufficient reason, namely the superior right of the public to be protected in its health and safety, then you have to think of some other way to resolve differences over wages, hours and working conditions to determine how the changes should be made. If there is a union, obviously you are not going to say the employer should make the changes.

That would clearly be inequitable and contrary to the system that we are seeking to cultivate. So the only other way is through a third party or compulsory arbitration. I think we must recognize that, and that when we talk about banning emergency disputes, preventing them from taking place, that if we say there can't be a strike, we are likewise saying that there can't be collective bargaining.

That is not a statement of preference, it is a statement of fact. Therefore, we must turn to some other way of resolving wages, hours and working conditions, and that only way, although there are all sorts of varieties, is compulsory arbitration.

When the question of emergency disputes was debated before this committee, and before the Congress of the United States in 1947, in connection with the Taft-Hartley law, the man who saw this as clearly as anyone was Senator Robert A. Taft.

I think it is a matter of great interest to go back and to review the debates that took place at that time, because while his proposals were denounced by labor and the law itself was called a slave labor law, the fact remains that after 25 years we appear to have had a salutory experience with the emergency strike provisions of the Taft-Hartley law, and it was Senator Taft who in connection with the passage of those provisions rejected compulsory arbitration out of hand, because he saw that as the first step toward price and profit regulation, recognizing that you could not very well have Government determination of wages, because that is essentially what compulsory arbitration is—it is arbitration pursuant to a law with the arbitrator appointed by the

Government and becoming in effect the government surrogate—without also regulating prices and profits.

You could not very well set wages by Government fiat without ultimately determining what the profit margin should be, and in the final analysis how the company should run its business.

The experience with the Taft-Hartley emergency strike provisions has been relatively good, as Secretary of Labor Hodgson himself testified when he appeared before this committee last June.

The burden of his criticism was addressed to the Railway Labor Act, and the proposal that has been made in S. 569 and more recently in the revised bill that has been introduced by Senator Packwood and others, S. 3232 deals only with the transportation industry.

The proposal is to abolish the procedures of the Railway Labor Act which generally have been recognized as not having worked well, and to put the two major industries now under the Railway Labor Act, railroads and airlines, under Taft-Hartley, and to that extent to apply the very useful procedures of the Taft-Hartley law to all emergency strikes in all American industry not merely railroads and airlines. But then the proposal is to go beyond, for five industries, railroads, airlines, maritime, longshore and trucking, with three new options for the President.

The first two are industries under the unworkable Railway Labor Act, and the last three are currently under what is recognized as the workable Taft-Hartley Act.

The question arises why bring these three that are under the workable Taft-Hartley Act under these new special procedures for transportation?

I do not believe the trucking industry has been the subject of a Taft-Hartley injunction, and for the most part, except for certain negotiations that take place with major conferences of the trucking industry, trucking is on a highly decentralized basis, and does not appear to have created any national or even regional emergencies that required Taft-Hartley applications.

According to the Secretary's testimony last June, maritime has been involved in a Taft-Hartley injunction in one instance, and the longshore industry, where the injunction was used, I think, now some seven or eight times has been the major industry that has had Taft-Hartley involvement. You gentlemen had some exposure to problems of longshore very recently when strikes were taking place on the east and west coasts simultaneously.

I have been involved in two longshore emergency disputes, in 1962 and 1964, and the one thing that stood out in my mind and the administration, I believe, agreed, as I read statements that Secretary of Labor Shultz made at the time, and it was, if anything, that the governmental procedures of Taft-Hartley had been used too much in longshore.

They had been used so extensively that they had come to be anticipated by the negotiators. Their either biannual or quadriannual labor contract expires on October 1, and the experience was invariably that there would be no bargaining, absolutely no bargaining, until the injunction of 80 days expired on December 20. December 20 became the effective expiration date of the contract, and the bargaining would not take place until that date, indicating again, that when you remove the

prospect of a strike and the right of the employees to strike and the right of the employer to take a strike, the will of the parties to bargain collectively is likewise removed.

What are the essential differences between Taft-Hartley and the Railway Labor Act as far as emergency disputes are concerned that would seem to suggest that some special new procedures should be applied to the transportation industry that do not apply to all other industries for which no legislation is currently being proposed by the administration?

Both laws have a cooling off period, and I think a cooling off period can be a salutory device or weapon, as it is sometimes called. Even though if it is improperly used and used on a continuous basis it comes to be anticipated and therefore looks to lose its effectiveness.

Both laws have cooling off periods. There is only one significant difference in so far as the laws are concerned. There may be important differences so far as the industries are concerned because of the problems the railroad industry has faced as a declining industry, with a work force that has gone from 1,500,000 people to approximately 500,000 over the life of the Railway Labor Act, which is a very important factor in their labor relations in a contracting industry, as you always have trouble in a contracting industry.

It is an industry that has faced the impact of technological change in a very substantial respect. It is industry that has been suffering from economic reverses.

When you look at the laws, the difference between Railway Labor and Taft-Hartley is simply that under the Railway Labor Act, emergency boards are appointed that make recommendations.

The boards under Taft-Hartley make no recommendations. They are purely boards of inquiry. I respectfully submit that the procedure calling for boards of inquiry and recommendation have done more harm than good. I say that with some knowledge of the way they operate, since I have served on them.

A board of recommendation is a totally different mechanism than a board of arbitration, and the approach of the members of the board necessarily must be substantially different.

In arbitration, the decision of the arbitrators is final and binding, and the only criteria they have to consider are the equities of the contest. They make a decision, as they should, on the record, what is the fair and reasonable thing to do.

In a board of recommendation—which necessarily implies that the parties have a legal right to reject the decision—the proper test of effectiveness becomes the acceptability of the decision.

Unfortunately, the way the industry and the unions have proceeded under the emergency board procedures is to make a record in exactly the same way they would make in a court of law or before a board of arbitration. The members of the emergency boards then proceed to make a decision on the basis of the record that is fair and equitable, but not necessarily acceptable. The rejections that have taken place, primarily in recent years on the part of the unions, have in fact made the dispute infinitely more difficult to settle.

When you start out with the premise that you want an agreement by the two parties that are involved, they have to reach an agreement through collective bargaining. Whether their demands are reason-

able or unreasonable, they are legal, and they have a legal right to assert them. In the process of collective bargaining they may or may not make appropriate concessions to bringing about an agreement.

But once a third party, particularly a party appointed by the Government, appointed by the President of the United States, has imposed his judgment of what is the fair and reasonable thing to do, the opportunity for further bargaining becomes practically nonexistent, particularly when one side agrees and the other disagrees.

It is a fact that the Congress of the United States has been beset primarily with disputes in the railroad industry that have come to the Congress after they have wound through the emergency board proceedings of the Railway Labor Act. By that time they have a long history of acceptances and rejections, and it is difficult for the Congress to do anything—except impose compulsory arbitration of one form or another.

It seems a matter of logic that if the Railway Labor Act is not working and Taft-Hartley is working reasonably well, and the major difference is simply that there are boards that make recommendations, that the proper approach would be to abolish the boards that make recommendations.

That is the essence of the procedure that is not working. We could rely exclusively on the mediation process. In my opinion, boards of recommendation have stultified collective bargaining in the railroad industry.

The industry as well as the unions have forgotten what collective bargaining is, and they play the game in relation to what they think the recommendations will be, and then maneuver vis-a-vis the recommendations and their opportunities to have the Congress of the United States take action.

If that opportunity were removed, we would at least have the railroad industry on the same footing as the rest of American industry insofar as Taft-Hartley is concerned and the parties would have an incentive to reach their own settlements.

The administration proposes for these five transportation industries, three additional options be made available to the President at the end of the 80-day period. The first is in and of itself harmless, and might even be helpful, and that is an additional cooling off period of 15 days, presumably to give the President the opportunity to decide on the next step or, hopefully, to resolve the dispute during that 15-day period. The cooling off period then becomes 80 days plus 15. But that is not a major difference. The other two options in my opinion present difficult questions for the Congress and this committee to consider. The first, at least in order of appearance in the proposed bills, is the selective or partial strike option.

This, I think, is soundly intended because it recognizes that you can only have collective bargaining when there is the possibility of a strike. It would seek to diminish the strike to the extent that that was necessary to protect health and safety, by having the President appoint a panel which would have as its sole determining question whether or not a partial strike would seriously affect public health and safety.

However, then it would do two things that I think are extremely dangerous. First of all, when you make a decision on a partial strike, you are also making a decision on the effectiveness of the strike, and

while the test that the panel would be using presumably would be public health and safety, it could not very well avoid the consequences of either helping or hurting the union or the management. This would put the United States of America, through an appointee of the President, in the position of making a decision that would be at the least construed to be on the side of labor or on the side of management, depending upon the impact of the strike on their respective economic involvements.

I don't see how the Board could disassociate itself from the consequences of such a determination. Further, it would mean that the strike would or would not begin at the instance of the U.S. Government.

Now, unions call strikes, managements impose lockouts, as part of the collective bargaining process. We don't want strikes or lockouts but we accept them as necessary parts of resolving differences or over wages, hours and working conditions, in a democratic society.

I don't think it would be appropriate for the United States of America to decide on whether or not a strike should begin. I can see the Government making a decision that a particular strike, whether a full strike or a partial strike, should be prohibited to protect public health and safety, but that is a different decision.

That is a clean decision on the protection of public health and safety. It is not a decision that would get mixed up with whether or not the strike would be helpful or hurt in the bargaining process.

The problem in the railroad industry grows out of the fact that the courts have recently recognized the legality of selective strikes, or partial strikes. It is a matter of interest that the first significant use of the selective or partial strike, by the United Transportation Union in the railroad dispute that was in and out of Congress for sometime, was one of the few instances in recent history where the parties came to terms through collective bargaining and made major changes with regard to the operations of the industry insofar as manning and productivity is concerned, primarily in connection with what is called "interdivisional runs."

The third option is the one that has attracted the most attention and is the most novel and most interesting, and that is the final offer selection.

In my judgment, it is pure unadulterated compulsory arbitration, in a form that is less satisfactory, or more unsatisfactory, even, than compulsory arbitration would be. The selectors are instructed not to communicate with the parties, as a mediator might. And they are told they have no power to vary the final offers of the parties. The theory of this option, as Mr. Hodgson explained before this committee, is to instill such fear of having the other fellow's final offer selected as to encourage the parties to bargain collectively.

In other words, in lieu of the pressures of the strike—which is a pressure on the workers because they lose pay, and is a pressure on the management because they lose profits—there would be substituted the pressure of an adverse decision.

That pressure also exists in compulsory arbitration, but it has not induced collective bargaining prior to compulsory arbitration. The difference would be that whereas in compulsory arbitration you might get an unfavorable decision and therefore you should presumably be more ready to bargain and collectively, in final offer selection, the deci-

sion would be so much more unreasonable that therefore you should have this extra incentive to want to bargain collectively.

Well, it does not work that way, and it does not work that way because anytime you substitute third party decisionmaking for collective bargaining, which is bilateral decisionmaking, you do something to the negotiators which they unwittingly accept, and that is, you relieve them of the responsibility for making decisions.

The most important thing that collective bargaining does is to force people to make decisions, or to take the consequences in terms of loss of work or loss of profits, because the only way the employees can resume work or get the employer back to making money is by reaching an agreement. It is the prospect of a strike that provides the greatest incentive for agreements. There is no device that the Congress of the United States could possibly think of that would settle more disputes than the prospect of a strike, and once you remove that, you remove from the parties the responsibility of decisionmaking.

Leadership is one of the most important things we have to develop in a democratic society where we can't rely on Government making all decisions for us. We have to learn the art of living together by making decisions in all fields of our life, and our emphasis should be on getting people to assume the responsibility which is a very difficult thing, because if you don't make a decision, you can't be criticized.

It is only when you make a decision that some fellow in the opposition can get up and say "You are wrong," and to complain at the rank and file meeting or among the stockholders or what have you, to take punitive action against the fellow that made the decision.

With third party selection, the negotiators are relieved of the decisionmaking responsibility. The notion that they will therefore make concessions in the bargaining process, fails to take into account the way people function in the decisionmaking process in a representative group relationship.

It is a lot different than decisionmaking in a 1-to-1 relationship. Where the relationship is representative, it becomes as important for the representative to look good to his constituents as it does for him to do good. In fact, that is more important, because otherwise he will not be continued as the representative and for reasons that I still don't understand, there are people around who are willing to take the place of the representatives who assume the responsibilities of decisionmaking.

Further, collective bargaining is not, as the proposal on final offer selection seems to imply, a process of exchange of bids, where the union says, "we bid 50 cents an hour," and the management says, "we bid nothing." It is a process of interaction, it is a process of discussion, it is a process where conditional proposals are constantly being made. "If we do this, will you consider doing that?"

It is a process where most of the effective discussion takes place on an informal basis, because once it is formalized, it is subject to review by the principals, and it is a matter of great difficulty, if not impossibility, for representatives, particularly on the union side, but on the management side also, to make formal offers and counteroffers that will constitute their last offer in the bargaining process that achieve the value of the interaction that collective bargaining brings about, and then have to face their constituents without a settlement.

This bill is really antidemocratic in the extreme. We passed Landrum-Griffin in 1959 because of the belief that union leaders were too autocratic, and that there was not enough opportunity for the rank and file to participate in the internal decisionmaking process.

Final offer selection would say, "let the union make the final offer" without a vote of rank and file before the final offer is made. Can you conduct collective bargaining that way?

No; the leadership would make the final offer, and the rank and file would never have an opportunity to say anything about it, because the decision of the selectors would be final and binding.

What we would have is a decision selected by the panel members. The law says they shall select the most reasonable offer, but I submit and I do not say this facetiously, that they would have to select the least unreasonable offer, because the offers would not be reasonable.

They would not be reasonable in terms of taking into account the needs of the other side which is done in the collective-bargaining process. People are myopic. They see the problem from their point of view, and they don't see it from the other fellow's point of view.

What the collective-bargaining process does is to impress both sides with the problems of the other side. Consequently in final offer selection, without real bargaining, the selectors would have a choice of the most unreasonable offer, or the least unreasonable offer. That is the offer that will be accepted.

If it were not the offer that is, that the union leadership had made, and even if it were, the rank and file would be precluded from having any vote, and what would the reaction be to the selection of the least unreasonable offer not made in their behalf, not taken up with them in any representative way, imposed on them because the management offer appeared less unreasonable, and they would never have any opportunity to vote on it.

Further, to come back to the bargaining process, there is a mistaken tendency to assume that the only issue in bargaining is money. If true this final offer selection business might have some validity, because where you are bidding, as you would at an auction, and you finally come to a difference of 10 or 20 cents, you would say, "Well, the pressure is if you don't split the difference, you are not even going to get what you might otherwise have gotten." That concept, where there is pressure to come in between on a money offer, overlooks the fact that the most difficult problem of collective bargaining and one which has caused this Congress great concern, has been one of the major problems of labor relations in this country, and that is the problem of technological change, which is very severe.

It becomes necessary for companies to be productive, to be competitive with foreign countries, and understandably, they wish to introduce the latest technology. The latest technology will invariably displace workers, and they don't like it, and they oppose it, and what to do about that has been the problem in one industry after another, and principally in the transportation industry.

This is not a problem that you can put up for bid, because it is a contingent problem. The first question is, what do you do? Is the technology one that should be introduced?

Second, if you could introduce it, what should its manning be? Do you need one man, or two men. How many men in the cockpit? That

was a big dispute in the airlines some years ago. How many men in a gang on the waterfront? Another major dispute, on the waterfront.

The third question is, assuming there is to be a reduction in the work force, what do you do about the people who are displaced? Do you give them severance pay, do you give them early retirement, do you give them retraining for other jobs? Do you keep them on and let attrition replace them?

In that connection, if you use attrition do you give the company the flexibility to use these people on other jobs while they are "attritting" or do they just stand by and not do anything?

The situation is so complicated, that it is absolutely impossible—I defy any company or any union to take one of those problems and reduce it to a final offer for selection by a panel. It is impossible, totally impossible and totally unworkable.

If this choice is given to a panel named by the President and they attempt to pick one of them in any but the most elementary kind of a dispute where the differences are minor in terms of wage costs, we will have nothing, in my opinion, but chaos.

The question then is what should we do? When we say "what should we do" I note that the issue has not been reduced to this fine point. But I think it is to the extent that the administration is offering changes solely in transportation to deal with emergency disputes.

The fact of the matter is that Congress has addressed itself to the problem of emergency disputes. It is a fact nevertheless that every time there is a strike like the recent longshore strike which hurt people economically, and that is unfortunate, we all want to do something about it, but we don't know what that should be.

The editorial writers begin the clamor, "let's do something about emergency strikes," and if I read one editorial in the New York Times, I have read a thousand of them, but I have yet to see any editorial in the Times or any other newspaper that makes a suggestion that will work.

What to do about it, yes, let's do something about it, but let's do something that is workable. Now, the fact is that the Congress did something in 1947, 25 years ago, and the history of experience under that law is salutary. That is what Mr. Hodgson told this committee. He would only make changes in three industries that are under that law, in one of which Taft-Hartley has become somewhat ineffective because it was over-used, and he would bring railroads and airlines under this new untried procedure that I submit is contrary to the way companies and unions operate, and would lead to more trouble than it would do good, when in fact the principal difference is boards of recommendation. If they are abolished and the railroad industry is brought under Taft-Hartley; yes, it will happen that on occasion the 80 days would expire without a settlement. But most, the vast majority of the disputes under Taft-Hartley have been settled before, during or after the 80 days without a second strike.

I think there were some eight or nine instances in 25 years where there was a second strike. Yes, it may be necessary to come back to the Congress on a case-by-case basis, and that essentially is what I believe Senator Taft contemplated when he introduced the 80-day cooling off period which, while it prohibits strikes, does not eliminate collective bargaining, because it is a temporary cooling off period.

Once the strike injunction is permanent, collective bargaining goes out the window, and compulsory arbitration in one form or another becomes essential. Senator Taft did not want that.

Taft-Hartley is open ended. It does not give that degree of security that everybody would like to have, that under no circumstances will there ever be a strike that will cause anybody any economic pain. But there is no formula that will get us that. The Congress of the United States is superior to any company or any union, and with the power of the President to impose an additional 15-day cooling off period to buy time, it is possible to devise a formula to cope with a national emergency strike through congressional action. The action that you will take will invariably be some form of compulsion, compulsory arbitration, whether you appoint arbitrators, as you did in 1962 in the railroad industry to make the decision, or again in 1967, and I served on that board, where you authorized the President to name a board of arbitrators, or whether you make the decision yourself as the final arbitrator, which I think is perhaps the least satisfactory of the alternatives.

But that is the direction the action will take. I know it is a nuisance, it is not something that Congress would welcome to have placed on its lap, but I think it is preferable to having a procedure which in advance imposes some form of compulsion, because the strike is prohibited, and thereby totally and completely frustrates the bargaining process and the development of it.

Bargaining is not working as well as it might, although it works a lot better than most people realize. If we spend our time in thinking of ways and means of improving the bargaining process, we would do a lot more to protect people against all types of strikes that inflict economic injury of a severe nature than we will in seeking to devise a new formula, an untried formula, when we do have a formula. I suggest in my paper that it be called a "Taft-Ad Hoc Formula for Dealing with Emergency Strikes."

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Kheel. Before turning to Senator Packwood and the rest, there are some questions, Mr. Kheel, and at this point we will include your full statement in the record.

(The prepared statement of Mr. Kheel follows:)

STATEMENT BY THEODORE W. KHEEL BEFORE THE UNITED STATES SENATE SUBCOMMITTEE OF THE COMMITTEE ON LABOR AND PUBLIC WELFARE, MARCH 14, 1972, WASHINGTON, D. C.

Emergency Disputes Legislation

I am pleased to respond to your invitation to comment on the bills to prevent national emergency strikes currently before this Committee. My qualifications to speak on this subject are set forth at the end of this statement.

The simplest way to cope with strikes threatening public injury is to ban them. But that removes the incentive for labor as well as management to adjust their differences by mutual agreement, that is, through collective bargaining. That is why all proposals banning strikes are invariably accompanied by some form of third party determination, that is, compulsory arbitration. There is no other alternative unless, of course, the strike is merely postponed and not permanently enjoined.

Senator Robert A. Taft saw this clearly in 1947 when Congress was debating the emergency strike provisions of Taft-Hartley. Because he was adamantly opposed to compulsory arbitration which he regarded as an inevitable move towards price and profit regulation, he proposed instead that strikes endangering public health or safety be subject to a stay on the initiative of the President for a cooling-off period of 80 days. This country's experience with the emergency provisions

of Taft-Hartley led Secretary of Labor James D. Hodgson to tell this Committee last June that the procedures warrant "high marks" for their successes. (Taft-Hartley's emergency dispute provisions have been invoked only 31 times since the law was passed. In four instances, the disputes were settled before an injunction was issued. Fourteen of the remaining 27 disputes were settled within the 80-day cooling-off period and thirteen were settled afterward. Of those settled after the expiration of the cooling-off period, five of the thirteen were settled without a strike while eight were settled after strikes of varying duration. In only one case was Congress called upon to legislate and that dispute, the recent West Coast longshore controversy, was settled before the law was signed.)

The same is not true of the Railway Labor Act. During the life of this law, almost 200 emergency boards were created to deal with transportation crises, an average of more than four per year. Congress was called upon to impose a settlement either directly or through a Board of Arbitration on three occasions and acted to postpone a strike for an additional cooling-off period on five occasions. There seems to be a general consensus that the emergency provisions of the Railway Labor Act are not working. For that reason, the Administration has proposed in S. 590 and more recently, as revised, in S. 3232, to abolish these emergency provisions and to make disputes in railroads and airlines subject to the

80-day cooling-off period of Taft-Hartley. So far, so good. But the Administration would go a long step further. It proposes three additional options for the President if an emergency strike threat persists after the 80-day cooling-off period and it would also make maritime, longshore and trucking, now under Taft-Hartley, subject to these options.

The first option would empower the President to impose an additional cooling-off period of 15 days, not an unreasonable means of giving him time to decide on his next move. But his two remaining choices would then include untried procedures of questionable value. The first calls for appointment of a Panel to decide if a partial strike could take place without imperiling the public health or safety. If a partial strike is permitted, the dispute necessarily would have to be resolved through collective bargaining. If disallowed, the third option would apply. Whether such a partial strike would be sufficiently effective to induce labor and management to bargain collectively can only be determined on a case by case basis. I do not see how the Panel could avoid weighing the strike's impact on the bargaining position of the respective sides. Moreover, if a partial strike was so limited as to have no impact, the dispute could not be settled. Under these circumstances, it seems to me, a panel of the United States Government almost inevitably would be put in the unseemly position of

making a decision on a strike that would aid or hinder the bargaining position of one side or the other. Regardless of how careful the panel might be in confining its decision to the question of public injury, it could not possibly avoid appearing, at the least, to help or hurt either management or labor. I can see the Government ruling on whether a selective strike is sufficiently injurious to public health and safety to be banned. But I seriously question the propriety of having a panel appointed by the President decide when and under what conditions a strike can begin.

But the most unusual option is the third, or FINAL OFFER SELECTION, as it is called in the proposed bills. Since a total and permanent strike ban would precede final offer selection, it must be regarded as a form of compulsory arbitration. In collective bargaining, the parties make the agreement. In arbitration, it is made by a third party. He decides what he believes should be the terms of the contract the parties sign. Final offer selection would empower a panel of three members appointed by the President to choose between the final offers of the parties. They would make the decision but their choice would be limited. They could neither consult with the parties or vary their final offers in any respect. Secretary Hodgson explained the Administration's theory in proposing final offer selection when he testified before this Committee last June. He explained:

> "The 'final offer selection' alternative is one of the most innovative concepts in the labor law field. It would have the effect, when chosen by the President, of forcing the positions of the parties closer together since it requires a selection without modification of the most reasonable offer of a party.
>
> "The parties would be pushed toward the middle ground -- the zone of disagreement would be narrowed -- because the penalty imposed for a party's maintaining an extreme position would be the likelihood of rejection of its offer by the Panel. The presence of this option will encourage collective bargaining in the early stage of negotiation, thus providing greater possibility of an early settlement."

In my opinion, this is pure wish fulfillment. It assumes that fear of an unfavorable award will induce the parties to bargain collectively. The prospect of an adverse decision is the substitute for the strike. The same argument can be made about compulsory arbitration. But this is not the way it works. When the parties are under the pressure of having to reach an agreement or face a strike, they will make concessions because there will be no agreement while management is losing profits and the workers go without pay. But the final settlement is one agreeable to both sides. If the liability of a strike has been removed and a decision for which they are not responsible will ultimately be imposed, they will play the "game" to get the most from the arbitrator while avoiding concessions for which they can be blamed even though they are essential to produce a workable agreement. The prospect of a strike forces disputants to assume the responsibility of decision making.

Any kind of third party decision enables them to escape from this responsibility. Final offer selection would be no exception.

Secretary Hodgson speaks of the push toward the "middle ground." This assumes that on all issues in bargaining there is a middle ground. Perhaps the wage issue can be put in this category. But not the most difficult of labor relations in recent years: the elimination of jobs as the result of technological change. The proposed law says that the panel shall select the most reasonable, in its judgment, of the final offers submitted by the parties. It gives no real criteria for enabling the panel to determine what is reasonable though it lists factors the panel can take into account. With regard to jobs and automation, it merely states: "(4) security and tenure of employment with due regard for the effect of technological changes on manning practices or on the utilization of particular occupations." But it does not specify how this factor should be applied.

This issue is never a simple clash of two opposing views which can be decided on an either/or basis. It divides into at least three contingent parts: 1) should any change take place; 2) if so, what should it be; and 3) what measures should be taken to ameliorate the adverse impact on the employees. Even on wages, bargaining is never simply the exchange of offers. It is a process of interaction. Parties

change their position even when they are making no formal proposals. Informal discussions of a conditional nature are constantly taking place. In the process of settlement, the number of issues may actually proliferate. They change form and then come together again as they have been analyzed and refined in the bargaining process. I am constantly amazed after years of exposure to the bargaining process how different the final settlement is from the original and modified demands of the parties and how much the interaction of the discussions promotes solutions. Bargaining is a creative process. It enables the parties to reach an agreement that satisfies their respective needs which they could not fashion by themselves. It cannot function simply as a system of bidding and it is naive to assume that the prospect of a panel selecting an unpalatable solution will be sufficient incentive to produce bargaining in the absence of the possibility of a strike. On the contrary, concern about how the panel will react will adversely affect the bargaining.

There is another reason why the parties will not be flexible in their exchange of offers and that stems from the representative nature of the bargaining. The negotiators are merely spokesmen. They must satisfy their principals. In particular, the union is a political entity. It has a rank and file to which the negotiators must report. Most of the meaningful adjustments in collective bargaining are made in the course of informal talks where the negotiators can express themselves without fear of untimely criticism

for making an improvident concession. Settlement talk under those conditions is possible because no disclosure is made until there is an agreement which the negotiators then bring back to the rank and file for approval. Such an agreement can be and must be recommended by the negotiators to their constituents. But what of a final offer that may or may not be accepted by the offerees? What responsibility has a negotiator to recommend a settlement that he has not proposed or accepted? But the selection of the panel is final. Since a choice must be made, the selection may not be the most reasonable but the least unreasonable. This is compulsory arbitration at its worst. In the usual form, the arbitrator can exercise some judgment in rejecting unworkable or unreasonable demands. In final offer selection, the least unreasonable offer would prevail. The panel is denied any power of modification regardless of what they think about the offers. And the rank and file would be denied any opportunity to vote on an award even though it did not stem from any proposal advanced in their behalf and might, in fact, be condemned by their leaders. This is not the way, in my judgment, to promote industrial peace. Nor is it the cure for what the Administration identifies as our current dilemma: what to do about emergency strikes in transportation.

Railroads are the problem, to be sure. But the airlines are also under the Railway Labor Act and they are rarely mentioned. Trucking is to be brought under the new system but Taft-Hartley has not been used in any trucking dispute. This is understandable, since most of the trucking industry is highly decentralized. Maritime is to be included but of the eight disputes involving strikes after the expiration of the 80-day cooling-off period under Taft-Hartley, only one occurred in the maritime industry. All of the remaining seven took place in longshore. But the Administration announced before the recent longshore strikes that Taft-Hartley had been overused in prior longshore disputes, and I believe that this is correct. I was involved in two so-called emergency disputes in longshore on the East Coast and I saw the frustrating impact of an anticipated injunction. The parties knew a strike would be banned for 80 days and would not bargain until the cooling-off period was over. Despite the most recent experience, complicated by technological change and the price and wage regulations, longshore needs less, not more, governmental restrictions on bargaining.

The railroads, then, are the problem and I agree completely that the Railway Labor Act has not been working in railroad disputes. But the emergency provisions of the Railway Labor Act differ from Taft-Hartley in only one important respect. Both have cooling-off periods but the Railway Labor Act empowers the President to appoint an emergency

board to make recommendations. The Board of Inquiry under Taft-Hartley makes no recommendations and therein lies an important difference. It would be oversimplistic to blame all of the woes of the railroad industry on emergency boards with powers of recommendation but I believe these procedures are largely responsible for inhibiting bargaining in this industry. The industry has other problems, to be sure. It has been a contracting industry whose work force currently is one third the size it was when the Railway Labor Act was passed. It is a regulated industry which believes, for this reason, that its wages should also be set by government through compulsory arbitration. It has suffered financial reverses which some attribute, in part, to the quality of its management. Continued dependence on the procedures of the Railway Labor Act, in my opinion, has atrophied the bargaining skills of the railway unions as well as the management representatives. But these skills will not be revived by substituting the untried form of Russian roulette the Administration is proposing. If Taft-Hartley works better than the Railway Labor Act and the only significant difference is the power of emergency boards to make recommendations, why not remove that power?

I believe that boards that make non-binding recommendations do more harm than good. They impair the urge to bargain as effectively as compulsory arbitration but they

do not produce a binding result. We eschew compulsory arbitration as incompatible with collective bargaining, but the mandate of the arbitrator is comparatively simple. He is called upon to make the decision that is equitably justified by the record. But a board that merely recommends is successful only if its recommendations are accepted by both sides. It may make the most reasonable recommendations in the world but if one side or the other rejects them, as they have a legal right to do, the dispute remains unsettled. As a matter of fact, the dispute becomes more difficult to settle when one side accepts while the other rejects. Most of the railroad conflicts that have been brought to the Congress in recent years grew out of the acceptance of recommendations by the railroads and their rejection by the unions. In the railroad dispute in which I was involved in 1964, the railroads had accepted recommendations on the revision of the entire wage structure of the industry which they knew were impractical and they were inhibited from changing their position as a matter of bargaining strategy until the restraints of the recommending process had been removed. Boards of recommendation tend to function precisely like boards of arbitration when in fact they have a different mandate. A record is made in both procedures and the case decided on the record regardless of the acceptability of the award. I believe that if the function of emergency

boards in railroads was confined to mediation, an important step would have been taken towards making the procedures of the Railway Labor Act workable.

On analysis, the question -- what to do about emergency strikes in transportation or any other industry -- is not as difficult as it appears. It appears difficult particularly in the middle of a long and agonizing strike when editorial writers are shrilly calling on Congress to do something. But they are notably silent on what that something should be. The fact is that Congress has done something. It passed the emergency provisions of Taft-Hartley. These have worked reasonably well. They may inhibit bargaining in some instances but they do not abolish it. The reason is simple: the strike ban is not for all time but merely for 80 days. What happens thereafter is open ended. This gives the President the maximum range of options because he can always ask the Congress to pass a law. The power of this country to protect itself against strikes that may injure health and safety is superior to the power of any union or company. Of course we would like assurance in advance that such strikes will not take place. But it is naive to believe that procedures prescribed in advance that ban strikes and necessarily invoke compulsory arbitration will give us the security we would like to have. We have security in the knowledge that Congress can act to protect

us if that becomes necessary. It may be that the power of the President to impose an additional cooling-off period of 15 days would be helpful in giving him the opportunity of deciding which way to proceed. But empowering him to impose final offer selection will do more harm than good.

We have a policy on emergency disputes. It might be called the Taft Ad Hoc policy. Our experience with it during the last 25 years has revealed that it works. Let us amend the Railway Labor Act to model its procedures after Taft-Hartley and then let us concentrate our efforts on how to make the bargaining process work better, and there is much room for improvement, instead of wasting our time on ingenious but unworkable devices that substitute compulsion for collective bargaining.

* * * * *

I have been involved in the resolution of labor disputes for nearly 35 years. In this period, I have served as arbitrator or mediator in over 10,000 cases. I began my career in labor relations with the National Labor Relations Board in 1939 and I served with the National War Labor Board as Regional Chairman and Executive Director from the formation of this Board at the outbreak of the war until VE day. I have assisted all of the Mayors in New York City with labor disputes beginning in 1946 and I have been on various presidential boards in railroads, airlines, maritime, and longshore.

I was one of two presidential mediators in the settlement of the 1964 railroad crisis involving the operating brotherhoods and I was on the Board of Arbitration created by Congress to resolve the 1967 shopcraft dispute.

The CHAIRMAN. We are most grateful for this profound and very wise statement of yours. First, do you know of any experience with the final offer selection process?

Mr. KHEEL. Not that I am aware of. I understand from the literature it has been tried in other countries, but I am not familiar with any experiences. I heard this morning it was tried in two States. I would doubt that whatever experience there has been would be revealing.

It is probable that it would work in some instances but I submit it would fail in far more cases than it would succeed.

The CHAIRMAN. At the conclusion of your statement, I got the impression that you are suggesting that compulsory arbitration may ultimately be a necessary answer in certain situations.

Mr. KHEEL. At the end of the line. At the end of the line I recognize there may be instances in which the right of the people to be protected becomes superior to the right of the parties to bargain collectively.

Some confusion arises because the strike is always spoken of as labor's right to strike. It was that in the last century and the beginning part of this century when labor was fighting for recognition, and where labor injunctions were used, and indeed violence was the order of the day, strike breaking and that sort of thing, but that era has ended.

It ended with the passage of the Railway Labor Act and the National Labor Relations Act, which provided a means for granting recognition to workers who select a representative by a majority vote, and we entered into another era, the era of collective bargaining. What we don't recognize and I don't think unions fully recognize is that the strike at that point, becomes not a right of labor, but a right of management as well as labor, because it is indispensable to the bargaining process.

In the case of labor, it is here the right to strike, and in the case of management it is the right to take a strike, because the alternative to the right to take a strike is compulsory arbitration, and most managements do not want it, because once you say that you don't have the right to take a strike, then you must necessarily say that you have to accept the decision of a third party.

Most times people think of the right to lock out as the opposite right to the right to strike. Actually, the lockout is used where the employer is the moving party, and that was the case in the depression period, when employers wanted wage cuts and the unions resisted and would avoid the bargaining table, and the only way the management could enforce its will to get a wage cut was by imposing a lockout.

Where the union is the moving party, where the union wants the change in conditions, it introduces the strike, but management's correlative right is the right to take a strike, and labor's correlative right is the right to take a lockout.

Because the opposite alternative is the introduction of compulsion, where the right of the public to be protected becomes superior to that of management and labor to bargain collectively and the Congress is called upon to act, there is only one thing the Congress can do, and that is impose a decision. You have done that several times, and you have used a different device each time.

In 1962, the President appointed a board of arbitration pursuant to your order, Messrs. Seward, Aaron, and Healey, and they made the decision on the crew consist issue.

In 1967 you authorized the President to appoint a five-man board, which was headed by Senator Morse at the time, to make a final decision.

In the recent cases in the railroad industry, I believe the Congress itself imposed the decision. Once you say the strike can't take place, permanently, as distinguished from a cooling off period, where the opportunity still exists for a strike or a discontinuation of the employment relationship, then collective bargaining does not go out the window. In a cooling off period, it may be frustrated somewhat, as it is often in longshore where they anticipate the injunction and wait out the 80 days. Nevertheless the expectation is that at some point they will have to resume the responsibility of decisionmaking.

Once you eliminate that responsibility by banning the strike you must impose some form of compulsory arbitration. There is no other way—those are your alternatives—we talk about a choice of weapons, but they all come down to either letting the strike take place, partially or fully, or having somebody else make the decision.

Boards of recommendation embody the worst features of both. They frustrate bargaining without producing a final decision. Compulsory arbitration does have the virtue of finality, based upon the deliberations of some third party who applied some thoughtfulness.

Final offer selection is Russian roulette. You take your chances on who is going to make the least unreasonable proposal. That is what it will come down to.

The CHAIRMAN. At some point, as you view it, the public interest, the right of the people, becomes paramount to the private rights of the parties in dispute?

Mr. KHEEL. It is a weighing process. To what extent do you believe the collective bargaining process, which is a good process for management as well as labor, should be subordinated to the public interest? My friends in the labor movement would not agree with this, but I do say there are points at which, on balance, you would decide that collective bargaining must go out the window. Most of the bills that are introduced all say they want to preserve collective bargaining, but if there is a strike that affects public health and safety that the following should happen.

I think it will help you to come to logical conclusions if you recognize that once you prohibit the strike you can't have collective bargaining. You can have negotiations, you can have discussions, you can have consultations, but you can't have joint decisionmaking, which is the essence of collective bargaining.

Now, that does not mean that collective bargaining is so important in our society that it must be protected even to the point where public health and safety are affected. But at that point we must truly recognize that what we are doing is substituting compulsory arbitration for collective bargaining.

I would rather have that done at the end of the process after the 80 days, which has solved maybe 75 percent of these emergency disputes, and in those where strikes have taken place it has been at least debated whether the public health and safety was involved, and then

have the President with whatever protective time he needs, 15 additional days as a cooling off period, propose legislation which in the final analysis will be compulsory arbitration.

The CHAIRMAN. This raises many questions: whether intervention must hinge entirely upon health and safety, or whether economic factors should be considered; whether it should be national impact or whether a regional emergency should be the test.

Mr. KHEEL. Those are value judgments that the Congress can make as to what extent the process of collective bargaining should be subordinated to other public interest, recognizing that the further you go, the more you move toward a regulated society.

Now we do regulate society to protect health and safety, and we regulate society for other purposes, too, but I think we all wish to avoid regulations as much as possible. That is why it is important to put this mechanism of compulsion at the end of the line, not at the beginning.

The CHAIRMAN. Thank you. Senator Javits?

Senator JAVITS. Thank you, Mr. Chairman.

Let me express my own pleasure both personally and as a Senator, from New York, to have Mr. Kheel, who is, I think, widely considered one of the leading labor arbitrators in the country, before us.

He happens to be a personal friend as well, which gives me additional pleasure. Mr. Kheel, your expertise is great in this field, so I hope you will forgive us if we try to use it to the full.

Mr. KHEEL. I don't think there are any experts. I think we are just trying to find solutions.

Senator JAVITS. I heard you say two things, which seemed momentarily inconsistent. You said, "You can't find a solution for a problem that will cause anybody any economic pain."

Then you spoke to the chairman of the "right of the public to be protected." Isn't there still another right, and I ask you to address yourself now as a citizen to this, and that is that the country shall be permitted, notwithstanding any dispute, to operate in the essentials required by the health and safety?

Mr. KHEEL. Well, I think so. I mean there is no disagreement there. The question is, how do you accomplish it?

Senator JAVITS. So the Government must have the residual power to operate; must it not?

Mr. KHEEL. It must have it, and it does have it.

Senator JAVITS. It must have it.

Mr. KHEEL. No question about it.

Senator JAVITS. Doesn't that face us with an immediate problem of the ambit of any legislation? The administration wants to go for railroads, longshore, maritime, et cetera. It excludes completely communication. It does not cover it, and it excludes also, public utilities. Now, we have been very lucky about public utilities, but isn't it a fact that a public utility stoppage to wit, electric light and power, could be the most devastating of all?

Mr. KHEEL. I agree completely. Let me suggest this, if I may. We have just come out of a 7-month telephone strike in New York, and we had a strike of the Consolidated Edison Co. a few years ago. If in fact those strikes were effective, particularly the electric strike, it would have been the most damaging strike in the history of any city.

We had a subway strike that was bad enough, but an electrical strike would not only turn the lights out, it would close down the subways as well. Nothing was done about those strikes and as you point out, the legislation does not even encompass them. Do you know why? Because as the result of technology, the strikes were ineffective, the company was able to operate with supervisors in both instances, and as a result, nobody was seriously hurt.

Therefore, nobody got excited about them. This goes to the question of partial strikes, because if a company can operate with supervisors, then there is no damage when you have a utility that is so completely automatic, and that is why I say it would put the United States of America in the position of deciding strike effectiveness.

The decision would be made, "Well, a strike can take place here because it would not be effective," and I think that it would be very unfortunate if the United States of America were put in the position of not merely protecting public health and safety, which it certainly has and should have the right to do, but deciding which strikes can take place because they will not be effective and the unions will lose them.

The telephone strike was lost, the telephone company won that strike in New York, and so did the Consolidated Edison Co. several years ago.

Senator JAVITS. Therefore, isn't it correct that as legislators we have to take account not only of what has happened in history but we have to insure that the United States and the regions thereof against mortal danger of what might happen.

For example, we have in the State of New York, a drastic emergency law, which is applicable only in the event of the atomic attack. Now, there has been no atomic attack in our State, or in the United States, and indeed, one is not even contemplated remotely.

Nonetheless, we all count, do we not, as a very provident exercise of governmental power the fact that we have such legislation on the books? Wouldn't you agree with that?

Mr. KHEEL. I agree with that.

Senator JAVITS. Isn't it a fact, then, that turning the telescope around, that what we have to look at is, one, threats to the operation of he country which inhere in labor disputes, and secondly our function in meeting those threats as an institution, to wit, the Congress as an institution.

That is correct; is it not?

Mr. KHEEL. That is correct.

Senator JAVITS. I notice your statement says on page 12, "This gives the President the maximum range of options, because he can always ask the Congress to pass a law."

Mr. KHEEL. That is right.

Senator JAVITS. But suppose we are not satisfied with the ad hoc situation, and we want it institutionally changed, because we don't feel we can legislate with intelligence and prudence on an ad hoc basis. We have been lucky so far, but we may not always be lucky. Would you agree with that?

Mr. KHEEL. You certainly are entitled. I don't suggest you should not if that is the wish of Congress, but I do believe you have legislated in the Taft-Hartley law an 80 day cooling off period which gives the President and people time in which to decide and, if necessary, go to

the Congress to obtain legislation on an ad hoc basis. I submit that there is no generic formula which you can come up with. We have been trying now for as long as there has been collective bargaining. The Congress tried it is 1947 and came up with the 80-day emergency procedures.

There is no generic legislation that you can come up with that will give us the protection we all want without doing more harm than good, without being so destructive of the bargaining process that the net result will be a minus and not a plus. I submit that you have a policy, and while it does not give you the security that you would like, it is the best policy, and 25 years of experience has proven that except for the inconvenience it causes the Congress to act on occasions, that it is a workable policy.

Senator JAVITS. So to sharpen your argument, you say you need a law, and these editorialists are not all that way off.

Mr. KHEEL. They are off.

Senator JAVITS. Wait a minute.

But you can't fashion one any better than you can both. Isn't that your argument?

Mr. KHEEL. You could put it that way. The one we have got is not a bad one.

Senator JAVITS. If we think we can, that answers your argument.

Mr. KHEEL. I would be surprised if you could.

Senator JAVITS. You have been surprised before, haven't you?

Mr. KHEEL. I have indeed.

Senator JAVITS. So have I.

One other question that is critical to this matter, and again legislators must think in ultimates, because otherwise we are not worth the right to be here.

You know we have been very lucky with American workers. They are extraordinarily patriotic. When we told them to go back, they went back, right? But that is not inevitable. We could have a situation where they would not go back, isn't that right?

Mr. KHEEL. I know of several I will tell you about.

Senator JAVITS. Go ahead.

Mr. KHEEL. The Taft-Hartley law has been invoked some 30 or 31 times and invariably it has been obeyed. It has not been defied once.

The Conlin-Wadlin law and the Taylor law in New York State, which apply to public employees, its procedures have led to injunctions in perhaps a comparable number of situations and they have not been obeyed once.

Senator JAVITS. They have been Government workers.

Mr. KHEEL. They have been Government workers, but they have not obeyed injunctions. The American worker is loyal and patriotic. Why is it that Government workers defy injunctions and private workers don't?

For the reason that the injunction under Taylor and Conlin-Wadlin is a permanent injunction. It removes all hope of compromise. Taft-Hartley is an injunction for 80 days and it does not remove the possibility of mutual agreement through collective bargaining.

Senator JAVITS. Doesn't that argument omit the fact, Mr. Kheel, that the various bills, my own and Senator Williams' and Senator Packwood's, do resolve the dispute flexibly and to finality.

The Conlin-Wadlin Act just says go back to work, but these bills solve the dispute on the merits of that dispute, whether it is collective bargaining, or even compulsory arbitration. They do resolve the dispute flexibly according to the circumstances of that dispute.

That is a major difference.

Mr. KHEEL. The use of compulsory arbitration is the only way that you ultimately and finally resolve the dispute. It has been a question in the State of New York as to whether compulsory arbitration for Government workers is legal, since it would, in effect, assign the decisionmaking function of an agent who has taken the oath of office, the head of a school board or the head of a public authority, and transfer that to an unsworn third party to make a decision. The law was revised accordingly, and what the Taylor law now does is that it says the final decision shall be made by the legislature, and that is incorporated into the procedure. Frankly I think that is far more unworkable than the procedures that I am talking about which you now have Taft-Hartley for 80 days.

Now, all the bills, yours included, that have any degree of finality, while you talk about the flexibility of procedures, when you analyze them they fall into two categories: those that prohibit the strike and therefore mandate compulsory arbitration, or those that merely delay the strike and permit collective bargaining through mediation, through fact finding, through any one of the other devices.

I think it is a mistake to think about an arsenal of weapons when in fact we have two categories. You either get a settlement through collective bargaining, or you get a settlement through third party decision.

I am saying I accept third party decision at the end of the line. I say if you put it at the beginning of the line, then in every case to which it is applicable from a jurisdictional point of view, the bargaining will be frustrated.

Senator JAVITS. Now, Mr. Kheel, isn't there yet another element which you have not mentioned? If Government has the duty to run the country and not to permit any labor group or any employer group to stop it, doesn't the Government have to have the right to seize them and operate the faciliy?

Mr. KHEEL. I think the Government has the right, and it has the power to do whatever is necessary to protect the people, and if in a particular instance seizure seems to be the best device then certainly seizure should be used.

The fact is that if the Government has, as it does have, the power to forestall a strike, for a limited period of time, it can then fashion the solution that meets the needs of the situation.

Because if you had a law that said all strikes by employees of electrical utilities should be prohibited, you would have compulsory arbitration in every one of those instances.

The fact is that no legislation is required in what was probably the worst strike potentially in the history of New York City, and we have had our share of them, and that was the Consolidated Edison strike, because if it had been effective it would have been devastating.

Senator JAVITS. Now, I don't know whether you have examined critically all of these bills, and I have no strong personal bias in favor of any of them, including my own. But is it not a fact that my own bill

does deal with the Congress problem by giving to the President a range of authority, a very broad range of authority, subjecting it to congressional veto and thereby establishing an institutional means for exercising its power without the hazards of congressional deadlock, the fact we are out of session, or some other problem inherent in what makes us unhappy and apparently I think is largely the gist for the editorialists mill, to wit, that we are subject to what might be ad hoc political pressures and have to deal with these matters on the spur of the moment with perhaps sometimes as little as a day or two.

We have to legislate a short freeze in order to give ourselves a chance to act intelligently even on an ad hoc basis.

Mr. KHEEL. I do think your proposal, your bill, is less objectionable than the administration's bill, but I don't think it is preferable to Senator Taft's bill.

He came up with the best formula. Let me say, too, that I don't think that the editorial pressure that comes very largely from the New York Times, should be the basis of legislation, because if you go back and read those editorials, they make absolutely no suggestions of any value what so ever as to what to do beyond saying, "the Congress ought to do something."

And if they had any good suggestions, they should give it to their own business department, because they certainly cannot claim to be a model of skill in labor relations.

So they are telling the Congress to act, they are not telling the Congress what to do and they don't quite know what to do themcselves.

So I say that is hardly the basis upon which you should base legislation.

Senator JAVITS. Mr. Chairman, I won't take any more time except to say in defense of the New York Times that even if they don't know what to do about their own labor relations, and they have not come up with constructive alternatives, assuming you are right, and I have not reread the editorials.

Mr. KHEEL. I have read them carefully, and I am still looking for one constructive suggestion.

Senator JAVITS. I will not refrain from reading their analysis if it will help me in my thinking, or if it will spur me and my colleagues to thinking of a good alternative ourselves, perhaps with your help.

Thank you.

The CHAIRMAN. I think I know what you meant, Mr. Kheel, when you talked about Senator Taft's bill.

Mr. KHEEL. I don't mean the current Senator Taft.

The CHAIRMAN. You mean the 1947 act.

Mr. KHEEL. Yes.

The CHAIRMAN. Senator Packwood?

Senator PACKWOOD. I am glad to get a chance to meet you at last. When I practiced labor law, I thought you were the author of the BNA reports.

You made the comment about the electric and the communications industries, that the strikes were ineffective because of the high percentage of supervisory personnel. They can limp along, and run their industries with supervisors and the strike cannot be effective.

Mr. KHEEL. And the degree of automation, too.

Senator PACKWOOD. Automation seems to be going up progressively.

Can you think of any transportation industry that could operate only with supervisory personnel?

Mr. KHEEL. Not with only supervisory personnel, but——yes, I do, although it is hardly the example you had in mind. There was a ferry boat strike in New York, and the ferries operated during the strike and the strike was ineffectual.

The most recent UTU strike in the railroad industry, which was a selective strike, a partial strike, apparently did not create a national emergency, and was one of the few examples in recent times of a negotiated settlement.

Senator PACKWOOD. I think it is a fair statement that if you looked at the maritime, the longshore, the airlines, or the trucks nationwide, none of them could work with supervisory personnel.

Mr. KHEEL. You assume that in the trucking industry there would be a nationwide strike.

Senator PACKWOOD. No; I am just presuming I don't want one nationwide.

Mr. KHEEL. I don't want them, either.

Senator PACKWOOD. If there was one in the electric industry we could not make it for an extended period, but it would not bring the country to its knees immediately. It would inconvenience us, but it would not have the same effect economically that a nationwide trucking strike would have.

Mr. KHEEL. I don't know. I think an effective strike of an electric utility is a dangerous thing.

Senator PACKWOOD. You commented that the high percentage of supervisory personnel in certain industries enables them to limp along. How would the union make the strike effective?

Mr. KHEEL. That is their problem, not mine. I am not seeking to make the strike effective; the fact is that at this moment in history whenever there is a strike in a utility, at least when there was in my city, it did not create a national emergency. I would not impose any restrictions on strikes except as it became necessary to protect public health and safety on a national basis or a regional basis.

Senator PACKWOOD. I think that is a fair statement. That is our aim in almost all cases, either regionally or nationally.

Mr. KHEEL. I don't think we have appreciated the extent to which we have developed a formula, because when Senator Taft proposed the 80-day cooling-off period, which the unions opposed as a slave labor law, he did not answer the question, "Well, what do you do at the end of 80 days when the 80-day injunction is up?" We are constantly asking those questions, "What will happen when the whole Nation comes to a halt?" Well, we have to do something, surely.

The President put the Army to run the post office. Taft-Hartley does not answer the question of what do you do after 80 days, but our experience in the last 25 years, indicates that the Congress of the United States, that the Government of the United States, is stronger than any company or any union, and does have the capacity to deal with these situations.

The problem that you pose, what if the whole Nation is shut down, which is a very difficult problem, does not have to be answered, because first of all, it has never occurred, but the Congress can deal with it.

We can deal with it at the very least by imposing a further cooling off period.

Senator PACKWOOD. What you said in your testimony, however, is that if at the end of the road the parties know there is some kind of compulsion they are not going to have serious successful bargaining.

Mr. KHEEL. If they are told in advance there is going to be some third party, some father who will make the decision for them, they will not make the bargaining.

Senator PACKWOOD. Haven't the railway and longshore industries been told that they cannot have a national strike?

Mr. KHEEL. That was true in railroads, and that was one of the reasons bargaining atrophied in the railroad industry. It is not true in longshore, because strikes have taken place, and in fact the administration told the industry and the union before the problem was complicated by the existence of longshore strikes on two coasts and by the introduction of wage and price regulations which complicated things, they were told this time when their contract expired on October 1, there would be no injunction. If these other complications had not come along, the settlement they worked out—and they did work one out on the east coast, they worked it out after Taft-Hartley, but without a second try—would have been worked out sooner.

Senator PACKWOOD. You are not saying, are you, that this Congress is going to stand aside and allow substantial national or regional transportation strikes and do nothing?

I think we have passed that place. We have said as a matter of policy, even though we have not stated it in the form of law, that we are going to impose a series of ad hoc settlements, compulsion as you called it, but we are not going to allow them to continue.

Mr. KHEEL. I don't know that I quite agree with you. I think you are going to allow them to continue in certain instances. You allowed the selective or partial strike in the railroad industry to continue, and the settlement was brought about.

Strikes in longshore have been allowed to continue. I know of no strike in trucking that has ever been enjoined. I think there was only one maritime dispute that was enjoined. I think if your approach is that we are never going to allow a strike in transportation, then we should, all right, if we have to face it, let's face it, but let's forget about collective bargaining and don't put anything in your bill about collective bargaining.

Senator PACKWOOD. If we are going to face that and start with the presumption that we want to guarantee continued transportation services, what is the best way to achieve that?

Mr. KHEEL. Through collective bargaining. That will settle more disputes than any other device you can think of.

Senator PACKWOOD. You are going to assume that if we have compulsion somebody is not going to follow the law.

Mr. KHEEL. And the Congress can take action to protect the country at that time.

Senator PACKWOOD. Even seizure is not going to protect the country if the workers won't work. I have reservations about the National Guard running the railroads.

Mr. KHEEL. The hypothesis you give me is one that I would say, "Well, the Congress can't allow that to take place." It is not taking place, however.

Senator PACKWOOD. Collective bargaining has not always guaranteed continuity of transportation services.

Mr. KHEEL. And Taft-Hartley.

Senator PACKWOOD. That hasn't guaranteed transportation services.

Mr. KHEEL. I submit the only industry in which there has been a substantial departure from that, is railroads, and that is the one industry in particular that has not been under Taft-Hartley and does have under the Railway Labor Act this procedure for boards of recommendation which I think do more harm than good.

Senator PACKWOOD. It didn't work for 124 days on the west coast.

Mr. KHEEL. In the longshore dispute. That was a very bad strike, the first one they had in 22 years, in the course of working out some very difficult problems of technological change.

Senator PACKWOOD. I want to come back to the presumption again, if we want to guarantee the transportation services, and collective bargaining hasn't done it, how do we guarantee that?

Mr. KHEEL. I don't think you can guarantee that there will never again be a disruption in transportation. I don't think that is the question. I think we are all anxious to prevent emergency strikes, that no one has a monopoly on his wish to prevent them.

I don't think the proposal that has been made in the bill that you have introduced with others will do what you want it to do.

Now, I would support it if I thought that that was in the public interest. I am not opposing it because I favor the unions. I think that collective bargaining belongs as much to management today as it does to unions, and I think the measures that you propose will unbalance, do more harm than good, and will not give us the kind of a guarantee you want.

It will not work. That is my objection to it. I don't object to your purpose or the sincerity of your purpose, and I am sure that what you want is precisely what I want but I don't think you have the formula.

Senator PACKWOOD. Well, then I would very much appreciate your suggesting a formula that will achieve it, and collective bargaining has not. There has to be something above and beyond that.

Mr. KHEEL. I called it the Taft ad hoc policy that the United States developed beginning in 1947, and the experience under that of those industries that were subject to it has been a good experience. That is what Secretary Hodgson said.

Senator PACKWOOD. You are talking about congressional compulsory arbitration.

Mr. KHEEL. At the end of the line, where necessary to protect the public, because the public under those conditions is entitled to that.

Senator PACKWOOD. At the end of the line you do have compulsory arbitration.

Mr. KHEEL. On an ad hoc basis.

Senator PACKWOOD. All it is is congressionally imposed arbitration, and what it amounts to is arbitration by a 535-member panel in the throes of an emergency.

Mr. KHEEL. I submit that the action that the Congress can take because it has not fashioned a whole mechanism, an arsenal of alternatives in advance, will be a more satisfactory solution, or a less unsatisfactory solution than you will get by having a set of prescribed alternatives which will include either strikes on a selective or other basis that will or will not permit collective bargaining to take place, and/or

compulsory arbitration, because once you introduce that and they know it is coming, that is the end of bargaining.

They knew in the railroad industry that every time there was a crisis, an emergency board would be appointed to make recommendations. They knew that, and the bargaining took place in the light of it.

There is only one way to assure collective bargaining, and that is to not impose any restrictions. That is not completely satisfactory, because we do need protection in certain instances. But we have it. We can impose an 80-day injunction. If you were to propose legislation empowering the President to impose an additional 15 days, I certainly would not object to it.

I don't object to that one of the three options that you provide.

In that period, there would be sufficient opportunity—these disputes are not that complicated at that point—to decide on what form of compulsions the Congress should introduce.

Senator PACKWOOD. Under my bill and most of the others, the various options are not mandated. There is no guarantee the President is going to invoke final offer selection.

Mr. KHEEL. You are saying that the President is going to allow a strike to take place that will injure public health and safety?

Senator PACKWOOD. No, if he comes to the conclusion that it is more injurious to public health and safety to continue the shutdown——

Mr. KHEEL. He has that option now. He has the greatest range of options, because he can ask you for any law he wants. You limit the options by narrowing him down to three.

Senator PACKWOOD. If he does not like them, he can still come to Congress and ask for something else.

Mr. KHEEL. Then why do you need the three?

Senator PACKWOOD. Congress has implicitly said to management and unions, "We are not going to allow a transportation crisis. If it comes, even regionally, we are going to impose a settlement."

Now, that premise is here for good, so any transportation industry that is bargaining as they look down the road, they know Congress is not going to tolerate for any length of time a serious regional or national dispute or disruption.

That has to be in their minds. The only thing we are talking about is whether to have a rational institutional approach or whether we are going to have ad hoc crisis settlements by Congress, with no legislation beyond what we have, other than your suggested amendment of the Railway Labor Act.

Mr. KHEEL. Yes. Well, I think you have a policy, and it is then not correct to say you have no policy, because you do have the Taft-Hartley emergency provisions. You do have the statement of the Secretary that they have worked. You do have the fact that the railroad industry has been the principal problem child, and Taft-Hartley in its pure form does not apply there.

You do provide in your bill to abolish the emergency boards, and I favor that, and to bring the railroad industry under Taft-Hartley.

My only objection to your proposed legislation is the inclusion of the three options, which I think limit the powers of the President. Incidentally, I favor the abolition of the adjustment board.

Senator PACKWOOD. I have no other questions, Mr. Chairman.

Thank you very much, Mr. Kheel.

The CHAIRMAN. Thank you, Mr. Kheel.

Our final witness this morning is Mr. Glen D. Hofer of the National Federation of Grain Cooperatives.

STATEMENT OF GLEN D. HOFER, ON BEHALF OF THE NATIONAL FEDERATION OF GRAIN COOPERATIVES

Mr. HOFER. Mr. Chairman, and members of the subcommittee, my name is Glen Hofer and I am executive vice president of the National Federation of Grain Cooperatives. We appreciate the opportunity to express our observations on the impact of dock strikes and other transportation tie ups on agriculture.

The membership of NFGC consists of 19 regional, farmer owned grain cooperatives which, through their affiliated cooperatives, serve well over a million grain producers. Their primary activities involve the storage, conditioning, processing, and marketing, both in the domestic and foreign markets, of all grains.

In the 1969–70 crop year, our network of local and regional facilities handled 2.3 billion bushels of grain or approximately 34 percent of the total U.S. grain crop.

U.S. grain production, like all agriculture everywhere annually is faced with drought, disease, and insect pests. In addition, artificial curbs are placed on U.S. production by the application of farm program regulation. Despite the inroads of these agents, however, then once triggered by seasonal planting, the combination of U.S. geography and farm technology is invariably going to put in the neighborhood of 10 billion bushels of grain (including soybeans) in the bin at the end of harvest.

Ten billion bushels which must disappear in the following 12-month period before another crop rolls from the field. Ten billion bushels to be stored, milled, crushed, merchandised, eaten, or exported. A very demanding exercise in logistics and one that depends entirely on an orderly flow of grain through the marketing channels which have evolved over the years.

Linking each component of this marketing system are the trucks and trains, and barges and freighters which must conduct the grain each step of the way from the field to the ultimate consumer.

Needless to say—whenever one of the transportation modes fails to provide orderly movement for any reason, back pressure develops on one side of the package and the vacuum develops on the other side.

Both of those conditions place stress on the entire system and if prolonged the effects become chaotic, costing the producers countless millions of dollars in terms of lost export markets and depressed prices. In addition, and perhaps equally significant for the purposes of these public hearings, the injurious influence soon spreads to the interests of the general taxpayer who has a vital concern in the U.S. balance of payments and the cost and effectiveness of U.S. farm programs.

Disruption or stoppage of transportation service can occur for one of several reasons. The shortage of railroad equipment during peak periods of grain movement has been a chronic ailment and has seemed

to intensify during the past decade. The most acute problems, however, have developed from work stoppages on the railroads and at the seaports, due to labor management disputes; the most recent, of course, being the 134-day tie up of west coast docks and the 58-day work stoppage at east and gulf ports.

As mentioned beforehand, a block in the grain pipeline causes an intolerable upstream pressure buildup, and a damaging downstream vacuum. Using the recent dock tie up as an example, and looking back toward the producer from the blocked terminal export position, the following conditions were soon apparent:

Equipment tie up

A severe congestion of transportation equipment is inevitable when the docks are struck. The manager of Farmers Export facility at Ama, La., reports there were 649 grain barges waiting to be unloaded at Baton Rouge and New Orleans on the day before dockside operations were resumed in November under court order.

Such immobilization of significant numbers of available barges severely disrupts the dry bulk traffic on the entire river system. In the same manner, loaded rail cars may be tied up in large numbers, intensifying the chronic harvest time shortage of rolling stock.

Overtaxed storage and handling facilities

With the work stoppage coming as it did, in the midst of harvest of a more than bumper crop, the facilities for storing and conditioning the grain were soon swamped.

Our Indiana member reported a million bushels of corn on the ground in Indianapolis. Much of this corn had high moisture content and losses were suffered from it going out of condition. Drying facilities at Indiana grain's elevators have good sized capacity for conditioning grain, but with the storage completely full and harvest still underway, they simply could not handle the situation. These conditions were repeated in many areas with another notable example in the Pacific Northwest where as much as six million bushels of soft white wheat are still on the ground in November, months after the July/August harvest time.

Depressed farm prices

Already under heavy supply pressure from the huge crop being harvested farm gate prices for grain have suffered a further depressant through the loss of the export outlets.

Since several factors bear on price, it is difficult to quantify the influence of the strike. But many responsible observers have projected a crop drop from 8 to 10 cents per bushel.

Our Illinois member has calculated that, at that rate, here the Illinois farmers alone lost directly $34 million out of net income from harvest time sales. Perhaps, the most serious impact on farm prices is yet to be felt.

The combination of the export stoppage and the very large 1971 crop has made inevitable the carryover of significantly increased stocks for all grains into the new crop year. The effect of this burden of excess carryover will be extremely bearish and loan level farm prices are in prospect unless weather severely cuts back the predicted production figures for the 1972 grain crop.

Disruption of Government program planning

Supply agricultural control programs must plan well in advance if production is to be tailored to disappearance. The USDA recently announced the details for the 1972 wheat and feed grains crop. In view of the huge crop produced this year and in an attempt to forestall any further burgeoning of carryover stocks, the Department committed an additional $800 million to the 1972 feed grain program and up to $200 million more in the wheat program to pay for production cutbacks.

Obviously the loss in export disappearance will offset some portion of the anticipated cutback and the taxpayer's money will have gone for naught. Looking downstream or toward the world market from the port bottleneck, these depressing conclusions can be drawn:

Loss of export sales

Documentation of the eventual actual losses are difficult to provide, but expert opinion in the form of comparative statistics and projections has been featured in recent USDA releases and statements by grain trade leaders.

Suffice to say here that very substantial losses have been suffered, even to the point of impairing agriculture's positive contribution to the critical U.S. balance of trade.

Loss of export customer confidence

The most serious aspect of the involuntary absence from the world grain market is the rapid deterioration of customer relations. Few, if any, of the grain importing countries have adequate storage facilities for accommodating a grain stockpile of any volume.

They must necessarily depend upon a regular schedule of purchase and delivery to keep their supplies in balance with current food and feed demand.

Consequently the capability of a supplier to provide regular service becomes a high priority factor in the importer's purchasing decision. Conversely, any inability to keep the pipeline full forces an immediate switch to alternate supply.

Given the presence in the world grain market of a number of aggressive and well stocked suppliers, business lost through transportation failure not only detracts from the seasonal total, but very likely is displaced in subsequent marketing years.

These are the reasons we are testifying in favor of legislation designed to limit the impact of prolonged transportation stoppages. In our view such legislation need not inhibit the bargaining posture of either management or labor but rather, if thoughtfully conceived and impartially administered, should greatly enhance the possibility of good faith bargaining.

In terms of the language of the legislative proposals being considered by this subcommittee, we would make only two general observations.

In the context of the agricultural production and marketing the consequences of regional transportation stoppages quickly become national in impact on the farm community. For this reason, we urge favorable consideration for broadening the definition of national emergency to include regional strikes or lockouts.

We believe the "final offer" concept has merit. We also would express our agreement with a practical suggestion made by a previous witness at these hearings. Mr. Rodman Kober, representing the National Grain and Feed Association on March 3, proposed the last offer selection process should provide that:

(1) The parties should be directed to identify those issues on which agreement has not been possible, and,

(2) The selection panel would be free to choose, without modification, the most reasonable final position on each unresolved issue from each of the final proposals.

The National Federation of Grain Cooperatives would summarize as follows: There is indisputable evidence that United States agriculture suffers immediate and disastrous results when prolonged work stoppages occur which stem from labor, management disputes in the transportation industry.

The negative effects of these agricultural losses spread beyond the agribusiness community and then should be of concern to the general U.S. taxpayer.

Agriculture's problems are compounded and in some ways unique because there is no recourse to plugged pipelines. We cannot bank the furnaces, lay off shifts or stop the pumps. When the season calls, agriculture's plant responds and the industry must accommodate to that schedule.

Thus we are terribly susceptible and need shelter from lengthy strikes resulting from disagreements in which we have no role in either the cause or the solution.

It is our hope that these hearings will lead to the eventual passage of legislation similar to S. 3232. We specifically cite two features as being necessary to any remedial legislation:

A. It should include regional application of its emergency definition.

B. It should contain a final determination tool such as a "final offer" concept.

We appreciate this opportunity to appear with testimony before the Senate Labor Subcommittee.

Thank you.

The CHAIRMAN. Thank you very much, Mr. Hofer. You underscore on page 5 "prolonged". What does that "prolonged" mean to you?

Mr. HOFER. I think what I was trying to say when I wrote the testimony, Mr. Chairman, is that we don't argue with the right of labor to use the strike as part of their bargaining process.

The past west coast strike of 134 days in my opinion was a prolonged strike that did severe damage. In contrast, the strike on the Gulf coast went for 58 days. It is beginning to appear that some of the lost corn and soybean business there will be made up, because it was not of sufficient length to damage those markets as much as we had first feared.

So it is a relative thing. I am just trying to say the length of the strike is really critical to agriculture.

The CHAIRMAN. Senator Packwood?

Senator PACKWOOD. Mr. Hofer, I know it is hard to estimate, but could you give us the best estimate you can of the losses to our export markets because of the west coast dock strike?

Mr. HOFER. I did have material from the Department of Agriculture this morning that shows in wheat alone, we are 110 million bushels behind our last year's export position as of March 3.

Now many things affect an export market besides the strike, of course. There are strong competitors looking for a place in that same area market, and our degree of success in competing with them determines what we can export, but I would say probably at least half of that 110 million shortage at this point could be attributed to the strike.

That is just a personal observation.

Senator PACKWOOD. Would you give us those figures for the record?

Mr. HOFER. Yes.

(The information referred to follows:)

U. S. GRAIN EXPORTS
(data in 1,000 bushels)

MARKETING YEAR *	7/1/70-3/12/71	7/1/71-3/10/72	DIFFERENCE
Wheat	475,756	360,419	-115,337
Barley	58,335	13,983	-44,352
Oats	15,265	8,751	-6,514
	9/1/70-3/12/71	9/1/71-3/10/72	
Soybeans	247,498	242,209	-5,289
	10/1/70-3/12/71	10/1/71-3/10/72	
Corn	241,917	291,624	+49,707**
Sorghum	97,968	43,619	-54,349

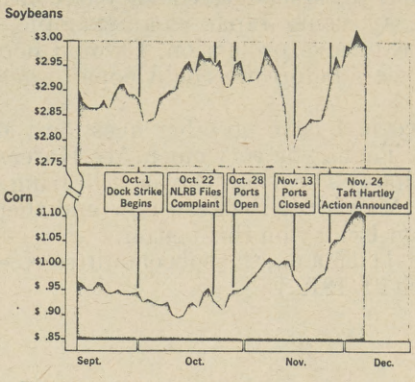
* Marketing year for individual commodities have different starting dates due to different harvest periods.

** Corn blight in 1970 severely restricted availability for export during that marketing year.

WHEAT EXPORTS BY CLASS FROM PACIFIC NORTHWEST PORTS
(data in million bushels)

	7/1/70-2/28/71	7/1/71-2/28/72	DIFFERENCE
White Wheat	77.6	39.1	-38.5
Hard Winter	37.9	17.8	-20.1
Spring	35.4	14.2	-21.2
Durum	1.3	1	- .3
TOTAL	152.2	72.1	-80.1

Dock Strike Effect On Farm Prices



The above chart shows the farm price of corn and soybeans from Sept. 15 to Dec. 7, along with indication of various actions involving the "on again-off again" dock strikes. Dec. 7 is the last day plotted since market prices beginning at that time were distorted by serious congressional consideration of increases in price supports and the enactment of a strategic reserve.

Note in the chart that between Sept. 15 and Oct. 1, corn prices fluctuated between 96¢ and 94¢ per bushel. On Oct. 1, the dock workers at the major Gulf ports walked off the job. In the next two weeks, corn prices drifted down to about 90¢ per bushel and then fluctuated around 90¢ to 92¢ until Oct. 20. At this time rumors began to fly through the grain trade that action would be taken by the National Labor Relations Board to end the strike. An NLRB complaint was filed on Oct. 22 but workers did not return to work until the following week when corn prices immediately responded by increasing to the 94¢ to 95¢ range. Prices continued to increase to the $1.00 to $1.01 level in the second week of November. Then on Nov. 13, the dock workers walked off the job. In three market days corn prices fell 6¢ per bushel. By the 22nd of November rumors began to fly that the "cooling off" provisions of the Taft-Hartley Act would be invoked. On Nov. 23rd corn prices were 98-1/2¢ per bushel. On Nov. 24, it was announced that the President was beginning the proceedings to invoke the Taft-Hartley Act. Corn immediately jumped to $1.05 per bushel or by some 7¢. In the first full week of December, corn had climbed to the $1.10 to $1.11 range.

While the market forces and reactions are somewhat different for soybeans and because the supply-demand balance for soybeans is much tighter than corn which subjects soybean prices to greater anticipation and speculation, much of the same kind of analysis can be made for soybean prices

Senator PACKWOOD. How long will it take to build up the export market to make up these losses?

Mr. HOFER. I made the point during the testimony that when you lose a market and the customer turns to an alternate source, if they are satisfied there, their deals have a tendency to continue. I think probably it is fair to say, using Japan as an example, a market built up over 25 years of extensive promotion, I would not be surprised if it would be 4 or 5 years before we could hope to get back to the same level.

Senator PACKWOOD. I have no other questions, Mr. Chairman.

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

This concludes today's hearing. Our next hearing on the subject will be next Tuesday, March 21. Between now and then we will have an executive session on Friday on this matter.

(Whereupon, at 11:55 a.m., the subcommittee recessed, to reconvene on Tuesday, March 21, 1972.)

NATIONAL EMERGENCY DISPUTES, 1971–72

TUESDAY, MARCH 21, 1972

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

The subcommittee met, pursuant to notice, at 2:05 p.m., in room 4232, New Senate Office Building, Senator Harrison A. Williams, Jr. (chairman of the subcommittee) presiding.

Present: Senators Williams, Javits, Packwood, and Stafford.

Staff members present: Robert E. Nagle, general counsel, and Eugene Mittelman, minority counsel.

The CHAIRMAN. The subcommittee will come to order. Our witnesses today are from the American Trucking Association, Mr. Brodeur, director of industrial relations department, and you are accompanied by, I understand, Mr. Greenleaf, Mr. Holmes and Mr. Mansfield.

Mr. BRODEUR. Yes.

Senator JAVITS. Mr. Chairman, I may be unable to stay, because I have other problems. May I ask unanimous consent to put any questions I have to the witness in writing and have him answer them and have that incorporated in the record?

The CHAIRMAN. Will that be satisfactory?

Mr. BRODEUR. Yes.

STATEMENT OF HAROLD H. BRODEUR, DIRECTOR, INDUSTRIAL RELATIONS DEPARTMENT, AMERICAN TRUCKING ASSOCIATIONS, INC., ACCOMPANIED BY THOMAS GREENLEAF, PRESIDENT, CHEMICAL LEAMAN TRUCK LINES, DOWNINGTOWN, PA.; ROBERT C. HOLMES, PRESIDENT, HOLMES TRANSPORTATION, INC., FRAMINGHAM, MASS.; AND S. EARL MANSFIELD, MANAGER, TRUCKING EMPLOYERS, INC., WASHINGTON, D.C.

Mr. BRODEUR. My name is Harold Brodeur. I am accompanied by Mr. Thomas Greenleaf, president of the Chemical Leaman Truck Lines, Downington, Pa.; Mr. Robert C. Holmes, president of Holmes Transportation, Inc., Framingham, Mass.; and Mr. S. Earl Mansfield, manager of Trucking Employers, Inc., of Washington, D.C.

I make this statement in behalf of the American Trucking Associations, Inc., the national trade association of the Trucking industry, representing all types of motor carriers, both for-hire and private, and having affiliated associations in 50 States and the District of Columbia.

We welcome the opportunity to present our views concerning emergency transportation labor disputes. Probably no labor relations subject in recent years has been the focus of more research, more debate and more emergency action in the Congress.

In the 2 years since the administration introduced its bill, S. 560, the Congress has occupied itself with consideration of a number of suggested measures for dealing with these disputes, especially in transportation.

The trucking industry is not a latecomer to this debate. In some respects we have been reluctant bystanders, while your committee has busied itself with the problems presented in the longshore, maritime, air, and railroad industries.

Each of these transportation industries either is now, has been, or is about to be, embroiled in labor strife in such a fashion as to focus the attention of the entire Nation on itself. Their labor troubles have sparked the appointment of special presidential boards, have caused the introduction of many bills in the Congress, and have monopolized the headlines of newspapers throughout the country. For the first time the trucking industry shared that spotlight of attention in 1970 in its last cycle of negotiations.

We have had to contrast the situation in these other industries with that of our own industry. Never in the history of our bargaining has an emergency disputes procedure been invoked. Our cycles of negotiations, going back into the fifties and sixties, have received little attention in the Nation's press, and even less in the Congress and the administration. This was remarkable in view of the key role which trucking companies occupies in the transportation system.

The absence of emergency disputes in trucking is even more remarkable when it is considered that the industry's principal bargaining agent is the International Brotherhood of Teamsters. Not only is this union the largest and the best known in the country, but its every action invariably attracts attention and sometimes controversy.

Why then should labor relations in trucking have aroused relatively little public interest until recent years? The obvious answer was that in the beginning there were few serious strikes or work stoppages. Such strikes as we had were not of sufficient duration, nor did they cover an area great enough, to cause widespread public concern.

You might ask how was the trucking industry able to avoid the type of paralyzing strike which arouses the public? Part of that answer was supplied on many occasions by the former general president of the Teamsters Union, James R. Hoffa.

In reporting that strikes during the sixties were at an all time low, he explained that this was in accordance with the "IBT policy of not being afraid to strike to enforce demands, but of first seeking possible avenues of settlement before a strike is called."

The same policy has been enunciated on repeated occasions by the present general president of the Teamsters Union, Mr. Frank Fitzsimmons. On the whole, and there are exceptions, the union officials with whom the trucking industry bargains have been realists who recognized that changing conditions, new equipment and new highways can make once valid work practices and pay systems obsolete.

By and large they have shown an awareness that stubborn insistence on keeping outdated contract provisions can rob a trucking company

of its flexibility and saddle it with such a high cost as to put it at a severe disadvantage with competitors.

Because of this realistic attitude we have been able to avoid many of the "make work" practices which seem to be at the root of the serious labor problems in other modes of transportation.

Another factor has played a part in the trucking industry's ability to avoid crippling strikes. That is the fact that in other modes of transportation, disputes have arisen over job security issues. We seldom have faced this problem, because we are still an expanding industry. Most of our mergers are still growth mergers which supply more jobs. That is not to say that bargaining in this industry with this union has been entirely satisfactory; quite the contrary, it has been very tough.

In the late fifties there were two severe and extended strikes of trucking employees in the 11 Western States. In neither of these was there Federal intervention beyond mediation to assist the parties toward settling their intractable disputes. In 1967 there were a number of wildcat strikes of short duration in the South Eastern and South Central States. This interfered with the negotiations between the Teamsters and Trucking Employers, Inc., the national labor relations agency for the general commodity trucking industry. The local union actions prompted an employer shutdown in defense of the industry's national bargaining position. The threat of a Taft Act injunction on the eve of the fourth day of the stoppage was sufficient pressure to prompt the bargaining parties to reach settlement.

In early winter of 1970 there was a 3-week strike resulting from an impasse in the Eastern tank haul negotiations. This almost completely shut off shipments of fuels and chemicals in West Virginia, Pennsylvania, New Jersey, and Maryland, and it severely affected industries and consumers in Charleston, Pittsburgh, Philadelphia, and Baltimore. There was no intervention beyond mediation. The settlement was exorbitantly inflationary.

In 1970 the general freight trucking industry negotiated a 3-year package of $1.10 and this was accepted for some 450,000 trucking employee members of the Teamsters Union. The agreement, however, was upset by some 50,000 trucking personnel bargaining independently in the city of Chicago, who were able to boost this from $1.10 to $1.65, with the result that the national agreement had to be reopened and boosted to a 39-month package of $1.85.

This inflationary settlement, whose total labor cost has been calculated at nearly 40 percent of the wage cost base preceding the contract, influenced the level of settlements in 1970–71, in autos, containers, aluminum, steel, railroads, and longshoring. What started out as a regionialized dispute in Chicago, created by an unusual imbalance of bargaining power, ended up having a devastating impact on the entire economy.

So said J. Curtis Counts, Director of the Mediation Service at a recent seminar on collective bargaining. In our judgment, some kind of innovative Federal intervention in the 1970 Chicago strike, beyond the services of the Federal mediators, was absolutely necessary and it was not available.

Notwithstanding these collective-bargaining disputes and others like them we have been reluctant to speak out on transportation emer-

gency disputes legislation. Generally, we have settled our differences peacefully and privately. Collective bargaining has not ceased to work in our industry.

The presence of an established national bargaining unit, however, has raised the prospect that possibly sometime in the future Federal intervention may be required.

While we have never experienced the 80-day Taft-Hartley injunction, we have made a careful study of its terms. We are quite certain that if we experienced it, we would wish to have improvements in it. The emergence of proposed legislation which seems likely to get Senate action, and the fact that we are in it, whether we like its terms or not, prompts us now to speak out and to make suggestions for making this legislation as workable as possible.

A large group of labor relations executives whose companies represent all kinds of trucking operations in this industry has studied the bills before you, beginning with the administration position introduced in 1970. They decided that the bill, S. 560, made some new contributions to the extensive research and debate on this subject.

But they came to the conclusion that if it was to be applied to the trucking industry, its terms would not be adequate because in many respects they do not reveal a comprehension of transportation economics and transportation labor relations. Our approach, therefore, is one of constructive amendments to that legislation and the other bills which have been introduced since that time, especially S. 3232. Our position has been under review by a substantial committee of the chief executive officers of a large number of trucking companies. This position presents their best thinking on the subject.

The trucking industry position would give the President a choice of methods to be used when intervention in a wide-area dispute seems to be the only way to motivate the parties to reach a settlement. He might adopt any of the following options or procedures:

1. The Government would do nothing and thereby leave the parties to their own devices;

2. A cooling-off period similar to the present 80-day injunction procedure would be invoked;

3. The procedure known as "final offer selection" would be ordered; or

4. The terms of the dispute would be submitted to arbitration.

There has been much discussion about these and other options in the testimony which has been presented to the committee. These are simply procedures and should be designed with some flexibility for application to the varying situations of different disputes.

However, we think that many of the details in which the procedures are couched are as important as the choices themselves. Let me, therefore, describe what we think are some of the more important aspects of the framework in which these options should be used.

First, we endorse those proposals which favor the availability of intervention procedures in regional disputes. The President ought not to be bound by a too narrow threshold test like that of national health or safety. Instead, he should have the discretion to invoke procedures in a threatened or actual strike or lockout which, if it occurs, will interupt interstate commerce to a degree so substantial as to deprive any section of the country of essential transportation services.

The triggering of the procedure, as it is now, should be discretionary. It should not be regarded as automatic or as too easily available. When the impasse in such a collective bargain has been reached, and the Mediation Director has so advised the President, a Board of Inquiry would be created as now provided in the Taft-Hartley Act.

The Board of Inquiry is an important device and under the present act would appear not to have had much of a chance to perform its function. Its function not only should be strengthened but it should make the initial decision on the further handling of the dispute. In order that it may perform this function without the pellmell pressures of getting to an 80-day injunction as in the present act, we think the President should be empowered to issue a temporary back-to-work order to last only long enough to permit the Board to make its findings within the time he has designated.

The Board not only should factfind, but it may be desirable in very limited situations for the President to direct that the Board make nonbinding recommendations for the settlement of the terms and conditions of the labor agreement. Additionally, the Board should be empowered out of its special knowledge of the character and history of the industry and its dispute to recommend the steps which the President should take in order to insure that the dispute may be resolved.

All of these steps, then, are involved in relation to the Board of Inquiry; the Presidential decision to trigger the procedure by appointing a Board, the selection of the Board itself, factfinding, optional recommendations of settlement terms, and recommendation of steps for further interventions; all of these steps taken over a short period of days or weeks, may well increase the leverage on the parties to take renewed steps to settle the matter by themselves, short of an injunction or other procedures.

Having reviewed the report and recommendation on the dispute, the President would still have a variety of choices, each designed to meet the facts of the bargaining climate at the time of his decision. He would not be obligated to take the recommendation of the Board.

One alternative, as outlined before, is to do nothing, or to do nothing for a few days or weeks. The "do nothing" alternative would apply in those bargaining impasses where it appears the parties are about to settle or where the public impact of the dispute is such that formal intervention procedures may be discontinued either temporarily or permanently.

A second option is the cooling-off period. We think it should be an option. This procedure would make the present Taft-Hartley cooling-off procedure optional rather than a prerequisite to other disputes handling mechanisms. This procedure would be advisable in situations in which mediation is working, but in which more time is needed for the parties to work out difficult problems.

The strike weapon would still be available at the end of the period as leverage for settlement unless another option for final settlement is designated.

We have no hard and fast feeling about the number of days. Perhaps the number of days should be left to the President's discretion in seeking the injunction. If the present 80-day procedure is to be modified, we would favor dropping the ballot on the employer's last offer.

The third procedure would be final offer selection. This procedure appears in several bills in slightly different forms as to the detail. Our

thought is that this procedure should involve the appointment of the tripartite panel if at all possible by the parties, or if not by them in a reasonable period of time by the President.

The selector panel would decide which of the final offers is the more reasonable. Their selection would be the contract to be put into effect. The panel's choice would be final and binding and would be subject to a court reversal only for arbitrary or capricious action.

A number of suggestions have been made for improving the chance that the parties will indeed narrow the area for final settlement. While the details of the procedure should not be too rigid, we favor the exchange of revised final offers. There should be opportunity to bargain over the offers. There must be enough time in the procedure to allow the parties still one more opportunity for negotiating their own settlement.

While we favor final offer selection, the trouble we have with this proposed procedure is anticipating how a national agreement with 40-or-so supplemental wage agreements, affecting 1,500 companies and 450,000 employees, and containing literally thousands of negotiable working conditions may, within the space of a few days, be wrapped up in a final offer. There is a distinct possibility that harried bargainers may misstep. Conveivably selectors may find one or more of the final offers less than reasonable. Revised final offers may correct this. Since there is a chance that an otherwise reasonable contract proposal may contain one or more serious inequitable parts, thought should be given to letting the selectors make sensible adjustments now in the final offers. Notwithstanding the chance that this untried theory may not always work, we think it is the most innovative proposal which has been presented, it will fit some disputes, and it ought to be included in the range of disputes procedures.

A fourth option is arbitration. This undoubtedly is the most controversial of the options suggested. We think it needs to be examined thoughtfully and objectively. We place it on our list of options, recognizing that its availability is not to be automatic. In most collective bargaining disputes it simply would not be available.

The utility of arbitration would be enhanced to the extent that both parties find it mutually acceptable as a means of settling some agreements which may not be settled any other way. If there are some disputes which will best be handled by this method, we think it should be available among the choices made by the President.

In either of the last two options the panel of selectors or arbitrators should follow certain economic criteria in reaching their decisions. These are spelled out in S. 3232, as they are in the original administration bill. These include the character and history of the bargaining and the practical factors which bear upon arriving at an economic package. Among these criteria should be consideration of the regulated transportation industry's ability to pay the increased costs of doing business under the new labor agreement. In the case of a regulated industry, the details of the final decisions should be transmitted immediately to the industry's regulatory agencies.

Probably there are other options which could be included in a presidential arsenal. I am sure there are other choices which might be employed in assisting the parties to arrive at a decision by themselves.

These however, reflect the best thinking of a large number of our industry's chief executives and their labor relations people.

Finally, we favor adopting the proposal for a study commission to look at the vulnerabilities of certain industries to work stoppages. We take this proposal quite seriously. The work of such a commission is needed.

Such a commission should be large enough to afford each affected industry sufficient representation and it should conduct its work over a period of time long enough to do the job.

Mr. Chairman, there are many other ideas and suggestions in bills before your committee for dealing with emergency labor disputes. The purpose in all these efforts is to provide additional steps to impel the parties to find a settlement when it has become difficult for them to reach one privately. The effectiveness of these steps and procedures will depend upon placing pressures on the parties which do not disturb the precarious balance of relationships at the bargaining table.

Such pressures need to be well balanced. As I understand the purpose of the legislation, the end result is to help the parties obtain settlements. However, the public interest in the matter should not be confined to simply getting rid of disputes.

An equally necessary public interest is to preserve and enhance collective bargaining. Another necessary public purpose is to insure the continued availability of transportation service at a reasonable cost.

Among the proposals common to most of the bills before your committee is the concept of partial operation. Closely related to it is the concept of selective strikes without lockout.

I am not sure what is intended to be achieved by such proposals. They do not seem to relate to the objectives of enacting sound legislation.

The trucking industry has experienced partial operation. We have had selective strikes—without legislation. Multiemployer bargaining is countenanced by the Taft-Hartley Act. The Labor Board and the Supreme Court have supported the doctrine that the multiemployer bargaining unit's position may be defended against attempts to break up the unit and the employer bargaining position by means of work stoppages against some members of the unit.

Such a procedure, if put into legislation as proposed, can have no other result than to hamper the reaching of an equitable settlement. I sincerely doubt the Government Board designated to draw up the order for partial operation could ever conscientiously finish the job.

To permit it to do only a "reasonable" job at balancing the economic burden on the parties would nevertheless put the Government in the business of deciding who will be on strike.

How would it balance all of the equities of the participants at the bargaining table, including those of the shippers and receivers of freight?

The underlying literature conceives of partial operation as meaning the designation of essential commodities necessary to preserving the public's health and safety. However, discussion of the proposed option, both before this committee and in the record which has been

made in the House, seems to indicate that partial operation may mean the designation of certain companies within the multiemployer bargaining unit which would operate wholly or in part, over some routes and not others, and perhaps even between selected cities—in short, a proposal permitting a selective strike without lockout.

The language of the legislation does not clearly define the limits that may be placed upon the draftsmen of a partial operation order.

How, in a threatened or actual national bargaining impasse, could one determine what percentage or level of operation would meet the test? What percentage of what commodities? What proportion of what routes? The selection of some cities and not others? What combinations of interline carriers?

Presently the parties to a dispute may privately agree to partially operate as to essential commodities, such as for hospitals and for defense shipments. They frequently do so. If the partial operation order were to go beyond a bare minimum of the shipment of such essential commodities, it is inconceivable to me that the Board would be able to find a way to place on any party an economic burden that would not be greater than that caused by a total cessation of operations.

Faced with a selective strike, the employer group is permitted by law to take defensive action to protect its bargaining position. The lockout step has seldom been used. It is never taken lightly, because the onus for deprivation of service is on the public service carrier, and there are always alternative means of transport. The calculated gamble is always taken that the weaker members of the bargaining unit will stay with the employer position long enough to achieve a reasonable settlement.

The trucking industry has had one national, defensive shutdown. It occurred in the 1967–68 negotiation and lasted 3 days, and two of those on a weekend. The public did not feel the dispute in any damaging fashion. In Chicago in 1970, a strike by Chicago area employees precipitated an employer shutdown to preserve the bargaining position.

Theoretically, the employer might partially lockout, but how is he to do that in this complex transportation system in which a shutdown at any one point quickly is felt at all other points in the system. Enactment of the partial operation proposition would provide a means for settlement that puts all of the pressure on the employer bargaining group and removes almost all of the pressure from the union. The result can only be the destruction of the bargaining position and the settlement of the contract at the union's highest demand.

The use of seizure as a method for obtaining settlements also does not guarantee a proper balancing of the powers at the bargaining table. Seizure usually connotes operation of a struck facility by the Government with a forfeiture of revenues by the carrier. A corresponding pressure upon the union might invoke forfeiture of dues payments in whole or in part.

This strikes us as an exceedingly drastic measure. It has not been practiced in recent years and if I recall correctly has never been employed except immediately before, during or after wartime emergencies.

It may well be repugnant to voters, both employees or employers alike. In too many cases in history seizure has been defined by one or more of the parties. In peacetime we don't know how the notion would obtain public acceptance. Anticipating the wide open terms of a seizure order, one cannot anticipate what would be the reaction of the bargaining parties in exercising responsible steps toward settlement.

The results, like partial operation, might be to remove the dispute from the public attention while enforcing a settlement at a high cost to the shipping public. Furthermore, in industries about which nationalization has become a topic for debate, the risks inherent in this measure may be too great a price to pay for labor peace.

Mr. Chairman, that completes my prepared statement.

The CHAIRMAN. Thank you very much.

Senator Packwood?

Senator PACKWOOD. I am curious about your national contract. If you have one bargaining unit nationally, how can the Chicago unit conduct their own negotiations?

Mr. BRODEUR. Senator Packwood, the bargaining unit is national in all respects, I think, except Chicago. I might ask one of the gentlemen perhaps to add to that.

Mr. MANSFIELD. Senator, there is an independent union in Chicago, which was involved in this particular work stoppage.

Senator PACKWOOD. They never were part of the national bargaining?

Mr. MANSFIELD. No.

Senator PACKWOOD. You make reference to 40 different local wage settlements. Do you not have the same wage base all over the country?

Mr. BRODEUR. The procedure has been to negotiate a national money package which applies generally equally to all of the wage supplements. They are more or less alike but there are many differences within them.

Senator PACKWOOD. Are the differences, for example, what the starting wage is?

Mr. BRODEUR. Yes.

Senator PACKWOOD. Those are negotiated locally?

Mr. BRODEUR. Money is negotiated nationally, after the working terms of the regional contracts have been settled. In other words, the working conditions, the nonmoney items and the semimoney items, are negotiated regionally.

Senator PACKWOOD. But the basic wage package is the same throughout the nation?

Mr. BRODEUR. Yes, the money is decided nationally.

Senator PACKWOOD. Those are all the questions I have.

The CHAIRMAN. I am a little bit confused about the ultimate position of the association. You have suggested, really, thoughtful and objective consideration of variations on themes that come to us in the different bills. That is the way I read this.

Mr. BRODEUR. That is correct.

The CHAIRMAN. Frankly, I don't know just how much time we have to further refine and define our appreciation of what is needed in this area and what we should ultimately vote on here. I wonder if we could get a little more help from you gentlemen. We are almost up to

the point of asking for your last offer, because we are almost up to the time of selection.

Mr. BRODEUR. Those last offers, you are never quite ready to pry out of your pocket.

The CHAIRMAN. The last offer selection is one of the approaches here. You suggest several variations on the simple, plain, clear-cut proposal that either side put up their last and final offer.

That is not acceptable, as I understand it, from your viewpoint.

Mr. BRODEUR. We have seen the basic draft, and we are not convinced that the parties would necessarily narrow their final positions. It seemed to us that there ought to be a spacing out of at least a few days within which alternative offers would be offered, and that there ought to be time to talk them over, and that faced with the inevitable result that somebody is going to settle something, the parties may still find a chance to settle it themselves.

The CHAIRMAN. Then that is not really a last offer. That is an offer, but somebody from the outside is in on the act.

Mr. BRODEUR. I guess I am cynical enough to believe that at the beginning of the procedure the parties might not believe it, and you may get unreasonable offers presented. Who knows what the real reasons would be for which an unreasonable offer would be put forward but I can see it happening, that a selection would be made with an impossible choice.

The CHAIRMAN. I can imagine that that would happen, too.

Mr. BRODEUR. Yet we are willing to, shall we say, experiment with this device.

The CHAIRMAN. Your industry presents some of the greatest opportunities for the unacceptable offers, because your bargaining issues are probably as complex as the railroads. I suppose the complexity is different.

Mr. BRODEUR. But they are many.

The CHAIRMAN. We had testimony from Mr. Simkin 2 weeks ago, and he was the chief mediator at the time of the 1967 dispute.

Mr. BRODEUR. I remember his being nonplussed by the fact that we had committees in every hotel room around town.

The CHAIRMAN. This supports what he said in his testimony, that while he was the chief in charge of mediation, there were a great number of issues that he did not know anything about, because of the bargaining that was going on in many places at once.

Mr. BRODEUR. Our position is that we would like to favor the final offer selection but we thought there ought to be something else in there someplace in case it didn't work, and we opted for an honest searching out of the possibilities of arbitration.

I hesitate to call it by its unholy names, but arbitration is at least being looked at as a way to go in some disputes. At least it should be given a chance on a voluntary basis.

The CHAIRMAN. You could educate me, and I certainly need it. When parties have agreed on arbitration, what is the arbitrator's approach? Does he get into the economics supporting the positions of either party?

Mr. BRODEUR. He would have to. The fact is that we have not had the experience with that, either.

The CHAIRMAN. I wouldn't put it purely in terms of this industry, but the role of the arbitrator.

Mr. BRODEUR. I think the role of the arbitrator is conceived of in two ways. First, it is possible that in setting up the final offer proposal, if you develop some items which you couldn't wrestle to a conclusion, you would propose to give them to the arbitrator in the final offer.

The CHAIRMAN. I wasn't thinking of this in the framework of last offer. I mean conventional arbitration, and where parties have agreed to arbitration. How does the arbitrator approach his job of finding the equities in making his decision which he knows the parties have already agreed to accept?

Mr. BRODEUR. On the whole contract he certainly would be dealing with the economics, and we have to be dealing with the many differences in many conditions. We are loath to really put ourselves in a position—we are sort of reluctant virgins, if you don't mind the expression, of putting ourselves out to say we would give it a try.

But there probably are disputes in which this could be acceptable to the parties, and you would have to know your arbitrators. You would have to know the closeness of your positions. There are many instances that would be awfully hard to give up on.

The CHAIRMAN. Yes. Under the legislative approach to compulsory arbitration, you are really giving that away, that opportunity to select your arbitrators.

Mr. BRODEUR. But only within the framework of arbitration being one of a number of options, and on major disputes, and you don't get into the procedure easily, and most disputes would never get there.

The CHAIRMAN. But you are giving it away. You really are going to only two final binding options, last offer selection and conventional binding arbitration.

Mr. BRODEUR. That is correct.

The CHAIRMAN. It is the ultimate for the Government in binding people. While we talk about the arsenal of weapons, the only tools really available for final action come down to last offer selection and compulsory arbitration.

Mr. BRODEUR. Yes, it does, and I would plead for a thoughtful review of that, from the standpoint, as someone remarked the other day "litigation is equally compulsory."

In effect, we would be bound to the results subject to penalties, of course. In that framework, perhaps it is worth looking at. It follows the giving up of some sacred privileges that management and labor have had for a long time.

The CHAIRMAN. Certainly now in arbitration you give away a great deal that is very personalized to a company or to an industry. The arbitrator really gets into the guts of the business, doesn't he?

Mr. BRODEUR. He certainly would. I would like to hear from someone who might have a different viewpoint. Mr. Holmes?

Mr. HOLMES. Mr. Chairman, as you say, when you get down to the end of the line, really what you are talking about are those two opportunities, either final offer selection or binding arbitration, and in an industry whose historic problems in collective bargaining are so complex, personally I question how any one individual or group of

individuals could get themselves familiar enough with the industry, with the economics, to come up with anything that would be meaningful.

The CHAIRMAN. I am not sure I got the full import of that. I heard what you said, but I don't know if the meaning fully registered on me. Could you go over that once more?

Mr. HOLMES. I question whether arbitration would be the most ideal way of settling a dispute that had gone that far.

Mr. BRODEUR. We don't have a panacea, Senator.

The CHAIRMAN. Yes. Does anyone else want to speak?

Mr. GREENLEAF. Yes. I think if we reviewed Mr. Brodeur's statement on page 10 that it would clarify it somewhat, in that we are offering this as an option, as a last resort, if you will.

It is further qualified by a situation where arbitration would be mutually acceptable. We are really talking about this——

The CHAIRMAN. That is the happiest end result, where the parties accept, or suggest. That is what happened in the west coast dock strike, although I think they waited until they got to this table to say it.

They agreed to arbitrate those issues that were remaining.

Mr. GREENLEAF. We have obvious fears about arbitration, as brought out by Mr. Holmes, in terms of who would the arbitrators be, and how familiar could they be with the complexities and operational aspects? The money part might be quite clear, but some of the operating conditions could be just as significant in terms of actual economics.

So that perhaps arbitration might be a threat to the two parties involved so that they would settle the dispute by one of the alternate methods.

There could be the option of mutual agreement to arbitration. I think we are trying to build in here some, or suggest, some flexibility so that the President would have four options. In each case it would give the two parties a better opportunity to settle their own dispute.

Perhaps, then, one step could be taken, and this might bring the parties closer together. Then there is still another option or another step to go to, with this being, perhaps, the last resort, if you will.

The CHAIRMAN. Yours is a hard and honest bargaining industry, isn't it?

I mean, with your national record of few strikes, you must be hard bargainers at the table, and you have bargained effectively.

Mr. BRODEUR. We think settling privately is the more desirable of the options, of course. Of course, Monday morning quarterbacking, we take these things apart and there is nothing we like worse, the whole business.

But on total measure, the desirability should be that the parties try to settle things themselves, because only they can be responsible for the results, and I was tempted to say I hate to spend too much time on these additional procedures, because it seems to me what we really need to be giving attention to is what happens before you get into it.

There are probably lots of things that could be done on the entry, and we think that time, as we suggested in commenting on the record on the Board of Inquiry, a little time there is necessary to let the parties really see what they are getting into.

That might be enough to prompt settlement. It did with us in one case.

There are a lot of initiatives that the Government can use and has used to pressure, persuade, cajole the parties to act privately to settle.

I think I made up a list of 20 items one day of different ways the Kennedy and Johnson administrations used on intervention short of this procedure. The variety of intervention——

The CHAIRMAN. Have you shredded that document or is it available?

Mr. BRODEUR. It included prompting the parties to negotiate, if you want to call it a "fail-safe device," some way to stay out of the clutches of government.

We and certain Teamster representatives have discussed this possibility.

How we go about it I don't know. Continuous bargaining has been mentioned, the concept of keeping the parties talking on something. We think there are improvements to be made in mediation. I notice Mr. Simkin was a little sensitive on that. I guess lots of these boards of inquiry had the effect of removing the Mediation Service from the primary role.

In fact, in that connection, we don't really care who makes the selection as to additional intervention, whether the board of inquiry, or perhaps then it would be mediators, as long as somebody with knowledge makes that choice, and with enough time to persuade the parties that this is coming at them.

Other approaches like the non-stoppage strike are just unreal.

The CHAIRMAN. Say that again?

Mr. BRODEUR. The nonstoppage strike is unreal. I don't think anybody has tried it. It must have been thought up by somebody who never signed a paycheck.

The CHAIRMAN. This has been very helpful, and I have the impression we could continue our discussion at great length. There are a couple of other points in this approach to trying to tighten up the bargaining. You know, it has been suggested that if you got 80 days under Taft-Hartley, perhaps it would help to have a board, a Government created board to get in there with the parties and make an evaluation of whether they really are bargaining hard toward a settlement. We get a lot of discussion coming in here that in some industries they do not really bargain toward settlement because they know that we sit here and we will be available for the bail out.

Mr. BRODEUR. I think there are other things. We don't have this fundamental problem, but there are underlying problems, which tend to frustrate bargaining and thereby create disputes. Take for example the bargaining unit itself. Some of the bargaining units in dispute-prone industries are so badly organized that they are disasters to begin with.

They have got tensions between competing employer groups, tensions between competing unions, crisscrossed pressures are are almost going to foment a dispute before bargaining can get off the ground.

That is not true of trucking, but it is true of some other forms of industry. I wonder if some meritorious study could not be given to what foments the dispute. Because you have these things in indus-

tries with declining employment, where the union officer is on the spot with his members.

The flight engineers was one in which the union was going out of business, and it went down screaming all the way.

Some of these disputes need something else. There are problems, it seems to us, that come across some bargaining tables that the bargainers are incapable of handling, and there has to be a bailout at some point.

That prompted my thought that if the mediator recognized it for what it is, why wait 80 days and prolong it? That would not be typical, however, in all situations.

The CHAIRMAN. Bob, I come back to you.

Senator PACKWOOD. In your national bargaining unit, after you have determined your nationwide package and you are on to your local issues, do you have a policy that all the local issues must be settled everywhere, or there will be a national strike? Or is it a situation of a local strike here and a local strike there over local issues?

Mr. MANSFIELD. The national negotiating committee has full power to act in these situations and settles the dispute or whatever it might be and concludes the bargaining. The local unions, local areas, they are given their day in court, so to speak, with the national negotiating committee, and all those issues are settled at the time that the contract is concluded.

Senator PACKWOOD. I am confused. Does the national contract have different provisions in it for Memphis, New York City, New Orleans, and San Francisco, but they are all part of one contract?

Mr. MANSFIELD. The national contract contains—I wish I had one here—37 provisions. One of them is the cost of living clause, another the change of operations clause, and the setup of the disputes procedure.

The local contracts set up working conditions, and they are supplemental to the national contract. Now, the national negotiating committee is made up of many people.

Senator PACKWOOD. You mean to say that the national negotiating committee for the Teamsters listens to the local negotiating committee from Memphis and what demands they may want, but it is the national bargaining team for the Teamsters that has the power to impose on the local what the contract is going to be, and the local has no right to strike or break off from the national bargaining unit at that stage?

Mr. MANSFIELD. It is my understanding that the local union has given the national negotiating committee their authority, or power of attorney, or whatever term you want to use, to conclude the contracts on their behalf.

Senator PACKWOOD. It is an unusual procedure. Let me make sure I understand. You don't really have local bargaining teams determining local conditions with local employers. They are hassled out by the national Teamsters, and it is the national union that decides what offer will be made for New Orleans and for Portland?

Mr. MANSFIELD. Again the national negotiating committee is made up of representative people from all over the country.

The Teamster negotiating committee has met with the local carrier committee in a particular area, say the southeastern area of the coun-

try. They have hammered out their differences between them, and they bring it to the national committee for approval.

Senator PACKWOOD. That would be in distinction from the ILA and the east coast, where they have a coastwide pact, but then they have to have settlements in different ports, and a couple of ports are not settled now, and can be on strike, and those local ports must settle locally. They don't go to the national ILA or have to bargain with the national ILA. This is a different situation.

Mr. MANSFIELD. It is.

Mr. HOLMES. I think I might be able to clarify it a little more for you, Senator. The national master contracts is 37 articles of boilerplate that apply everywhere. Supplemental to that, there are some 40 regional supplements, and the supplements contain the working conditions and so forth. Now, in bargaining, simultaneously these 40 different areas would be negotiating their working conditions and so forth at the same time that the national committee might be negotiating the money package and so forth, and at the time the national money package is concluded, then any region that has not concluded satisfactorily their negotiations, they are then brought into the national committee, both Teamsters and employers, and they take over from there to settle the issues that remain unresolved.

Senator PACKWOOD. And if by chance the national level is unable to settle to the satisfaction of some region, do you then have a nationwide strike?

Mr. HOLMES. I would have to say that it has never happened that way.

Senator PACKWOOD. I can see why. It is because when the final chips are down and the regional employers and the regional Teamsters have been brought in, it is the national employers bargaining unit and the national union that has the right to say they are not going with the regional demands.

Mr. BRODEUR. It seems to me, Senator, the Teamsters would lose their objective in striking nationally. They would have everybody in the country down on them. They can threaten a partial strike and achieve their ends.

Let me comment for clarity on the record that when we speak of the national freight agreement and its supplements we are talking about, well, half of the regulated trucking industry, the dry freight industry.

Among the haulers of special commodities, of course, are the tank group which Mr. Greenleaf represents. Others have substantially large bargaining units, such as the automobile haulers. There are other examples that you can find.

Mr. Greenleaf's group represents hauling companies in the eastern central States. They have nothing to do with the national dry freight bargaining situation.

Senator PACKWOOD. Are all companies interstate or intracity carriers?

Mr. BRODEUR. There are all kinds.

The CHAIRMAN. Mr. Mittelman?

Mr. MITTELMAN. Mr. Brodeur, you have discussed earlier the problems you have with the rather rigid formulation of the final offer selection method. Have you given any thought to a proposal which

would let the selectors reject both offers as unreasonable and ask the parties to come back with different offers, if in fact they found that both offers were unreasonable?

Mr. BRODEUR. I think the procedure should not be too rigid. There probably should be quite a bit of flexibility to allow this kind of thing. I would have to study that suggestion. It sounds to me at first blush as if it would have merit.

Mr. MITTELMAN. Thank you very much.

The CHAIRMAN. Thank you very much, gentlemen. For the record, Senator Packwood, did you have something?

Senator PACKWOOD. For the record, the Chamber of Commerce of the United States has sent a letter to me with carbon copies to all of the other Senators on this committee, setting forth their position, and it is a reversal of position from their previous statement, and I would like to submit a copy of their letter for the record.

The CHAIRMAN. You see where we get in the last offer business.

(The information referred to follows:)

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

ARCH N. BOOTH
EXECUTIVE VICE PRESIDENT

1615 H STREET, N.W.
WASHINGTON, D. C. 20006
202 / 659-6207

March 20, 1972

Honorable Robert Packwood
United States Senate
Washington, D. C. 20510

Dear Senator Packwood:

At the outset of the hearings on national emergency disputes before the Subcommittee on Labor of the Senate Labor and Public Welfare Committee, Chairman Williams quoted the following from a joint position paper prepared a few years ago by the National Chamber and the National Association of Manufacturers:

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

Elsewhere in the report, which rejects compulsory arbitration in such emergency disputes, it is stated that "compulsory arbitration and collective bargaining are incompatible bedfellows."

The fact is free collective bargaining does not exist in the transportation industry today. In the report, we also concluded that the problem facing us was not one of emergency strike legislation but a problem of deeper significance; namely, undue concentration of power at the bargaining table.

This power manifests itself in two principal ways: The strategic power of unions to cut off essential transportation services thus creating national emergencies, and, more importantly, transportation union bargaining power to enforce inflationary wage and benefits increases. We urged a thorough examination of these concentrations of labor power and the establishment of a legislative framework which would return balance to the bargaining table.

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Unfortunately, no such examination has occurred or appears imminent. On the other hand, since publication of that report, we have seen transportation strikes which have repeatedly crippled industries, substantial geographical areas, and the national economy. These emergencies almost without exception have resulted ultimately in government intervention.

The concept of free collective bargaining has been the linchpin of our opposition to compulsory arbitration, but that concept is nonexistent in the transportation industry. For this basic reason the National Chamber decided to reexamine its opposition to final and binding arbitration of unresolved labor disputes in the transportation industry.

Following extensive study by the National Chamber's Labor Relations Committee, and recommendations resulting therefrom, the Chamber's Board of Directors adopted the following statement:

> "The Chamber of Commerce of the U.S. strongly opposes the compulsory settlement of labor disputes. However, strikes in the transportation industry present a separate and unique problem. The impact of such strikes on the Nation's economy is severe. Prices in transportation are already regulated. Presently, government fact-finding recommendations for resolution of labor disputes are, in practical effect, binding on employers. The industry itself believes that compulsory settlement of their labor disputes is essential. Under these circumstances the Chamber of Commerce will support final and binding arbitration in the transportation industry. Since the compulsory arbitration approach in the past has not assured economic stability or labor peace or reconciled settlements, we do so with grave reservations and solely as an experiment that should not be extended to other industrial groupings."

This, then, is the National Chamber's position today.

More specifically, the Chamber of Commerce of the United States recommends passage of permanent legislation that reflects the following:

1. Such legislation should apply to the modes of transportation as provided in the Administration's proposal: airlines, longshore, maritime, rails and trucking.

2. The imperiling of the "national health or safety" as a threshold test or condition precedent to application of emergency disputes procedures is inappropriate.

The threshold test should be that contained in the Airline/Railroad Bill (S. 2060), to wit, if "a dispute has not been settled . . . and . . . it threatens to interrupt commerce or the operation of a carrier engaged therein . . ." the emergency procedures should be imposed.

3. Emergency disputes legislation should not include a mandatory cooling-off period.

4. Legislation should clearly encourage free collective bargaining at each step of the procedure.

5. An "arsenal of weapons" should be provided for the President's use.

6. The exercise of options afforded by such an arsenal of weapons should be discretionary with the President on a successive basis with complete flexibility until final resolution of the dispute.

7. The disputes resolution mechanism should contain appropriate time restraints leading to finality within a prescribed period of time.

8. The arsenal of weapons should include:

a. Compulsory arbitration of all the issues, not merely those remaining unresolved.

b. Final offer selection with final offers being limited to mandatory subjects of bargaining.

c. Fact-finding with recommendations optional and nonbinding.

d. A "cooling-off" period or extension of an existing mandatory "cooling-off" period.

e. A "do-nothing" provision.

9. The arsenal of weapons should <u>not</u> include:

a. Government seizure

b. Selective strikes

c. Partial operation

10. The final offer ballot as presently provided in the National Labor Relations Act should not be included.

Legislation reflecting the foregoing 10 points is critically needed in the national interest, and we recommend its development and enactment.

We are grateful for your continuing efforts on this vital subject, and will welcome any opportunity to work with you toward accomplishment of the type of legislation we have outlined.

Cordially yours,

C. Conn Bean

Executive Vice President

cc: Members of the Senate Labor Committee
Stewart E. McClure, Staff Director
Robert Nagle, Chief Counsel

The CHAIRMAN. We stand in recess.

(Whereupon, at 2:55 p.m. the subcommittee recessed, to reconvene on Tuesday, March 28, 1972.)

NATIONAL EMERGENCY DISPUTES, 1971–72

TUESDAY, MARCH 28, 1972

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

The subcommittee met, pursuant to notice, at 10:10 a.m. in room 4232, New Senate Office Building, Senator Harrison A. Williams, Jr. (chairman) presiding.

Present: Senators Williams, Hughes, Javits, Packwood, Dominick, and Stafford.

Staff members present: Robert E. Nagle, General Counsel; and Eugene Mittelman, minority counsel.

The CHAIRMAN. The Subcommittee on Labor will come to order. The subcommittee is resuming its hearings on emergency labor disputes legislation.

Our witness this morning is one of the most distinguished figures in the world of labor mediation and arbitration, Mr. David L. Cole. Mr. Cole's career has included service as Director of the Federal Mediation and Conciliation Service, and the chairmanship of the New Jersey State Mediation Board. He was a member of the War Labor Board, the Missile Sites Labor Commission, and President Kennedy's Labor Management Advisory Committee, as well as numerous boards of inquiry and emergency boards appointed under the Taft-Hartley and Railway Labor Acts.

A past president of the National Academy of Arbitrators, Mr. Cole has been named as impartial umpire under numerous labor agreements. He currently serves in that capacity for the AFL–CIO internal disputes plan.

I am proud, too, to emphasize that Mr. Cole is a native and still a resident of the State of New Jersey. We are very grateful to you, Mr. Cole, for your willingness to appear and for giving us an opportunity to draw upon your vast experience and your insights into the problems before us.

Mr. Cole is our only witness this morning. We also planned to have the American Paper Institute and the National Forest Products Association, but their witness was unable to make it and requested to be scheduled at a later date.

Mr. Cole, our forum is yours.

STATEMENT OF DAVID M. COLE, LABOR MEDIATOR AND ARBITRATOR

Mr. COLE. Thank you for the very kind introduction, Senator. I have a statement that has been distributed, I assume. I do not propose

to read it. There are a few parts I would like to read, and I am rather looking forward to a discussion with the members of the subcommittee following.

There are a couple of things I would like to read because I think they deserve a little emphasis. One of the first ones is the very elementary proposition about what this thing is that we call collective bargaining, which we all respect so much and seek to support and what not.

I think some confusion has crept into what the nature of this process is, and I would like to devote a moment or two to what I think it is.

I have written here, and this is what I believe, that it is a process of reasoning and persuasion through which are composed the differences or conflicting interests of employers and employees that arise during contract negotiations.

The persuasion in some situations is through the strike or lockout, but there is general accord that reasoning is the basic ingredient of the kind of collective bargaining we all seek to preserve.

I mention this because there are those who speak of the strike as though this were the purpose of collective bargaining. Of course, it is not. In truth, it is merely one of the techniques used to induce agreement, and there is surely no doubt that the responsible leadership of American labor and management, let alone the public, believes that it should be of diminishing importance and consequence as labor relationships mature and as the parties become more sophisticated and accustomed to dealing with one another.

And I believe those who equate collective bargaining directly with the strike seem indifferent to the fact that they are championing a process that would be essentially punitive and destructive, rather than rational and constructive.

The right to strike is quite different from the constant reliance on the strike. Constant reliance on the strike repudiates the reasoning and persuasion theory, and is clearly distinguishable from the constructive process of collective bargaining which is the one which our national labor policy contemplates.

To suggest that we cannot have collective bargaining without reliance directly on the strike as the moving force is the same as saying that in international relations if we depreciate or renounce warfare we cannot have diplomacy.

I think that a very fundamental purpose of collective bargaining is to find ways of resolving and composing differences without reliance on economic warfare.

This is the nature of sophisticated collective bargaining. It is entirely consistent with our underlying theory. Now, I do not have to remind you sophisticated gentlemen of our national labor policy. I refer to it and quote some statements on it, in my prepared remarks.

We have heard about our national labor policy over the years, the reliance on free collective bargaining, et cetera. I will skip over that part.

But I would like to call your attention to something which I think is quite interesting. I say on page 4 that one of the most thoughtful and expressive statements was that made on May 1, 1962, by President Kennedy's Advisory Committee on Labor-Management Policy. This

was a Committee which was tripartite in structure. I was a member of that Committee. I remember very well the study at the time.

The industry representatives included the heads of some of the country's most important corporations, like Ford Motor, International Business Machines, Inland Steel, McGraw-Hill, and United States Lines. The labor members included the presidents of the AFL–CIO, the Steelworkers, the Autoworkers, the Ladies' Garment Workers, and the Railroad & Steamship Clerks. The public group consisted of seven, made up in part by the Secretaries of Commerce and Labor, Arthur Burns, Clark Kerr, and George Taylor.

President Kennedy called this Committee's report on Free and Responsible Collective Bargaining and Industrial Peace "a document of lasting contributions to our country's welfare," mentioning the significant fact that it was unanimous in its confirmation of the essential validity and strength of free collective bargaining. The President agreed with the Committee that free collective bargaining must also be responsible collective bargaining.

Not long before this report there had been a lengthy steel industry strike, in which the Taft-Hartley law had been invoked. Nevertheless, in its report the Committee recommended only relatively mild modifications of the statutory procedures relating to critical and national emergency disputes, expressing regret that it was necessary to suggest any further intervention by Government into free collective bargaining.

One interesting feature was that there was a protest or dissent entered against even these mild modifications by Henry Ford, who wrote:

> The present national emergency provisions have had remarkable success in fulfilling their intended purpose * * *
>
> In my opinion, the remaining changes indicated here would weaken the whole concept of free collective bargaining, and would not help to alleviate national emergency strikes.

This may fairly be described as the classical view held over the years by important segments of American industry.

Now there is no doubt we have had many needless strikes. We must be aware that collective bargaining is a sensitive process that can easily be impaired. There are various techniques which are used as aids in collective bargaining—mediation, factfinding, recommendations, joint studies, and, yes, binding arbitration.

The value of such techniques depends directly on the disposition of the parties and their willingness to make use of them in trying to reach agreement.

I would interpolate at this point to say that we see the same agreement resulting in industrial peace in one plant of a company, but in turmoil in another plant of the same company, or in relative peace in one company and turmoil in another company.

This merely indicates that the form is secondary to the disposition or the attitude of the parties to make the relationship work. A favorable attitude or disposition of both parties to employ collective bargaining is in a constructive manner vastly more important than the form or procedure or technique set up. Either party has it easily in his power to frustrate the peaceful approach.

Moderation or restraint on the part of labor is most effectively observed when it is on a voluntary basis.

Getting closer to the subject that I think we are all interested in this morning: witness the violent reactions to the very expression "compulsory arbitration." It is equally objectionable to labor and management. We must recognize that those who favor legal compulsion are definitely in the minority, and have special reasons for this which are not applicable generally.

It may seem paradoxical, then, to observe that we have had a great many disputes resolved by binding arbitration. Between 1948 and 1957 I personally sat as arbitrator in almost 50 contractmaking disputes, making final and binding decisions. But this was possible because the parties entered into an arrangement and agreed to it. Perhaps even more paradoxical is the fact that one side or the other, sometimes both sides, have in some important respects acquiesced in having laws or regulations promulgated which govern subjects formerly determined through collective bargaining and not infrequently by use of the strike.

By way of demonstration, one need only mention the following: recognition, representation, and bargaining unit disputes now under the National Labor Relations Act; minimum wages and overtime under the Fair Labor Standards Act; retirement matters under the Railroad Retirement Act; compulsory arbitration of grievances before the National Adjustment Board under the Railway Labor Act; the prevailing wage doctrine and other matters under Davis-Bacon and Walsh-Healey; and I might add industrial safety matters. These are all matters governed by law or regulation, in a binding, mandatory fashion, leaving no room for collective bargaining on the subjects covered, to the extent they go, and yet they have been acquiesced in or even lobbied for in some instances by the people who now would object strenuously to any form of compulsion.

Within the labor movement we note also the willingness to surrender to third party procedures the regulation and settlement of matters which were formerly jealously considered solely within the control of the unions involved. These include union raiding and work relationship disputes which are now processed under the AFL–CIO internal disputes plan as set forth in its constitution, and work jurisdiction disputes which are submitted under the provisions of the dispute-settling National Joint Board procedures of the building and construction trades, department of the AFL–CIO.

One of the major causes of labor unrest and strikes has been largely eliminated by providing almost universally in labor agreements for the submission to binding arbitration of grievances that arise at the workplace.

The distinguishing and controlling characteristic of all these is that they were undertaken with the participation or approval of the affected parties. Compulsion by acquiescence seems like a contradiction, but it is clearly an accurate description.

Considering the extent to which causes of strikes have been diminished by the types of means listed above, one may well ask whether this is the time to consider the imposition of legal restraints on the parties by new legislation.

If the evidence indicated that we are at the end of the voluntary road, or that there may even be retrogression, it might be understandable that another look should be taken at the labor relations picture, particularly its prospects.

It happens, however, that there are encouraging signs which point the other way. Indeed, they are unusually encouraging at this time.

About a year ago, the American Arbitration Association asked George Meany, president of the AFL–CIO, to elaborate his thought that in public employment and in major industries it would be wise for labor to consider the use of arbitration on a voluntary basis rather than recourse to the strike over issues arising in negotiations. Out of this grew an important joint project. A labor-management advisory committee was established by the American Arbitration Association. Five labor representatives, all presidents of international unions, were designated by Mr. Meany to meet with five industry counterparts. The association also designated David A. Morse and me as public members. Mr. Morse was for many years director-general of the International Labor Office, the organization which was awarded the Nobel Peace Prize, as you will recall, some 2 years ago.

Our task has been to explore in depth with major figures in industry and the labor movement experiences or thoughts with respect to the use of biding arbitration or other third party techniques as a substitute for the strike or lockout as the means of avoiding or resolving differences that normally arise in contract negotiations.

Our discussion with these individuals has been informal and private. Most of it has been off the record in order that we have the benefit of actual rather than formal or ritualistic ideas. Some of the thoughts advanced, however, have now been brought out into the open and may be mentioned in this statement.

One must be careful not to be overoptimistic. As pointed out above, this is a sensitive area and a hopeful trend can easily be disrupted. This could possibly occur if it is made to appear to labor that there is a lack of confidence in its willingness to move constructively and that it must be curbed by legal sanctions.

In the earlier stages of our work Mr. Morse and I found less receptivity to the thought that there are more desirable ways of settling labor contract disputes than by economic trial. As time moved on, we observed some change in emphasis. Strikes are too costly and too cumbersome, was one view. The benefits achieved through strikes could probably be approximated with less turmoil, was another. A third opinion was that employees cannot be indifferent to the welfare of their employers and the industry of which they are a part—business and foreign competition are matters with which labor must concern itself.

I might say parenthetically that you remember the statement made by I. W. Abel when they settled the last steel dispute. Instead of thumping his chest in triumph over a great settlement, and there was a generous settlement, he talked about the obligations of the employees in the steel industry now for the welfare of that industry, as their No. 1 concern.

Three encouraging facts may be mentioned. In the February 21, 1972, issue of U.S. News & World Report there is the report of an

interview with George Meany. He was quoted as saying he advocated voluntary but binding arbitration and hoped the American Arbitration Association project will help evoke a formula that would make this the accepted practice. He also spelled out in some detail the kind of procedure he envisages for this purpose.

The second encouraging sign is the program agreed upon among several maritime unions, including those of licensed and unlicensed personnel and the east and gulf coast longshoremen. The purpose of this program is to improve and stabilize labor relations in this industry and to develop means of minimizing resort to strike. The avowed reason is to strengthen the industry, which has been beset with far too many strikes, and has been subjected to very difficult foreign competition.

The third encouraging sign has already been mentioned. The American Federation of State, County and Municipal Employees, which represents almost 100,000 employees of the city of New York was an active party in having the city council enact the ordinance requiring unsettled issues arising in negotiations to be submitted to binding arbitration.

Other thoughts expressed to Mr. Morse and me must remain off the record. We believe we are justified in hoping that the larger bipartite committee may respond constructively.

I am firmly of the view that collective bargaining in its creative form is better capable of coping with the problem of emergency disputes than an enlarged or modified statute would be. Where there is the disposition and the will to avoid punishing strikes or other economic trials, there is a better chance of protecting the public interest.

But neither good will nor social responsibility can be decreed or created by legislative mandate.

The repeated question, what if this approach fails, is not helpful in inducing the essential good will and sense of social responsibility. It is better, I submit, to look at the great progress made in the past 30 or 35 years and to hope that it will continue, in the common good. Not all things lend themselves to neat packaging. Nor is the legislative or legal route the only way to make social progress.

Experience suggests that the very process of trying to formulate and reach consensus on protective legislation could conceivably have the opposite effect. Its effect may be to introduce irritants or frictions which will retard or perhaps even reverse the hopeful trend we have been discussing.

I believe that it would be prudent to be patient and not to try to force a cure through legislation. We should rather observe and encourage the kind of development to which the American Arbitration Association-Meany program is directing its attention.

I would like to add that in the administration bill the last part speaks of setting up industrial commissions to study the industries which have caused the greatest amount of grief in terms of strikes. It calls for a 2-year study with recommendations to be brought forth. It is intersting that in 1953 when I was leaving Federal Mediation Service I left a set of recommendations with President Eisenhower. I recommended almost identically the same thing at that time.

There was a great deal of talk then about amending, strengthening or weakening, depending which point of view one took, the Taft-

Hartley law. There was a lot of ill will in the air at the time, a lot of restlessness.

I recommended that we would be better off to discontinue the discussions at that time because I did not think anything would come of them anyhow, they would serve only to irritate and drive wedges between American management and American labor, and it would be much better if the President were to set up a high level commission to come forth with a white paper after careful examination of what the possibilities are for development of creative bargaining of the kind I described at the outset of my talk here today.

They did discontinue the discussions about changing the law, but the President did not set up the commission, which I see now the administration is recommending. It is essentially the same kind of commission.

I think this has a great deal of merit, because we can get away from the frictions, from the belligerence that we commonly see when the parties line up one against the other in these confrontations, particularly in the atmosphere that we see rampant in the country today.

I would think a quite thorough, studious, dispassionate study by a high-level commission, which would come forth with a white paper, could be very constructive and helpful; what they produce may be quite acceptable.

This is the end of my direct statement, and I would be very happy to answer any questions, of course.

The CHAIRMAN. Thank you very much, Mr. Cole. First let me make a couple of observations before we turn to the other members.

You express some degree of optimism that both labor and management are moving in the direction of voluntarily agreeing to submit otherwise insoluble issues to binding arbitration.

Mr. COLE. Yes, sir.

The CHAIRMAN. It was interesting this morning that I noticed as I was coming in from New Jersey a story about a dispute that has been part of the New Jersey scene for almost a year—the Newark News' inability to come to agreement with the various unions representing its employees. That strike was settled and one of the elements was the provision for binding arbitration and the announcement was that this would, among other things, insure labor-management peace until 1976, which is just the most recent example that has come to me of what you are saying.

It is good to hear—is the proper word "optimism"?

Mr. COLE. Guarded optimism.

The CHAIRMAN. Guarded optimism. In the meantime, of course, we periodically feel the need to bring the Congress to bear in these issues. We have had eight congressional acts dealing with emergency disputes in transportation within the last 10 years. Of course, that particular congressional experience has us here in deliberation on these various bills. We have a dilemma. We do not know whether we have any of the necessary answers here in any of these bills.

You did not mention any of the specific provisions, but there are basically two ultimate answers in this legislation. One is the final offer selection procedure—would you comment on that?

Mr. COLE. Well, I am quite familiar with that. I saw this thing developing in its very early stages. About 10 years ago there was a study

in depth commissioned in a sense by the CED—Committee for Economic Development. I was a member of that.

George Shultz was the executive director of that study. I believe he mentioned the idea of the last offer selection, and he developed it very logically. It is a half step removed from complete compulsory arbitration.

However, labor says the half step does not amount to anything. Labor objects it is compulsory arbitration, even though it is cloaked in somewhat different form.

At that time we also saw the development of the partial operation thought, which is also one of the options provided in the proposed law, and incidentally that thought was incorporated in the report that I referred to a short time ago to President Kennedy by his Advisory Committee on Labor-Management Policy, the thought that the 80-day period that is provided for in the Taft-Hartley law might be modified to the extent that it might not be a complete injunction against the strike, but a way of having partial operation if the President on the advice of his Committee or panel thought this was all that was necessary.

I am not a member of any labor union, never have been—but I have had very close contact over the years with people in the labor movement. I am serving currently as the impartial umpire in the AFL–CIO Internal Disputes plan—raiding disputes—I can tell you definitely that labor representatives regard this selection process as compulsory arbitration as far as they are concerned, and they do not like it, they do not want any part of it, and I am sure they will resist it as hard as they can, leading to the kind of michief that I have been talking about in my report.

You know unacceptable things are hard to make work in our sort of society, and I suppose the most outstanding example is the Federal prohibition by law of strikes in Federal employment. By and large over the years it has been pretty well observed, but in recent years we have seen some very serious violations or breaches of that law. The Post Office, of course, was an outstanding example.

Exactly what one does in a society like ours in these circumstances, one finds it hard to say. Do you call out the Army, Navy, and Marines? What do you do in such circumstances?

I would think it is far better in intelligent society, which is conconcerned with the will of the majority of the people, far better to anticipate these things and avoid them. This is why I urge so strongly the acquiescence approach, the voluntary and creative kind of thing, rather than the punitive.

I am not sure what will happen with the punitive. I have played some part in New York as a member of the Taylor Committee, which came up with recommendations on which the Taylor Law was largely based, and continuing prohibition of the strike in public employment. It was not new. It had always been prohibited.

There was much publicity given our recommendations, and a good deal of resentment developed. We all know that strikes are frequent now in New York in public employment.

They have had more strikes since the law was amended than they ever had before. The courts have tried to cope with it, not very successfully—I see no indication that the unions are about to comply with that law and refrain from striking, because of the law, so long as they think they have injustices to correct.

On the other hand, we find Wurf of the AFSCME coming out openly, reversing his previous views, and supporting compulsory arbitration in public employment now. This is a complete change of position. It is one of the signs that I say is encouraging. Wurf was one of the men with whom David Morse and I spoke.

He said, "Yes, I have changed my view. I think we stand to benefit better from compulsory arbitration in public employment than we do from the use of the strike."

I think it is partly—he did not quite spell it out this way—but I believe it is partly because he has seen the deep resentment growing up on the part of the public against public employee strikes. It is all to the good if he recognizes it and is willing to adapt his position. This I think is one of the encouraging things that you have to take note of.

The CHAIRMAN. Senator Packwood.

Senator PACKWOOD. Mr. Cole, if we were to pass legislation like the administration bill with final offer selection or something with final arbitration in it, there would be no harm if indeed management and unions do reach the conclusion that you hope they will reach, because their voluntary arbitration would not be discouraged or even affected.

Mr. COLE. At the moment, it is a very emotional issue with them. If there is any form of legal, compulsory arbitration in the picture, their dander gets up, and their backs go up. With that attitude, I do not think you will see the development of the program I have been talking about. That is what I am worried about.

Senator PACKWOOD. What would you suggest we do if we start with these two assumptions: One, we would like to see the transportation industry in this country remain in private hands; two, we make a decision that we cannot tolerate interruptions in transportation services.

Now if Congress makes those two assumptions, what do we do as a Congress to guarantee continuity of transportation service?

Mr. COLE. Well, we have had a long history in this country without the type of legislation we are talking about now. I will grant that in the last few years we have had some serious situations. But I think it is partly because—well, as has been said, every now and then you must change your tools.

The Railway Labor Act at one time was quite successful. It did help on the railroads, the recommendations of the emergency boards were productive. In recent years they have not been.

Well perhaps some form of change of machinery, but again by consensus, as the Railway Labor Act was enacted by consensus, will be effective for a while. When there is authorship by the people who are going to be affected by it, they are more apt to respect it and observe it and try to make it work than something that is imposed on them.

I think this is why I mentioned the commission, the white paper approach. Now you might say what happens in the meantime.

Well, the answer I suppose is that in the meantime Congress is not being abolished, the Congress has acted before. It is not the best way to do things, I will grant. I would like to see it avoided. Nevertheless, there it is with its power undiminished.

Under the present law the last step after the strike resumes is for the President to make a report and recommendations. That has been very effective.

When I was Director of the Mediation Service, they had a strike that had been enjoined under Taft-Hartley, at the American Locomotive Co. It involved the production of nickel-lined pipe for the hydrogen bomb plant. President Truman invoked the law. President Eisenhower came into office when the 80-day period was to expire, and the question was what should the new administration do in a situation of this type, because at that time the cold war was pretty hot.

Korea and other things were going on and it was quite important that the defense program not be retarded. As Director of the Federal Mediation Service, I was asked to help work on a message for the President. But before it was sent to Congress, I asked permission to talk about it to the union and the company, and, to make a long story short, I can report that the threat of what that message would include was successful in getting a settlement, without the message going to Congress.

Sometimes the threat of something is better than fulfillment of threat. In that case we settled the thing very quickly. What the President was going to ask for very simply was to have Congress extend the 80-day period indefinitely in the public interest, because of the public welfare. Undoubtedly, President Eisenhower would have been supported by the Congress if he made his recommendation, and this induced the steel workers union to agree.

As a result of this, we had a settlement within a week or so. I think these things can be done, Senator.

Senator PACKWOOD. Mr. Cole, at least in the railway industry, do we not have now the admission on our parts that Congress will not tolerate a national or even a major regional railway strike? And that we do indeed today have compulsory arbitration, with Congress as the arbitrator?

Mr. COLE. I think you are right. I would agree, and I have always said, the real emergency dispute is a general railroad strike in the country. I do not think there is any question about that.

I submit, I suggest to you, that the railway unions recognize this too, and they will not call a general railway strike. They will not do it. They will not risk Congressional reaction of the kind you have been describing. Have they not recently had a favorable court decision——

Senator PACKWOOD. Five times in the last 3 years Congress has intervened. What we have is compulsory arbitration, and the parties know it. They know we are not going to tolerate it. What we are talking about, as far as the railway industry is concerned, really, is whether Congress is going to arbitrate or will we regularize it by statute?

Mr. COLE. The ad hoc type of thing has one favorable aspect to it, from labor's point of view, namely, that it dies with that emergency, whereas a full fledged statute is a permanent part of our industrial relations picture. The Philadelphia lawyers on both sides will quickly calculate which way do they have the better chance of succeeding if there is a permanent or set course. Which procedure is to their advantage? I would like to keep them guessing. I would not like to have anything definite that they can measure and address themselves to. Surprises, uncertainties, have a value, too.

Senator PACKWOOD. On page 10 of your testimony you talk about the program agreed to between the maritime unions and the east and gulf coast longshoremen. Could you elaborate a little bit on that?

Mr. COLE. Yes, I have brought it here. It is still in a sketchy form. David Morse and I talked at great length with Paul Hall. Gleason of the longshore union reported this plan to the AFL–CIO executive council. I think the maritime group was pointed to by the Secretary as the one most frequently requiring Taft-Hartley intervention and the industry most frequently unsettled after an 80-day injunction period. It is quite significant, then, that the unions in this industry should be saying what they say. I will read their brief statement.

It is a report that was made by Gleason as president of the International Longshore Union on behalf of his organization, the Masters Mates and Pilots, the Marine Engineers Beneficial Association, the National Maritime Union, the Seafarers International Union, United Steel Workers—they have a maritime branch—and the American Radio Association. Now this pretty well includes all the maritime and longshore unions except Bridges'. I do not know how Bridges stands on this—I have no idea—and I think perhaps he was not included because the others are all AFL–CIO unions. That may be the reason, but I am not sure.

Here is what they say on this. They are reporting on a meeting which these men had in which they unanimously agreed.

At this meeting the maritime unions discussed ways and means of insuring the job security and employment opportunities of their members. They agreed that industry stability is a key factor in this respect, and consequently they reviewed the areas on which they will continue their discussions and through which industry stability can be achieved as a necessary ingredient to the success of the program to encourage U.S. shippers to ship cargoes on U.S.-flag ships.

The areas which will be given priority in their continued discussions are: One, no strike during the period of contract negotiations; two, 3 to 5 year contracts to provide assurance with respect to continuity of operations; three, uniform contract expiration dates; four, provision for automatic wage adjustments; five, establishment of a mechanism or procedure for the resolution of disputes without stoppages.

Now, granted this is all in outline form; but in our discussions with Calhoun of the MEDA and Hall of the Seafarers International Union, we were assured that this was very real. They regard this as a must program as far as they are concerned.

They are concerned not primarily for the general welfare or the public welfare in general. They are concerned about their jobs, the security of their membership, decline in their membership, the use of foreign flag vessels in the place of American shippers. And they say they are going to come up with a complete program. It is going to be a unanimous program. Well, I think this is very encouraging, because they have been in a troublesome industry. They have been in most difficult disputes over the years. I have been in a few of those cases. They have very strong feelings and they express themselves very freely as you know. Some of the language I learned there was marvelous.

Senator PACKWOOD. I have no further questions. Thank you very much, Mr. Cole.

The CHAIRMAN. Mr. Hughes.

Senator HUGHES. Mr. Chairman, I will pass for now.

The CHAIRMAN. Mr. Stafford.

Senator STAFFORD. Thank you, Mr. Chairman. You will forgive me for introducing a personal note here. I have wondered for years what apt phrase might describe the lady of our houshold who runs our domestic affairs. I finally found one on page 8 of your statement which I think fits the situation. That is "compulsion by acquiescence."

In the course of your discussion, and as a matter of background, have you ever considered, Mr. Cole, the possibility of a seizure on the part of the Government after an appropriate court order as a means of trying to reach a settlement of a labor dispute which otherwise has been unsettleable in the national transportation industry?

Mr. COLE. Yes; I have been present in a number of discussions of the subject. This is a product of changing style. There are periods when there are people advocating it and other times when the same person opposes it. I think ever since—was it 1951 when President Truman was held by the court to have exceeded his authority in seizing the steel mills, I think it has pretty much fallen out of popular appeal. There is very little popular appeal for it. There are many people and some very logical people who say this is the ultimate step and that the Government should have the right to seize. Of course you know the next step, Senator, that follows. The purpose of seizure—we have had it in our State, Senator Williams, in public utilities—the State government seizes the Public Service Electric & Gas Co. by raising a flag over the headquarters building. The theory would be that the people become employees of the government, and they would not dare strike against the government. But you see now that strikes against the government have become quite fashionable. The seizure itself has lost its greatest strength because of the changing attitude toward government operations.

I am not sure today, if the Government seized the facilities in any bitter dispute between the union and the company that the people would be prepared to recognize the inhibition or restriction on them as Government employees. They do not respect such restrictions in more vital Government services and in circumstances in which there is less heat. They could well say that the seizure may be solely for the purpose of killing the strike, of spoiling a strike for them, and might oppose the whole thing and deliberately exhibit the kind of defiance I spoke of earlier.

Senator STAFFORD. Mr. Cole, one of the proposals in front of this committee would under certain circumstances permit the President after a court order to seize the carrier, either the railroads or airplanes or something similar, and then impose a certain amount of penalty on both parties until they reached the bargaining agreement, by first taking away the profits from management during the period of the strike, and, second, taking away any retroactive benefits on the part of the unions until an agreement had been reached.

Would you have any comment on that sort of arrangement?

Mr. COLE. I have heard discussions of that, and it has some merit. The difficulty that one immediately encounters there is the feeling that one side or the other is going to believe they are victims of politics. They are going to say a favorable administration will do it one way and an administration unfavorable to that side will do it another way. I think by and large it will not work.

There will be a lot of resistance, great resistance to it. Incidentally, it is one way of course of weakening, I fear, all collective bargaining.

Senator JAVITS. Would the Senator yield for a question on seizure?

Senator STAFFORD. Yes.

Senator JAVITS. Mr. Cole, I respect your expertise. We know it very well. As you know, I have been one of the principal advocates of the seizure. What interests me is that you say they will not come back to work for the Government. Why will they come back to work if we pass a law saying come back to work?

Mr. COLE. Why will they?

Senator JAVITS. They have done that constantly. They have never defied a law passed by Congress saying return to work.

Mr. COLE. Well, I compare this with the situation in New York, the Taylor law, which prohibits strikes. We have had more strikes since the Taylor law was enacted than we ever had before in New York.

Now the Federal Government had laws prohibiting strikes, as I said before you came in Senator Javits. Striking constitutes a crime. Yet we have had Post Office strikes and all sorts of things in recent years. I think attitudes are changing. I think in connection with the special laws that are enacted by Congress in the railroad disputes, there are some unique features. They are relatively infrequent and are ad hoc, only temporary in nature. Also, when enacted the issues have already been narrowed or reduced, and the law generally provides minimum assurance or protection to the employees. In other words, the outcome is not left wide open.

The terms and conditions that may be the outcome are not left wide open.

Senator JAVITS. Not always. It has been as wide open for example, as one bill that Senator Morse and I sponsored, that the settlement was to be within the perimeters of the negotiation. It has been as wide as that.

Mr. COLE. I do not know. I said earlier, this is an uncertain area, and one cannot pinpoint and identify things as black or white. One can merely see what the trends are. I think if something is important enough to call for a special law on rare occasions, we have had four times where Congress had to do this in the last number of years——

Senator JAVITS. Eight times in 10 years.

Mr. COLE. I think that has been regarded of sufficient importance up to now to accomplish its purpose. If it is used too often, I suppose it will be diluted too, as happens with all compulsion.

The Railway Labor Act used to work. It does not work now.

Senator JAVITS. Thank you very much, Senator.

Senator STAFFORD. Mr. Cole, I have just one more question. In the event this committee does feel it necessary to bring out some legislation on emergency strikes in the transportation industry, what parts of the industry should we cover; railroads, airlines, trucking, longshoremen, or what? Would you care to comment on that?

Mr. COLE. You mean limiting ourselves to transportation?

Senator STAFFORD. Yes.

Mr. COLE. One might ask why only transportation?

Senator STAFFORD. This is what I would like for you to comment on, Mr. Cole. Whether we should or should not.

Mr. COLE. I remember when I was involved in atomic energy, we thought that was one of our greatest concerns in terms of strikes. As I mentioned earlier, the American Locomotive's was considered a very serious strike, because of the public interest, due to special circumstances. They were making nickel-lined pipe for the thermonuclear plant. Things vary from time to time. We have never had any legislation concerning over-the-road trucking. We all know it is extremely important. We have never had a general over-the-road strike that I know of, not a national one. It could be very serious. We have never had the problem. Does that mean we will never have it? I do not know.

I would dread to think of a national trucking strike. This could throttle the country pretty badly. Does one rush into the law although we have never had occasion to be concerned about that yet? I think we have got to remain fluid on these things.

We observe students and experts taking issue with findings that were made during the time of the strike, saying a particular strike did not really create the emergency that people thought it did. These experts have evaluated the effects by reference to a variety of statistical indicators, and in many cases say the strike was merely inconvenient but it was not actually a national emergency—a threat to the national health and safety. I do not know how much threat we ought to have before we consider it a national emergency.

In my early years I had a great many occasions to joust with the master of them all, John L. Lewis. Almost every time Lewis got into a dispute, they called it a national emergency. Subsequently many scholars made studies and found that these national emergencies were not emergencies at all. First of all there were stockpiles of coal before these things came to a head. All sorts of things happened. Some of these were national emergencies that did not turn out to be emergencies at all.

Yet that was the number one emergency of those days, John L. Lewis always was. I do not know how to answer it, Senator. I think it varies with conditions, times, circumstances, world affairs, weather, I suppose, weather conditions, state of international disputes, cold wars, all sorts of factors come into it.

Senator STAFFORD. Thank you very much, Mr. Cole.

Mr. COLE. I am sorry I cannot make it more explicit.

Senator STAFFORD. I appreciate your testimony.

The CHAIRMAN. Mr. Cole, you said the Railway Labor Act does not work, and of course we have seen its ineffectiveness here particularly in other testimony which has suggested that one of its most ineffective provisions is the emergency board and its recommendations. I think it was testified to that the board with its authority to make recommendations should be changed. Do you have any view on that?

Mr. COLE. Change it in what way, by removing the recommending power?

The CHAIRMAN. Part of it. Put it more in an analogy, or make it more a counterpart of the board of inquiry under the Taft-Hartley Act.

Mr. COLE. I think it would go the other way. I would enlarge the powers of the board rather than curtail them. I think one of the faults of the Taft-Hartley board, and I have served on a number of them, is that they have been impotent. There is nothing they can do. They find

facts which everybody already knows. Newspapers have been full of those facts which they can find and they are directed by law not to make any recommendations. It is one of the most frustrating functions to be on a Taft-Hartley emergency board. There is nothing you can do unless you violate the law and make recommendations, privately perhaps.

The CHAIRMAN. Greater authority you are suggesting. Maybe we should amplify that for a moment. Well I have an idea too, but let me see what greater authority you would suggest?

Mr. COLE. Senator Javits' bill is, I think, the most comprehensive of all. He would use all the known various techniques and incorporate them in the law. He would not let them know precisely which technique is going to be used in a given situation. I would apply more of that approach to the Railway Labor Emergency Board procedures.

I would give the board members a variety of kinds of authority short of compulsion or determination by decision. They cannot now make decisions, and I do not think the country is ready for decision-making which will legally conclude a strike. The recommendations and the harnessing and exploiting of public opinion might be helpful. Recommendations made public, procedural recommendations in the first instance that may lead the parties closer together, so they may then bridge the gap themselves. I have had several experiences in the airlines, in almost all of the trunk lines—in which the airline and the pilots jointly try to avoid the strike. They have had truly serious differences, yet they would call in somebody they mutually respect, some friend or somebody who knows something about the industry. I have sometimes performed this function too.

They would say, look, sit with us while we continue our negotiations. It looks a little bit rough, maybe you can help us. I would sit with them and listen to them. At some point they would say, look, here are the issues, we cannot seem to get anywhere. Do you have any recommendations, first any procedural recommendations?

Is there anything you could recommend that might help us get over some of these hurdles, I would then make some procedural recommendations. If they could still not reach agreement, they would ask whether I had any recommendations, nonbinding, on the substance or merits of some of these remaining issues.

Then we would mediate again. We would probably resume the role of mediator. Usually the relatively few remaining issues would be submitted for final and binding decision by mutual agreement. There would then be only the two or three remaining issues. Strikes were averted in almost every situation because of these procedures, because the parties earnestly desired to find solutions.

I think perhaps there is a lesson in these experiences which can be of use with respect to emergency boards.

The CHAIRMAN. You are addressing yourself now to the Mediation Service?

Mr. COLE. No. I function as a privately selected neutral——

The CHAIRMAN. What does the Mediation Service do? Do they not do exactly what you describe?

Mr. COLE. No. They are not generally used by the parties in this way. They will act as mediators, individually and in panels, and serve

a great purpose in narrowing the issues. At some point a change in the cast of characters becomes necessary, however, in the most obstinate cases because the parties are still frozen. They may then call in somebody of their own choice, directly or through the Government service. This person of course works closely with the Mediation Service, but he provides a new face and a different point of view. It is usually somebody they have some special confidence in because of his familiarity with their problems and because they have previously worked together.

I was on an emergency board, a very important emergency board in 1948. It was the 40-hour week dispute. They were working 48 hours a week at that time. We came out with our board recommendations for gradual decrease of hours over a period of several years. They had difficulty applying this to the varied and complex working conditions on the railroads, so they asked the board members to come back and sit with them to mediate or work out or clarify some of the things we had in mind in connection with the decrease in weekly hours. We did this.

We worked with them for some weeks in Chicago. Then they were still apart on some items. When they were writing their agreement, their work rules, as they call them, they asked us to come back again and act in still another capacity—to resolve the remaining differences by binding arbitration.

We were an emergency board appointed under the Railway Labor Act originally. We were converted into private mediators subsequently—and by agreement of the parties, converted finally into arbitrators. I think these are the things that Senator Javits has in mind, the fluidity, the flexibility of various procedures.

Senator JAVITS. If the chairman will yield to me, you are not wrong at all. I do believe there is one additional point I wonder whether you would agree with me, Mr. Cole, and that is exactly my purpose, but I do want to give the President the full range of weapons, including those that you have some doubt about, including the opportunity for partial operation, even if that involves seizure, to the extent required by the public health and safety. But I do think in order to equip him, you cannot give him simply advisory weapons. He needs the whole armory available to the Government. The way I've tried to protect is in the really drastic situation is to give the Congress the right to reject by a vote of one House.

Mr. COLE. I understand and I have read your bill with interest. I can see the background out of which it grows, our experience of recent years.

I would prefer not to see it enacted into law because I think we have more promise in the voluntary kind of moderation that may be developing. In self interest, not out of any altruism or anything else, in self interest, I think the labor movement is prepared to recognize they have much to gain from a moderation which will not bring down the wrath of Government on them or the resentment of the public on them.

Senator JAVITS. Do you not think that Government must have the residual authority to operate under any circumstances, and notwithstanding the will of any group of its citizens?

Mr. COLE. I think the Government does have that.

Senator JAVITS. Where does it have it? Do we not have to pass a law——

Mr. COLE. That is the authority. That is the greatest authority. We do not know what kind of law is going to be passed.

Senator JAVITS. Do you think our laws passed ad hoc in the face of an emergency problem——

Mr. COLE. I would much rather not see the necessity for having them passed. I would hate to see you give up authority, take away authority to pass if we need them. We did not have many of these ad hoc laws until relatively recently. In former years we did not have any. Why are we having it now?

Senator JAVITS. I think we are having it now because of the organization and determination of labor entities, and as a matter of fact you know I do not want to differ with you particularly, you are a very eminent man and I respect you highly, but we are having it precisely because what they are not doing what you say you think they are doing——

Mr. COLE. Yes, it has been slow. Unfortunately I was not able to develop the things that I think are encouraging signs in your presence this morning, Senator, but there are some encouraging signs at the moment. David Morse and I are working on this. We are both encouraged.

I am a realistic person. My head is not in the clouds. I have seen these things at close range. I am encouraged at the moment and so is Dave Morse. Dave is a fairly sophisticated person, too. We think things can improve.

Senator JAVITS. I will read the record very carefully. Unfortunately I have an executive meeting to attend.

The CHAIRMAN. There is one thing, before I turn to Senator Hughes, what are the attitudes and what is the impact on collective bargaining when it is known in advance that unresolved issues will go to binding arbitration?

Mr. COLE. That has been thoroughly studied and documented. Our State particularly made a very deep study of it. Governor Meyner in the early part of his first term set up a tripartite committee of which I was chairman to study the workings of the antistrike public utility law you know in New Jersey. The law had originated during the period when Governor Edge was Governor. He was off on a quail-shooting holiday down in Georgia, when the gas or electric people went out on strike. He came back promptly and had a law enacted. The law called for seizure and required the employees to work for the State, suspending the right to strike, followed by fact finding—and then ultimately binding arbitration.

Well, immediately thereafter, every negotiation, every contract negotiation resulted in seizure because they would not agree. One side or the other would disagree. We had constant seizures by the State of New Jersey and this went on for some time.

They bypassed the factfinding. They said we do not need that, knowing we are not going to compulsory or binding arbitration, we might as well go directly to that. The telephone company, street transport, all of them, were seized. There was constantly the flag of New Jersey

flying over one of them, Governor Meyner set up our committee to advise him.

Our committee was tripartite, including people from public service and public utilities, some labor people, and Richard Lester, who is a professor down at Princeton, and myself. We came up with the unanimous recommendation that the law was not helpful, that it should be repealed because we do not have collective bargaining any more.

The Governor agreed he would not invoke the law any more. The Newark News published an editorial asking how naive can people be to strip the State of New Jersey of this power to seize? Nevertheless, the law has never been invoked since then. It is now 15 years or so. We have had a few strikes, but the strikes have become less frequent. We have one going on at the present time. I am a little bit puzzled by this one. They should not have had the strike. The union is the Amalgamated Transit. Its constitution has a provision that no local may go out on strike against a public utility without first proffering binding arbitration, and if they do, they do not get any strike benefits from the national union. I am not involved in this case, but I assume that the offer of arbitration must have been made by the union to the company and rejected by the company or else they would have had arbitration and there would not have been a strike. This union has had this constitutional provision since 1892 or 1896.

But we have this strike, and it is a bad strike. It has caused a good deal of grief in New Jersey. I think it might have been avoided by resort to arbitration. Why it wasn't I don't know.

The question you ask is answered by the experience in New Jersey. So long as they knew they were going to go to arbitration, they did not bargain collectively.

The CHAIRMAN. This was very interesting, and this will be perhaps tested right now because yesterday it was in the morning paper that they were at the State house yesterday. No discussion of the issues, but the Governor asked them to get this settled and suggested he was going to unfurl the State flag and get it ready to fly.

Mr. COLE. The law was never repealed. It is still on the books. He may use the law again, and if so it will be the first time in 15 years that it has been used.

The CHAIRMAN. He knows it is there. They were standing by the flag pole.

Senator Hughes?

Senator HUGHES. Thank you, Mr. Chairman.

Mr. Cole, talking about Governors, what should the position of the President be under existing law? Should he exercise through the White House all the influence that he has to bring these parties together?

Mr. COLE. He could dilute his influence. I think he ought to move in hesitantly and rarely. You will remember that President Eisenhower repeatedly said he was going to follow a hands-off policy in labor disputes and let the parties work out their own destinies. It was not easy to stay out of them because the hue and cry and the pressures become pretty strong. Repeatedly President Eisenhower said he did not want to step in. You remember the criticism at that time was that the President's office has stepped in too frequently during the Democratic years, that Presidents Truman and Roosevelt had stepped in too frequently.

I think as a matter of fact the present administration has said the same thing. George Shultz believes very strongly that the Government, certainly the Chief Executive, ought to intervene as rarely as possible and only in the clearest of cases. Otherwise, you know, you cry wolf too often——

Senator HUGHES. Do you think they were stepping in too frequently? You were doing a lot of work in those years.

Mr. COLE. I thought so, yes. I thought they stepped in some situations that they should not have stepped into. In fact when I was Director of Mediation, I left recommendations as I said earlier, with President Eisenhower, suggesting that they be very circumspect about the times they step in.

Senator HUGHES. Your opening paragraph and your final paragraph seem to pretty well state your conclusions. You state, "the question to be considered is whether our laws relating to emergency labor disputes should be amended, in the public interest, to include procedures which would serve as restraints on the parties." In the final paragraph you say, "I believe that it would be prudent to be patient and not to try to force a cure through legislation."

In other words, you are saying do nothing.

Mr. COLE. I say do nothing at this point. I may add that one must be flexible. It could be that 6 months from now my view point may change, depending on what develops.

I think in light of developments that I have personally been exposed to and seen that I would be patient, as I say in my last paragraph I would hesitate about legislative innovations.

One thing I would do would be to set up a high level commission to watch developments and perhaps have the Government, through such a commission, participate in the program which the American Arbitration Association is carrying on. It is certainly a highly important and major undertaking. Anything that can possibly bring cooperation between organized labor and major industry forces deserves the greatest amount of attention and encouragement.

I would like to see it encouraged by Government and perhaps through the type of commission that is proposed in the administration's draft bill. I have spoken to the Secretary of Labor about this commission. He considers that the commission proposal is an important part of S. 560. I do not know whether there has been much discussion of this.

I would like to see a commission of that kind, a very high level commission, studying and encouraging these developments and finding out what significance and meaning they have, whether there are dangers that ought to be avoided and whether after a thorough observation and analysis, it is really necessary or wise for Government to exercise its ultimate authority.

I personally hope it will not be. But I would like to have a high level commission make that determination.

Senator HUGHES. Do you think we have reached a point where there ought to be third party representation in major labor relation dispute, such as those which can tie up the country?

Mr. COLE. Not in every one. They could use up their influence; too much familiarity is not a good thing. They ought to be used in difficult situations, obstinate situations. Mediation, yes—mediation is

always available through the Federal Mediation Service and through the National Mediation Board. The parties know it. But there are some times when some very important industry settlements have been reached by the parties with the mediators on a back burner, so to speak. Sometimes that is good.

I do not think there is any flat rule to apply to all cases.

Senator HUGHES. Do you think Congress has the ability to respond rapidly and effectively in the case of major tieups, and to be the court of last resort as we have been?

Mr. COLE. It is a highly undesirable thing. I do not like it one bit. I think the likelihood that the Congress will do it can be used as an effective instrument for inducing last-minute settlement through mediation or through the board that is functioning. This has happened at least once in my experience, as I mentioned earlier. What Congress might do was the means by which we achieve settlement——

Senator HUGHES. In other words that is a bargaining tool?

Mr. COLE. It is a bargaining tool. It is a mediation tool. It is something that can be evaluated and used.

Senator HUGHES. I take it in arriving at your conclusions, you feel that the tools and the mechanisms that exist are enough to protect the public interest and public health in any major dispute that could arise?

Mr. COLE. I think so, remembering that the Congress is still in business. I hope the Congress does not have to act, but the Congress is available to act if we have this real disaster that we are all worrying about.

Senator HUGHES. You have probably heard the testimony here time and time again that a regional strike impairing the economy of a region, endangers the health of the economy and the wellbeing of the people of the entire Nation.

Mr. COLE. Yes.

Senator HUGHES. I have never seen this interpretation before in bringing the Congress into play on these matters. What do you consider that to be?

Mr. COLE. I would like to see that avoided. That would be an extension or incursion into the collective bargaining field that could be very serious. This is not to say, however, that regional tie-ups cannot cause serious situations. The present law has a provision for a national labor-management advisory panel to help the mediation service. I recommended that advisory panel should be reactivated and raised to a very high level, including on that panel the Secretary of Labor and Secretary of Commerce. This would lend great weight and dignity to this panel. I would also have carefully selected industry representatives and labor representatives named and would call this panel together only in rare and critical disputes.

Its function would be to protect the country. I would also have counterparts of this national advisory panel in the regions. The Federal Mediation Service has regional offices, as you know.

In the regions I would have topflight citizens of the community standing by ready to assist, prepared to step in and act as supermediators, as the voices of the public. If this could be built up, I think it could go a long way to avoiding the regional problem that we are talking about.

Senator HUGHES. Do you feel that the transportation—we are talking basically about transportation strikes now, potential effect on regional or the Nation strikes, such as west coast dock strike, where the unions offer to move whatever is essential in the way of produce or equipment for the public interest, the national interest, let us say the war or the public health, that this can be handled through a negotiated arrangement?

Mr. COLE. I think it is possible. We have of course had military supplies transported during strikes. I think it is possible through good will. It is delicate but I think it is possible to work out such an arrangement. Even John L. Lewis, you know, would provide for coal for certain purposes during his strikes, on a voluntary basis. He also never shut down coal mines, as I understand it, certainly not in any case I was ever in, and in any way that would endanger the mine. He would permit the mine activities to be tapered off, so to speak, to avoid serious physical harm. I understand in the steel industry they do the same thing, in the banking of furnaces. They do not just walk off the job in basic steel plants. I think an extension of that kind of thing is within the realm of possibilty in the type of program I visualize.

Senator HUGHES. If I understand you, basically what I believe you are saying is that under the existing structure of law it is not functioning perfectly, and in some instances failing to work. You believe the potential of negotiation allows for meeting the critical needs of national safety or health. You believe the Congress, waiting to act in the case of a dire emergency, provides enough pressure that can in the final analysis, when the pressure builds, be the force that causes a negotiated settlement. Thus, in this case, perhaps, the best action of the legislative body would be not to legislate, rather than to legislate in the public interest?

Mr. COLE. Exactly so, sir.

Senator HUGHES. Is that an analysis of what you are saying?

Mr. COLE. It is a very fair statement of what my position is.

Senator HUGHES. Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Hughes.

On the question of selection of the last offers—it has been suggested here that it is an unusual dispute that would lend itself to this simple selection, because of the complexity of labor disputes in today's situation. Could you give a further opinion of the usefulness of that method, if you were choosing it, if it were part of the arsenal of opportunities given to the President?

Mr. COLE. Well, you know that I would prefer not to see it as a part of the law. I have helped write labor agreements under the pressure of strike and strike settlements. As I read the bill, the Board could select one or the other of the last offers without any modification whatsoever. That would constitute the contract of the parties. If that is going to be the complete contract, for example in a railroad dispute with all the work rules and details and related things that might be involved, it is hard to picture the possible confusion that could result. It requires the most technical knowledge and experience to be able to write these things. The major issue may be money and the Board might like the money offer of one as opposed to the other, but this is going to be a complete contract and the Board has a limited time in which to make

a selection and to make a selection not only on the money issue, but on every issue separating the parties, of which there may be hundreds, working rules and conditions and all sorts of things, seniority problems so complex that only the most competent railroad men on that Board could even comprehend them. Most Board members could not even understand the working conditions within the time alloted to them, let alone make a proper judgment with respect to all such matters.

I cannot picture how anybody can live with the kind of agreement that would be made under those circumstances, because the parties will maneuver and jockey, Senator, they will play games. The union could make a modest money request which could be accompanied by all kinds of complex work or extreme rules which the Board may not fully understand. It might well prevail because the Board will like the money offer. The parties could then have a contract that will hardly amount to or contribute to industrial peace. Or, vice versa, the employer may say we will propose something that looks like a generous wage offer, and we will put in a lot of working conditions which take away the equivalent of more than has been given, but the Board cannot separate them out. It has to make a selection of the offer as a whole. What will they do? What can it do?

What sort of contract can be made by such a procedure? A railroad contract can be a hundred pages long. Are we going to ask a Board which is made up of nonrailroad men to sit down and within a period of days make the selection based on economics and at the same time on all the working rules that may be involved? In the 1948 40 hour week case we worked for months on the economics and on the working rules, mainly the latter. How can any board conceivably do such a job intelligently in a 30-day period?

Moreover, the Board members are not supposed to pay any attention to what went on during the negotiations, so they are denied the benefit of that information and guidance, too. How can they determine what should constitute the complete contract in such a limited time and under such restrictive conditions?

The CHAIRMAN. Thank you.

Mr. COLE. This is what I would be concerned with.

The CHAIRMAN. Any further questions?

Mr. Cole, we are most grateful.

Mr. COLE. Thank you.

(The prepared statement of Mr. Cole follows:)

Statement of David L. Cole
before the United States Senate Committee
on Labor and Public Welfare on Proposed Changes
in the Emergency Dispute Provisions of the Labor
Management Relations Act and the Railway Labor Act

March 28, 1972

The question to be considered is whether our laws relating to emergency labor disputes should be amended, in the public interest, to include procedures which would serve as restraints on the parties. This is by no means a new question.

At the heart of our national labor policy is the process of collective bargaining. Everybody on all sides speaks respectfully of collective bargaining, and it is routine to agree that it must be preserved and strengthened. This has been so for more than a generation.

It seems odd, therefore, that one should consider it necessary at this time to speak of the nature of collective bargaining and to try to define it so that we all understand what we have in mind.

It is a process of reasoning and persuasion through which are composed the differences or conflicting interests of employers and employees that arise during contract negotiations. The persuasion in some situations is through the strike or lockout, but there is general accord that reasoning is the basic ingredient of the kind of collective bargaining we all seek to preserve.

I say this because of the confusion introduced in some of the discussions of this subject by those who speak of the strike as though this were the purpose and objective of collective bargaining. In truth it is merely one of the techniques used to induce agreement, and there is

surely no doubt that the responsible leadership of American labor and management, let alone the public, believes that it should be of diminishing importance and consequence as labor relationships mature and as the parties become more sophisticated and accustomed to dealing with one another.

If persuasion through reasoning were not the essential characteristic of collective bargaining there would be no point in having a mediation service. Mediators surely do not consider it to be their function to assist either party in engaging in economic warfare or in prevailing through the application of sheer economic muscle. On the contrary, the very basis upon which they proceed is that the parties will respond to reasoning predicated on facts and other rational factors.

Those who equate collective bargaining directly with the strike seem indifferent to the fact that they are championing a process that would be essentially punitive and destructive, rather than rational and constructive. The right to strike is quite different from the constant reliance on the strike. Constant reliance on the strike repudiates the reasoning and persuasion theory, and is clearly distinguishable from the constructive process of collective bargaining which is the one which our national labor policy contemplates.

To suggest that we cannot have collective bargaining without reliance directly on the strike as the moving force is the same as saying that in international relations if we deprecate or renounce warfare we cannot have diplomacy.

The strongest proof of what I am suggesting is that those most vitally and actively involved in collective bargaining, the authoritative and respected spokesmen of labor and industry, have been the ones most

ardently and creatively searching for substitutes for the strike as the means of composing their differences. As I proceed in this statement, I shall give a number of illustrations of developments and activities which have this as their objective.

It is entirely consistent with the underlying theory of collective bargaining to search for such alternatives. Indeed, this is an integral feature of collective bargaining, which has at its root the flexibility and adaptability from which much of its strength and appeal stem. One cannot logically maintain that the methods and practices found necessary or useful in former years during the early stages of employer-employee relations must be adhered to rigidly without regard to the changed circumstances which have developed since then.

Let us preface our review of fundamentals by noting that we have a well established national labor policy. It has been declared and redeclared by Congress. Essentially it is as follows:

> "The national policy shall be to place primary reliance upon the parties to any labor dispute to make every effort through negotiation and collective bargaining and the full use of mediation and conciliation facilities to effect a settlement in the national interest." (1952 revision of Defense Production Act)

In his discussion of emergency or critical labor disputes, President Eisenhower repeatedly promised to follow a hands-off policy and to intervene only in the most exceptional or rare instances. As he stated in San Francisco on August 23, 1956:

> "Free collective bargaining without government interference is the cornerstone of the American philosophy of labor-management relations.
>
> "If the government impatiently charges into every major dispute, the negotiations

> between the parties will become a pointless preliminary farce while everyone waits to see what the government will do."

This sentiment has been expressed repeatedly over the years by industry, labor, government, and students of labor relations. One of the most thoughtful and impressive statements was that made on May 1, 1962 by President Kennedy's Advisory Committee on Labor-Management Policy. This was a committee which was tripartite in structure. The industry representatives included the heads of some of the country's most important corporations, like Ford Motor, International Business Machines, Inland Steel, McGraw-Hill, and United States Lines. The labor members included the presidents of the AFL-CIO, the Steelworkers, the Automobile Workers, the Ladies' Garment Workers, and the Railroad and Steamship Clerks. The public group consisted of seven, made up in part by the Secretaries of Commerce and Labor, Arthur Burns, Clark Kerr, and George Taylor.

President Kennedy called this Committee's report on Free and Responsible Collective Bargaining and Industrial Peace "a document of lasting contributions to our country's welfare," mentioning the significant fact that it was unanimous in its confirmation of the essential validity and strength of free collective bargaining. The President agreed with the Committee that free collective bargaining must also be responsible collective bargaining.

Not long before this report there had been a lengthy steel industry strike, in which the Taft-Hartley law had been invoked. Nevertheless, in its report the Committee recommended only relatively mild modifications of the statutory procedures relating to critical and national emergency disputes, expressing regret that it was necessary to suggest any further intervention by government into free collective bargaining.

One interesting feature was that there was a protest or dissent entered against even these mild modifications by Henry Ford, who wrote:

> "The present national emergency provisions have had remarkable success in fulfilling their intended purpose. . .
>
> "In my opinion, the remaining changes indicated here would weaken the whole concept of free collective bargaining, and would not help to alleviate national emergency strikes."

This may fairly be described as the classical view held over the years by important segments of American industry.

Another official study which pointed out how the availability of too much government intervention resulted in the deterioration of collective bargaining was that made for Secretary of Labor James P. Mitchell by his Advisory Committee on Labor Management Relations in Atomic Energy Installations. This Committee filed its report with Secretary Mitchell on January 31, 1967.

The question to be considered at the present time is whether circumstances dictate that we ought now to depart from the proposition that we should rely on free collective bargaining as the means of composing industrial differences which cause emergency disputes.

There is no doubt that we have had needless strikes. There is equally no question but that through the process of collective bargaining we have resolved the overwhelming proportion of the disputes which have arisen during negotiations.

We must be aware that collective bargaining is a sensitive process and that it can easily be impaired. There are various techniques which are used as aids in collective bargaining, -- mediation, fact-finding, recommendations, joint studies, and, yes, binding arbitration. The value

of such techniques depends directly on the disposition of the parties and their willingness to make use of them in trying to reach agreement.

There is certainly no doubt that the favorable attitude or the disposition of both parties to employ collective bargaining in a constructive manner is vastly more important than the form of procedure or technique set up as the means of avoiding strikes or lockouts. Either party has it easily in his power to frustrate any peaceful approach.

After many years of experience with collective bargaining we know that underlying this as an improving process is the knowledge of the parties that they retain a high degree of direct control. Moderation or restraint is most effectively observed when it is on a voluntary basis.

Witness the violent reactions to the very expression "compulsory arbitration." It is equally objectionable to labor and management. We must recognize that those who favor legal compulsion are definitely in the minority, and have special reasons for this which are not applicable generally.

Some labor organizations in the local government employee field are beginning to think with favor of compulsory arbitration in preference to strikes. Some of our regulated or franchised transportation industries would be willing to have compulsory arbitration. By and large, however, both management and labor express themselves as strongly opposed to compulsory arbitration, whether in routine labor disputes or in critical or emergency disputes.

It may seem paradoxical, then, to observe that we have had a great many disputes resolved by binding arbitration. Between 1948 and 1957 I personally sat as arbitrator in more than 40 contract making disputes. And, of course, other arbitrators were engaged in similar activities.

The essential point is that these were all by virtue of agreements voluntarily reached by the management and labor groups to submit their specific differences to binding arbitration. As I have observed above, agreement on such a procedure is in itself a proper and desirable function of collective bargaining.

Perhaps even more paradoxical is the fact that one side or the other, and sometimes both sides, have in some important respects acquiesced in having laws or regulations promulgated which govern subjects formerly determined through collective bargaining and not infrequently by use of the strike. By way of demonstration, one need only mention the following: recognition, representation, and bargaining unit disputes now under the National Labor Relations Act; minimum wages and overtime under the Fair Labor Standards Act; retirement matters under the Railroad Retirement Act; compulsory arbitration of grievances before the National Adjustment Board under the Railway Labor Act, the prevailing wage doctrine and other matters under Davis Bacon and Walsh Healy. There is now an ordinance in New York City requiring employees of the City to submit their contract disputes to final and binding arbitration, a development not opposed by the dominant union.

Within the labor movement we note also the willingness to surrender to third party procedures the regulation and settlement of matters which were formerly jealously considered solely within the control of the unions involved. These include union raiding and work relationship disputes which are now processed under the AFL-CIO Internal Disputes Plan as set forth in its constitution, and work jurisdiction disputes which are submitted under the provisions of the dispute-settling National Joint Board procedures of the Building and Construction Trades Department of the AFL-CIO.

We should point out, moreover, that one of the major causes of labor unrest and strikes is now largely eliminated by providing almost universally in labor agreements for the submission to binding arbitration of grievances that arise at the work place.

The distinguishing and controlling characteristic of all these is that they were undertaken with the participation or approval of the affected parties. Compulsion by acquiescence seems like a contradiction, but it is clearly an accurate description.

Considering the extent to which causes of strikes have been diminished by the types of means listed above, one may well ask whether this is the time to consider the imposition of legal restraints on the parties by new legislation.

If the evidence indicated that we are at the end of the voluntary road, or that there may even be retrogression, it might be understandable that another look should be taken at the labor relations picture, particularly its prospects.

It happens, however, that there are encouraging signs which point the other way. Indeed, they are unusually encouraging at this time.

About a year ago the American Arbitration Association asked George Meany, president of the AFL-CIO, to elaborate his thought that in public employment and in major industries it would be wise for labor to consider the use of arbitration on a voluntary basis rather than recourse to the strike over issues arising in negotiations. Out of this grew an important joint project. A labor-management advisory committee was established by the American Arbitration Association. Five labor representatives, all presidents of international unions, were designated by Mr. Meany to meet with five industry counterparts. The Association also

designated David A. Morse and me as public members. Mr. Morse was for many years director-general of the International Labor Office, the organization which was awarded the Nobel Peace Prize, as you will recall.

Our task has been to explore in depth with major figures in industry and the labor movement experiences or thoughts with respect to the use of binding arbitration or other third party techniques as a substitute for the strike or lockout as the means of avoiding or resolving differences that normally arise in contract negotiations.

Our discussion with these individuals has been informal and private. Much of it has been off the record in order that we have the benefit of actual rather than formal or ritualistic ideas. Some of the thoughts advanced, however, have now been brought out into the open and may be mentioned in this statement.

One must be careful not to be overoptimistic. As pointed out above, this is a sensitive area and a hopeful trend can easily be disrupted. This could possibly occur if it is made to appear to labor that there is a lack of confidence in its willingness to move constructively and that it must be curbed by legal sanctions.

In the earlier stages of our work Mr. Morse and I found less receptivity to the thought that there are more desirable ways of settling labor contract disputes than by economic trial. As time moved on, we observed some change in emphasis. Strikes are too costly and too cumbersome, was one view. The benefits achieved through strikes could probably be approximated with less turmoil, was another. A third opinion was that employees cannot be indifferent to the welfare of their employers and the industry of which they are a part, -- business and foreign competition are matters with which labor must concern itself.

Three encouraging facts may be mentioned. In the February 21, 1972 issue of U. S. News and World Report there is the report of an interview with George Meany. He was quoted as saying he advocated voluntary but binding arbitration and hoped the American Arbitration Association project will help evoke a formula that would make this the accepted practice. He also spelled out in some detail the kind of procedure he envisages for this purpose.

The second encouraging sign is the program agreed upon among several maritime unions, including those of licensed and unlicensed personnel and the East and Gulf Coast longshoremen. The purpose of this program is to improve and stablilize labor relations in this industry and to develop means of minimizing resort to strike. The avowed reason is to strengthen the industry, which has been beset with far too many strikes, and has been subjected to very difficult competition.

The third encouraging sign has already been mentioned. The American Federation of State, County and Municipal Employees, which represents almost 100,000 employees of the City of New York was an active party in having the City Council enact the ordinance requiring unsettled issues arising in negotiations to be submitted to binding arbitration.

Other thoughts expressed to Mr. Morse and me must remain off the record. We believe we are justified in hoping that the larger bipartite committee may respond constructively.

I am firmly of the view that collective bargaining in its creative form is better capable of coping with the problem of emergency disputes than an enlarged or modified statute would be. Where there is the disposition and the will to avoid punishing strikes or other economic trials, there is a better chance of protecting the public interest.

But neither good will nor social responsibility can be decreed or created by legislative mandate.

The repeated question, what if this approach fails, is not helpful in inducing the essential good will and sense of social responsibility. It is better, I submit, to look at the great progress made in the past 30 or 35 years and to hope that it will continue, in the common good. Not all things lend themselves to neat packaging. Nor is the legislative or legal route the only way to make social progress.

Experience suggests that the very process of trying to formulate and reach consensus on protective legislation could conceivably have the opposite effect. Its effect may be to introduce irritants or frictions which will retard or perhaps even reverse the hopeful trend we have been discussing.

I believe that it would be prudent to be patient and not to try to force a cure through legislation. We should rather observe and encourage the kind of development to which the American Arbitration Association - Meany program is directing its attention.

The CHAIRMAN. You have been most helpful to the committee. Thank you very much. The committee is adjourned.

(Whereupon the committee was adjourned at 11:30 a.m. to reconvene on Wednesday, March 22, at 10 a.m.)

NATIONAL EMERGENCY DISPUTES, 1971–72

WEDNESDAY, MARCH 29, 1972

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

The subcommittee met, pursuant to notice, at 10:15 a.m., in room 4232, New Senate Office Building, Senator Harrison A. Williams, Jr. (chairman of the subcommittee) presiding.

Present: Senators Williams, Javits, Packwood, and Stafford.

Staff members present: Robert Nagle, general counsel, and Eugene Mittelman, minority counsel.

The CHAIRMAN. The Labor Subcommittee hearing will come to order.

We are resuming hearings today on emergency labor disputes legislation.

Our first witness is James E. Yost, president, Railway Employees' Department, AFL–CIO.

We appreciate your being with us and helping us in our deliberations.

STATEMENT OF JAMES E. YOST, PRESIDENT, RAILWAY EMPLOYEES' DEPARTMENT, AFL–CIO

Mr. YOST. Mr. Chairman and members of the subcommittee; my name is James E. Yost. I am president of the Railway Employees' Department of the AFL–CIO. This department of the federation is composed of six international labor organizations commonly referred to in the railroad industry as the shopcrafts. These organizations are: International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers; Brotherhood Railway Carmen of the United States and Canada; International Brotherhood of Electrical Workers; International Association of Machinists & Aerospace Workers; Sheet Metal Workers' International Association; and International Brotherhood of Firemen and Oilers.

Each of these organizations has a vital interest in the legislation pending before you, because they represent thousands of employees on practically every railroad in the United States as well as in Canada.

They also represent additional thousands of employees in industries outside the railroad industry. For example, the total membership of the International Association of Machinists & Aerospace Workers exceeds 900,000, and that of the International Brotherhood of Electrical Workers is approximately 1 million.

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For this reason, they feel particularly qualified because of their experience under both the Railway Labor Act and the Taft-Hartley law, to evaluate some of the proposals before you to drastically revise the Railway Labor Act and substitute Taft-Hartley procedures.

I appear before you today with Mr. Edward J. Hickey, Jr., who is the Railway Employees' Department's general counsel, to testify on pending legislation concerning emergency labor disputes in the transportation industry.

My main purpose is to support and recommend your favorable action upon S. 832, sponsored by Chairman Williams of your full committee, and Senator Kennedy of Massachusetts and to oppose S. 560 which is the Nixon administration's proposal and S. 3232, which is for all practical purposes a repeat of the administration's bill, plus a prohibition of regional strikes and some further unnecessary scuttling of the Railway Labor Act.

At the conclusion of my statement, Mr. Hickey will explain to you in more detail some of the specific reasons for our support of the Williams-Kennedy bill and our opposition to the administration's proposal, and will also comment upon some of the other bills which are before you for consideration.

In doing so, he will be speaking for the Railway Labor Executives' Association, which comprises 15 railway labor organizations of which the six shopcrafts are a part.

In approaching the problem of what should be the central point of concentration in the observations which I wish to lay before you, I must necessarily direct my attention to the avowed reason for the introduction of this proposed legislation.

As I understand that objective, it is to seek better ways and means to avoid or settle emergency disputes in the transportation industries—which, because of our involvement, means the railway industry.

Or, to put it another way, the objective of this legislation is to provide procedures which will take the crisis or emergency out of railroad strikes because past national railroad strikes have proved unacceptable to the public, the administration, and the Congress.

We accept the fact that the right of labor under the existing Railway Labor Act to engage in a nationwide strike is, from a practical point of view, a dead letter. But we also want to make the point that the harassment of Congress and the public in recent years is not properly attributable to railroad labor which has tried to avoid nationwide shutdowns through resort to selective strikes, but, on the contrary, is due to the railroads' success, until just recently, in securing court injunctions against such limited strike action on the grounds that since the bargaining is nationally pursued, the strike must be nationally maintained.

The objective was obviously to provoke congressional intervention. A good example is the shopcrafts' efforts in 1969 to limit strike action and avoid a national strike, the carriers' retaliation of a national lockout, the court's injunction against any selective strike, and the resulting congressional action when the only strike then legally permissible created an emergency situation.

While it is true that after S. 832 was originally drafted and introduced, the Court of Appeals for the District of Columbia ruled on March 31, 1971, that a selective strike is legal under the Railway Labor

Act, and the Supreme Court rejected the petition of the railroads to review this decision, it does not follow that the legislation proposed by S. 832 is no longer needed.

On the contrary, there are important provisions in the bill which, if enacted, would preclude the deliberate expansion of the strike by the carriers so as to convert limited action into national proportions, thereby creating a national emergency. The carriers' objections before this committee to these safeguards belie their exhortations against the Nation emergencies.

Both the carriers and the administration in their appearance before the Congress continue to profess the belief that collective bargaining should be preserved and improved in the railroad industry and that it should be as free as possible from governmental restraint.

For example, Secretary of Labor Hodgson has said in his testimony on the administration's bill that "collective bargaining should be as free as possible from government interference and that any legislation should serve to enhance, rather than reduce, the incentives to such bargaining."

Mr. John Hiltz, former chairman of the National Railway Labor Conference, who was the carriers' chief spokesman in national railway labor negotiations for the past 5 years, embraced the same philosophy in his appearance before this subcommittee in September 1971, when he said that "the overall challenge to your committee, as I see the situation, is to amend the Railway Labor Act in a way that preserves and improves the collective bargaining process" and his "preference is for as little government intervention as possible."

It is axiomatic in any free society which believes in the right of its citizens employed by private industry to be free from involuntary servitude that the right to strike is an inherent part of the right to bargain collectively.

Aside from nationwide shutdowns which, as I have already observed, we accept as impractical, if the time has come when rail workers are no longer to be viewed as citizens employed by private industry and are to be denied the right to strike at all by the adoption of any of the proposals by the AFL–CIO in February of last year in its comments on the Nixon administration's proposals, the Congress should immediately move to nationalize the Nation's railroads.

This brings me to the provisions of the administration's bill—S. 560—and why we find them totally unacceptable as a solution to the problem of removing the emergency or national impact from strikes in the railroad industry. My observations apply equally to the Packwood bill, S. 3232.

The legislation proposed by the administration's bill goes much too far to remedy the defects which it states now exist under the Railway Labor Act, and in our opinion would, if enacted, seriously and needlessly curtail advantages now enjoyed under existing law and jeopardize legitimate interests of railroad labor.

In saying this, I do not wish to be understood as taking the position that some remedial legislation in the area of emergency disputes is not necessary or desirable. On the contrary, that is the precise reason why the AFL–CIO and all railroad labor are supporting the Williams-Kennedy selective strike bill.

But what I am trying to say most emphatically is that the broadsword approach of the administration's bill is not the cure.

Perhaps the most fundamental fallacy in the administration's bill is its failure to follow its initial premise, stated in the proposed congressional "Finding and Purpose," that the present procedures for dealing with national emergency disputes under the Railway Labor Act tend to encourage too much resort to governmental intervention rather than utilization of collective bargaining processes to solve disputes.

From such a premise on would reasonably expect that the proposed procedures in the bill would limit governmental intervention and require solution through collective bargaining, including the ultimate right of labor to strike.

Instead, the administration's bill requires not less but more governmental intervention and a longer rather than a shorter period of delay in the succession of boards of inquiry, court reviews, and injunctions, Presidential interventions, special boards, and "final offer" panels, attendant upon the resolution of national emergency disputes are viewed, as realistically they must, as nothing short of institutionalized governmental intervention.

Even more fundamentally, the administration bill fails to fol'ow its initial premise by not confining its procedures to the resolution of emergency disputes. Instead, it departs from this premise and stated purpose and proposed abolishment of the existing Railroad Adjustment Board where the costs are in part assumed by the Government and substitutes private arbitration where the entire cost will fall upon the unions and the carriers. The net gain is no advancement in collective bargaining but only one to the administration's budget.

This brings me to the bill's second finding or premise, that present procedures for dealing with disputes in the transportation industries have proved insufficient to prevent serious disruptions of transportation services.

Aside from the area of national emergency disputes, as for example, the thousands of so-called minor disputes which are resolved through the compulsory arbitration of the Railroad Adjustment Board, special boards of adjustment and the public law boards under the Railway Labor Act, no case at all has been made or can be made to substitute this finding and premise.

And even in the limited area of national emergency disputes the facts in the railroad industry are contrary to the finding and professed purpose of S. 560 and S. 3232.

In the 46 years that the Railway Labor Act has been in effect, there have been only three major, nationwide rail strikes, each lasting but a few days, and only one major airline strike.

Secretary Hodgson has admitted this fact in his appearance before the Congress and testimony in support of the administration's bill. Moreover, there have been only five threatened or actual nationwide rail strikes in this total period of 46 years, where it has been necessary for Congress to intervene.

Insofar as emergency boards are concerned, even if we include the airline industry as well as the railroad industry, only 179 emergency boards have been created throughout the history of the law pursuant to

section 10 of the Railway Labor Act as of June 30, 1971, according to the annual report of the National Mediation Board—an average of less than four a year throughout the history of the act.

These statistics are a far cry from the administration bill's pronouncement that present procedures for dealing with the disputes have proved insufficient to prevent serious disruptions in an industry of over 600,000 employees.

Completely overlooked is the fact that there are literally thousands of disputes which are settled through collective bargaining without even the intervention of the National Mediation Board.

Another statistic which should be of interest to this committee in evaluating the need for Congress to repeal the whole Railway Labor Act instead of confining its remedial legislation to section 10, or the area of emergency disputes, is the fact that 97.2 of all cases submitted to mediation have been settled without work stoppages.

The representative of the Nation's railroads admitted the fact that collective bargaining under the Railway Labor Act had not broken down, as claimed by the administration, in his appearance before this committee when he said "Collective bargaining in our industry does work—not perfectly, of course, and it can be improved, but it does work. The fact is that hundreds of agreements each year are negotiated in the railroad industry with no governmental intervention of any kind."

On the basis of these observations we think it fair to conclude that the underlying assumptions of the administration's bill of need for the drastic legislation proposed are simplistic and completely unjustified.

The over concentration of the administration on the few isolated instances of congressional or Presidential intervention have blinded its appreciation of the overall efficacy of the Railway Labor Act in areas outside the arena of national emergency disputes.

We see no justification whatever for the wholesale slaughter of provisions in the Railway Labor Act governing adjustment of minor disputes, judicial enforcement of awards of the adjustments boards, and the abolishment of the National Mediation Board and transfer of its representation and mediation functions to other agencies, or the institution of a variety of new procedures which would be highly injurious, time consuming, and costly to railroad labor when none of these provisions are responsive to the asserted reasons of the administration for the introduction of the legislation or are related to the avoidance of emergency disputes or their settlement. To do so would create a chaotic situation, junk years of experience and expertise in the handling of minor disputes and in the long run create more problems than would be solved.

Now let me illustrate a little more concretely what these changes are which the administration seeks in areas unrelated to the provisions for resolving emergency disputes and tell you more specifically the reasons for our opposition.

First, in the area of disputes involving the interpretation of application of collective bargaining agreements, all such disputes are now subject to compulsory arbitration under the Railway Labor Act by the National Railroad Adjustment Board or by other boards of adjustment established under that law.

An important feature of these arbitration provisions of the Railway Labor Act is that the cost is borne essentially by the Government. While it is true that each partisan member of the Adjustment Board appointed by the railroads and labor organizations, respectively, is paid by the party each represents, this is really a small part of the costs of the abritration process.

Each neutral member selected to resolve deadlocks in the termination of disputes between labor and railroad members is paid by the National Mediation Board.

Similar provisions apply to the special boards of adjustment called Public Law Boards that were established by congressional amendments to the act of 1966.

The administration's bill proposes to eliminate this Government-supported arbitration and substitute private arbitration, paid for entirely by the parties.

Although the administration purports to make this change in order to eliminate reliance upon governmental machinery for resolving disputes, such a claim is completely inconsistent with the elaborate governmental machinery established by the administration's bill for the handling of major disputes where the costs are assumed by the Government.

In any event, the substitution of private arbitration would visit a real hardship upon the rail unions whose membership and dues are decreasing. The cost of supporting the arbitration of minor disputes under the Railway Labor Act is a rather insignificant amount for the Government but would be significant for the unions.

By way of example, in 1971, total expenditures for the National Railroad Adjustment Board were $785,000.

Moreover, the loss of background and experience of the members of the Adjustment Board, many of whom have spent most of their lives in this work, through conversion to private arbitration would be highly detrimental to a knowledgeable disposition of disputes.

Another highly injurious feature of the administration's substitution of private arbitration for the present procedures of the Railway Labor Act is the elimination of the enforcement provisions of the act.

The provisions permit recovery of costs and attorneys' fees by the unions when the carriers fail to abide by the arbitration awards of the adjustments boards and court enforcement is required. The alternative of private arbitration proposed by the administration would visit prohibitive expense upon the rail unions and very likely would result in considerable stalling and foot-dragging by the carriers in complying with their obligations under collective bargaining agreements simply because of the unequal financial contest between the railroads and the employee representatives.

Second, there are a number of so-called miscellaneous provisions contained in the administration's bill which are highly objectionable. One of the most dangerous is the prohibition in the proposed law of the restraints against injunctions contained in the Norris-LaGuardia Act in any judicial proceedings brought under or to enforce the provisions of the act.

Such a provision can only be viewed as completely antilabor. Courts already have severely limited the application of this anti-injunction law in cases brought to require compliance with requirements of the

Railway Labor Act. But the purpose of the administration in doing away with it entirely can be viewed as nothing short of an effort to give the courts unrestricted power to issue injunctions.

If the administration's bill is enacted, we can easily see that the day of government by injunction in labor disputes would be back with us.

Contrast this with Secretary Hodgson's statement to the Congress that the administration's objective was that "collective bargaining should be as free as possible from Government interference and that any legislation should serve to enhance, rather than reduce, the incentives to such bargaining."

Another highly objectionable miscellaneous provision of the administration's bill provides for court actions by and against railroads and employee representatives for violation of agreements.

This could result in a flood of litigation including damage suits since another provision of the proposed law would make a union liable for the acts of its agents notwithstanding other provisions of existing law such as those contained in the Norris-LaGuardia Act, which now permit defenses to such suits.

This is another illustration of how the present administration is seeking to have labor disputes resolved more and more by the courts and one of the fundamental why we are so opposed not only to the provisions of the administration's bill but its underlying philosophy as well.

It is apparent from what I have said thus far that the administration's proposals for changes in the Railway Labor Act outside the area of emergency disputes are not only acceptable to railroad labor but are also foreign to the avowed reason for the proposed legislation, are not responsive to any need for changes demonstrated to this Congress by the administration, and would create a chaotic situation in the railroad industry for no reason except a punitive attack on railroad employees.

Clearly, these proposals which are unrelated to the problems of emergency disputes should be rejected as unnecessary and unwarranted intrusion into established law which has created no problems whatsoever of public concern. As our general counsel, Mr. Hickey, will inform you in his testimony on behalf of the Railway Labor Executives' Association, the great majority of section 10 of the Railway Labor Act concerning emergency disputes and do not propose the unnecessary and unrelated repeals contained in S. 560 and S. 3232.

Insofar as the administration bill's proposed changes in the emergency disputes procedure are concerned, we do not oppose them for the reason that they are irrelevant to the problem which triggered all of the legislation before this committee but simply because we do not believe they would cure the problem.

On the contrary, they would create more delays in the solution of emergency disputes rather than less, would involve the courts to an abnormal degree, which should be avoided, and would ultimately result in compulsory arbitration which is the antithesis of free collective bargaining.

In substance, the administration's proposal would add three new emergency antistrike procedures to the 80-day injunctions now provided by the Taft-Hartley law.

These three devices are (1) an additional 30-day injunction, (2) an authorization for partial operation only, such as moving essential goods, and (3) a new variation of compulsory arbitration which is called "final offer selection," under which the union and the employer each makes a final offer and an arbitration panel would choose one or the other without change or modification.

For practical reasons, the so-called choices actually dissolved into one, the "final offer selection" procedure, which is unacceptable for a variety of reasons. Here, the disputing parties are supposedly put on the defensive in terms of demanding too much because to do so would lead to rejection of their offer by the President's selection panel.

But "final offer selection" does not take into account the facts of life of present-day trade unionism. The leader of a trade union represents a membership. That membership measures the effectiveness of its leader primarily in terms of what they achieve in the collective bargaining process.

In most instances, members of a union will accept in a collectively bargained agreement less than the initial demands. But it is naive to assume that the leadership of the union can afford to take the responsibility of making an offer far below the initial demands in order to make it sufficiently attractive to be adopted by a selection panel.

And it is not realistic to believe that if agreements are subject to ratification, as most of them are today, the submission of a proposal substantially below the initial demands would be approved by the membership.

Incidentally, the time limits prescribed by the administration's bill in the "final offer selection," procedure would not permit ratification references anyway. To this extent, at least the proponents of the administration's bill either are not aware of or completely ignore the internal laws of some of our railroad labor organizations.

The administration has argued vigorously that its "final offer selection" does not amount to compulsory arbitration. This claim is based upon the fact that the offer selected by the panel is the offer of one of the parties rather than a decision imposed by third parties.

While this is true technically, the fact remains that one party is saddled with his adversary's draft of a collective bargaining agreement which he must accept. And he must accept it under compulsion of law. Consequently, we have the use of governmental power enforcing a unilateral decision of one of the parties to a labor dispute which is the very opposite of collective bargaining.

Now, let us turn to the provisions of the Williams-Kennedy bill—S. 832—and give our reasons for supporting this proposed legislation.

The purpose of this bill can be simply stated. It would take the national emergency out of railroad strikes by permitting the rail unions to exercise their right of self-help now given to them under the Railway Labor Act after the exhaustion of all required procedures in such a way as to avoid nationwide shutdowns and the attendant interventions of the President and the Congress.

As I have already said earlier in this testimony, the right to strike nationally is for all practical purposes precluded to the rail unions and if this right is to be preserved at all—or to put it another way—if collective bargaining is to be permitted to function in the railroad industry—the more limited selective strike must be permitted.

But it must be permitted in a way which will prohibit the carriers from converting the limited strike through the use of a lockout into a national crisis or we are right back where we started, with no practical strike at all and thus no real collective bargaining under the Railway Labor Act.

It is for this reason, among others, that the legislation sought by S. 832 is still necessary, notwithstanding the recent court decision which I mentioned earlier which held selective strikes to be legal.

We would hope that decision will settle the question but we cannot be sure the railroads will not institute other litigation seeking inroads upon it as they recently attempted in the selective strikes of the United Transportation Union when the Chicago & North Western Railroad sought and obtained a separate settlement with the union without the concurrence of the National Railway Labor Conference.

The selective strike bill expressly recognizes and reaffirms the right of the carriers to put their proposals into effect when the procedures of the Railway Labor Act have been exhausted; and the only restriction is that when the railroads have proposed changes, not on their own initiative, but in anticipation of or as counterproposals to the union proposals, they would not be permitted to put such changes into effect unless they are struck.

The reason for this restriction is that during recent years, the railroads have adopted, as a deliberate strategy, the practice of countering union proposals with intolerable counterproposals in order to be in a position to put the counterproposals into effect if the union should call a selective strike and thus convert a selective strike into a national strike, thereby creating a national emergency into which Congress must intervene.

The railroads' insistence on putting their counterproposals into effect would defeat the purpose of the bill to take the national emergency out of railway disputes.

The selective strike bill also provides important safeguards with respect to the national health and safety by providing that both the union and the railroads shall be required to furnish transportation during a strike to the extent that the Secretary of Transporation, after consultation with the Secretaries of Defense and Labor, find it essential.

The carriers complain that such partial operation of a carrier, even though it is also a part of the administration's proposal, is burdensome and difficult. Even if it is, so also is the effectiveness of the strike and both sides must make that sacrifice for reasons of public necessity. This safeguard to national health and safety is another reason why the legislation is needed despite the court decision validating selective strikes.

I should like to defer at this point to our General Counsel, Mr. Hickey, who will testify on behalf of all organizations of the Railway Labor Executives' Association and will, as I previously stated, deal more specifically with the particular provisions of the bills I have discussed in general terms and also state our views on some of the other bills pending before your committee.

I thank you for your time and attention.

The CHAIRMAN. Thank you very much, Mr. Yost. I think we will see if there are any questions of you.

Senator Javits might be called to the floor shortly.

Senator JAVITS. I have a bill on the floor and I will be called.

I would like to tell the witnesses I will read very carefully all the statements. As you know, I have a bill myself.

I would like to ask you just one question. The railroads say that partial operation differs from the selective-strike concept, but it does figure in the administration's approach—the railroads say partial operation is impractical.

That, of course, relates to your point that national health and safety will be protected because under Senator Williams' and Senator Kennedy's bill, partial operation may be ordered where it relates to the national health and safety.

Now, they say it is impractical because it costs as much to operate partially as to operate in full.

They just cannot absorb the loss of operation without the concommitant revenue.

My question to you is, (1) do you agree with that? In other words, is that true; and (2) would you wish to add a further point to your point of support for the Williams-Kennedy bill; to wit, that we should compensate railroads on the theory of expropriation, when we use the lines for partial operation and they suffer loss because it is partial?

So there are two questions: point 1, do you agree with the railroads that it is impractical to operate partially, even if it is national health and safety; and two, if you do agree, then shall we add to the concept of partial operation compensation for the use of the property in an uneconomic way?

Mr. YOST. First of all, I certainly do not agree with the railroads it is impractical. It will be difficult, certainly, to operate on a partial basis. But it can be done.

I certainly would disagree with them that the cost would be too great for partial operation. I mean, if they want to cut their supervision and their other operations to that which it necessary for the partial operation, I do not think they would make a profit off of it; but I do not think they would go too far in the loss column, either.

Insofar as your second question, as I understand that, talking about the Government compensating for partial operation——

Senator JAVITS. If they lose money.

Mr. YOST. I do not see why the Government should.

Senator JAVITS. Should or should not?

Mr. YOST I do not see why it should; because if you compensate them for the partial operation, you are certainly not going to be making any contribution toward settlement of the strike.

Senator JAVITS. Of course, the reason I suggest that for your consideration is on the issue of confiscation. In other words, where a government requires partial operation, it has no right to require it unless it compensates for the use of the property.

Mr. YOST. You would be requiring the labor of my people, would you not, against their wishes?

Senator JAVITS. They will be paid for their labor.

Mr. YOST. They will be working against their wishes.

Senator JAVITS. And against their interests.

So you feel we should not compensate the railroad for the use of the property even though it is an uneconomic use?

Mr. YOST. That is correct; because employees are going to be suffering too.

Senator JAVITS. I just wanted to get your views.

Thank you, Mr. Chairman.

The CHAIRMAN. Do you want to inquire now, Senator Packwood?

Senator PACKWOOD. Mr. Yost, in your prepared statement, you said, "We accept the fact that the right of labor under the existing Railway Labor Act to engage in a nationwide strike is, from a practical point of view, a dead letter."

Could you expand on that a bit?

Mr. YOST. Well, to look back over the years, every time that there has been an effort to strike the railroads either selectively or nationally, the courts have said, no, we cannot do it.

So what we have done, we have come to the point of realization, and we have come to understand that this Government, that the public, is not going to permit national railroad strikes.

Senator PACKWOOD. Did the courts say this or are you saying that Congress has said this? As I understand, the courts gave you a right for selective strike, and you have always had a right for a national strike.

Mr. YOST. I am sorry; the Congress has said this. The courts have said heretofore we could not strike selectively and when we went nationally, the Congress has said. "No, we cannot have that."

Senator PACKWOOD. What you are up against is, if you strike partially, you think there will be a nationwide shutdown and Congress will not tolerate railroads shutting down nationally.

Mr. YOST. I would not think they would.

Senator PACKWOOD. So what you really have is a system of compulsory arbitration, only Congress is the arbitrator.

Mr. YOST. That is correct.

Senator PACKWOOD. And in the administration's bill, you have final offer selection, or compulsory arbitration as you call it, you have an impartial panel——

Mr. YOST. No.

Senator PACKWOOD. You admit we have compulsory arbitration now, and we are not going to allow a national railway strike or lockout, and Congress will decide what terms will be imposed on the parties——

Mr. YOST. We have that threat of compulsory arbitration. I do not think the Congress has ever really arbitrated a dispute. What the Congress has done is, they have taken what the parties have been able to agree to up to a certain point and they have imposed, and Congress has taken recommendations of an emergency board and imposed a part of it, and ordered the parties to continue negotiations.

Senator PACKWOOD. What Congress has done, as a third party, is impose upon both parties their idea of a solution, whether it be from the emergency board, or whether it be Congress' original solution.

Congress has said to the parties, You are not going to interrupt transportation systems.

Mr. YOST. That is correct.

Senator PACKWOOD. I think we agree that Congress is not in the future going to tolerate, either a nationwide rail strike, but we prob-

ably would not tolerate a month's strike of the Pennsy without some action.

Mr. YOST. This might be true. But I think if you give the employees the unrestricted right to selectively strike, which makes us equal at the bargaining table with the railroads, I do not think you will have to be worried about any strikes.

I think we will be able to settle our disputes.

Senator PACKWOOD. You are saying take away from railroad management the right to have nationwide lockouts?

Mr. YOST. Absolutely.

Senator PACKWOOD. Just allow selective strikes?

Mr. YOST. Absolutely.

Senator PACKWOOD. Now, when you have a selective strike, in the areas that are struck, for all practical purposes it might as well be a nationwide strike. Those areas have no railway service.

Mr. YOST. Not necessarily.

Senator PACKWOOD. How do they get service?

Mr. YOST. There are other carriers within the region or the area. There are other forms of transportation. You have trucks; you have air transportation.

Senator PACKWOOD. Of course, you have that in a nationwide strike, too.

Mr. YOST. Well, this is true. What I cannot understand is that trucks can come out and they can strike for month after month, and the Congress does not get excited about that. The administration does not get excited. But let us strike a few railroads, and you get excited.

Senator PACKWOOD. To begin with, we have as yet never been faced with a nationwide trucking strike. We had one for 3 days in 1967, but under the administration's bill, or mine, the trucking industry would be subjected to the same rules as all other transportation industries are.

Mr. YOST. I understand that.

Senator PACKWOOD. You would not be treated unequally.

Mr. YOST. I understand that.

But what I cannot understand about your bill or the administration's bill is why you want to knock out all the other provisions of the Railway Labor Act that have certainly over the years contributed to the settlement of disputes.

Senator PACKWOOD. Well, let us get to a couple of those.

You talk about railway adjustment boards in your statement and correctly admit that the Government picks up by far the largest part of the arbitration of these grievances.

Can you think of any other industry where the Government pays the tab for grievance procedures under existing contracts?

Mr. YOST. There is no other industry that I know of that has been asked to make the deal that we were asked to make back in the early 1930's. We were asked to accept compulsory arbitration of disputes.

Senator PACKWOOD. Most other industries now under Taft-Hartley Act have in their contracts a provision of no strike, no lockout and arbitration of grievances arising in the contract, and parties pay for the arbitration themselves.

Mr. YOST. That is voluntary, is it not?

Senator PACKWOOD. It is voluntarily agreed to in the contract. It has the same effect that the legislation imposed upon you in 1934 has. But even in the airline industry where adjustment boards are used, they pay the cost of the arbitration. The Government does not pay the cost of their arbitration——

Mr. YOST. What you do not take into consideration in these other industries that you are talking about is that when their contract terminates, they have the opportunity at that time of settling all of these grievances that have stacked up over the 2 or 3 years of the contract.

We do not have that in the railroad industry. Our contracts never expire. They continue in force and effect until such time as they are revised through procedures of the act.

We are not permitted to strike to settle our minor grievances, our minor disputes. We are forced into compulsory arbitration.

Senator PACKWOOD. As I say, in most industries, the industries and the unions have agreed to arbitrate grievances rather than strike.

Mr. YOST. Many of them, sir, they do not arbitrate, they just hold them until the end of the contract term, and at that time, they force a settlement of those grievances.

Senator PACKWOOD. If they have a serious grievance they may attempt to negotiate a solution to it. But in almost all cases, they arbitrate grievances and pay for the costs themselves.

Well, it is neither here nor there. I want to have on the record that the railway industry is probably the only industry in the United States where the Government pays the cost of adjusting grievances. We are trying to change that in my bill so the railway industry is treated the same as all others.

Mr. Yost, in your statement you make reference to repeal of the Norris-LaGuardia Act, or at least its injunctive powers, in the attempt to enforce obligations arising under the contract. Is this not the same situation you have in the Taft-Hartley Act today? That is, when you have a valid collective bargaining agreement, you are entitled to court enforcement of it and injunctive process, if necessary?

Mr. YOST. Say that again, sir?

Senator PACKWOOD. Under the Taft-Hartley Act today, where you are attempting to enforce collective bargaining contracts, where you have a firm contract, you are entitled to use the entire range of court processes, including injunction, for the enforcement of the contract.

Mr. YOST. That may be true, but enforcement of our contracts—well, we go to the National Railway Adjustment Board.

Senator PACKWOOD. So again, what I am saying is, the administration's bill and my bill are designed to put railway unions on the same footing with other unions under Taft-Hartley——

Mr. YOST. It seems to me you would be putting more Government intervention on us. You talk about the Government paying for compulsory arbitration of our minor disputes. I think some $870,000—how much does it cost to go to court? How much does it cost the Government for me to go into court to enforce my contracts?

Senator PACKWOOD. Are we trying to put you on the same footing as any other union that is under Taft-Hartley Act.

Mr. YOST. Why should I be subject to Taft-Hartley Act?

Senator PACKWOOD. I am not really curious as to why you think you should or you should not. Is that not what we are trying to do?

Mr. YOST. My question to you is, Why? I thought you only wanted to deal with emergency disputes.

Senator PACKWOOD. Mr. Chairman, he is not going to answer my question. Could you instruct the witness to answer yes or no as to what this bill does, either S. 3232 or S. 560, as to making the railroads subject to identically the same provisions as other unions are subject to under Taft-Hartley Act?

Mr. YOST. I am opposed to the railroad unions being put into the position as the other unions are under Taft-Hartley.

Senator PACKWOOD. You are opposed to railway labor unions being treated the same as other unions?

Mr. YOST. I am opposed to having to spend all my time in court fighting restraining orders and injunctions.

Senator PACKWOOD. I have no more questions, Mr. Chairman.

The CHAIRMAN. Let us turn to Mr. Hickey.

STATEMENT OF EDWARD J. HICKEY, JR., ON BEHALF OF THE RAILWAY LABOR EXECUTIVES' ASSOCIATION

Mr. HICKEY. Thank you, Mr. Chairman and members of the subcommittee.

My name is Edward J. Hickey, Jr. I am a lawyer and member of the firm of Mulholland, Hickey & Lyman with offices at 620 Tower Building, Washington, D.C. I have been engaged in the private practice of law in Washington since 1948. My particular field of work has been the representation of railroad labor organizations.

I appear before your committee today on behalf of the Railroad Labor Executives' Association for which association I am general counsel. I am accompanied here at the table by Mr. J. Taylor Soop who is the executive secretary of the association.

Mr. Chairman, I recognize my statement is somewhat longer than I had hoped it would be. The reason for that will appear in the course of my remarks. With your permission, I would like to skip certain parts of it for a later reading because I do not think they are absolutely essential for this morning, so I shall not impose to unreasonably on your time.

We have listed all the 15 labor organizations that compose the RLEA, and I do not see any necessity of reading those at this time.

The CHAIRMAN. All of this statement will appear in the record following your testimony.

Mr. HICKEY. As Mr. Yost has informed you in his testimony on behalf of the Railway Employees' Department, AFL–CIO, all of the rail unions are united in their opposition to the administration's proposals set out in S. 560 and S. 3232 and in their support of S. 832, the Williams-Kennedy bill. What Mr. Yost has had to say with respect to these three bills on behalf of the Railway Employes' Department is also the position of the Railway Labor Executives' Association. Accordingly, I shall not repeat testimony which he has already given but shall, as he has told you, deal more specifically with particular provisions of the bills he has discussed in general terms. I shall first discuss in detail our objections to the administration's bills which are before

you, next give you our reasons for support of the Williams-Kennedy bill, and also briefly comment on the other bills which are before you for consideration.

It is our understanding that S. 3232, introduced by Senator Packwood and supported by certain other Senators, is a revised version of S. 560 which the administration is now supporting. Accordingly, my comments are directed to that bill.

Aside from our objections to key provisions of the administration's bill for resolving emergency disputes about which you have heard a great deal before this subcommittee—and which I shall later discuss—we must at the outset express our vigorous objections to other extraneous provisions of the administration's bill about which you have heard far too little. I refer to the heavy-handed repeal of provisions of the Railway Labor Act in title II of the bill which really have nothing to do with emergency disputes in transportation industries which is the problem with which this Congress is grappling and seeking to resolve. The Packwood bill is entitled the "Transportation Crisis Prevention Act of 1972" and from that descriptive title one would naturally conclude that its provisions were addressed to this stated purpose. Some of them of course are, but many of them are purely and simply attempts to use the crisis-strike issue before the Congress as a vehicle for proposing what one observer has described as "the most vicious antilabor bill that has been considered in this century."

The organizations comprising the Railway Labor Executives' Association regard these overkill provisions of the administration's bill as an issue of critical importance for understanding by this committee because their enactment, under the guise of regulating emergency disputes in the railroad industry, would needlessly abolish existing provisions of law which are not involved in the strike problem before you. We seriously doubt that most Members of the Senate and possibly some of the members of this committee fully comprehend the reach of these proposals and this is understandable because of the preoccupation of practically all those who have testified before you with those provisions of the administration's bill which admittedly are relevant to the problem of emergency disputes and their corresponding neglect of those provisions which are irrelevant to this purpose. Secretary of Labor Hodgson, the spokesman for the administration's bill in his appearance before this subcommittee last June and on other occasions gave scant attention to the provisions to which I should like to draw your attention, and little or no justification for their inclusion. While it is true that railroad management recommends a few changes in the act outside the area of emergency disputes to which we take exception and which I shall later discuss, even they do not support the sweeping changes which the administration proposes be made in the Railway Labor Act. None of the bills before this committee other than the administration's proposes such drastic changes. In fact, we are hard-put to name anyone who has sought to justify this wholesale dismemberment of the act. Yet the provisions are there in the bill and if enacted would create chaos and cause irreparable damage to labor relations in the railroad industry.

Now let me cite to you specifically the proposals of the administration's bill which are unrelated to the avoidance of emeregency disputes or their settlement.

First, section 403 of the Packwood bill completely eliminates the Norris-LaGuardia Act in any judicial proceedings brought under or to enforce the provisions of the proposed law. As Mr. Yost has already told you, such a provision can only be viewed as nothing short of a completely antilabor effort to give the courts unrestricted power to issue injunctions. We invite this committee's attention to the fact that the inapplicability of Norris-LaGuardia is total. Even section 8 of the act is inapplicable. Thus a carrier can obtain an injunction without making "every reasonable effort" to settle a dispute. Likewise, section 7 will not apply. Accordingly, there will be no opportunity to show unlawful acts. Presumably we will revert to Government by injunction with all the evils we knew before 1932. In view of the indisputable purpose and effect of section 403 of the administration's bill, how can we accept Secretary Hodgson's statement to this committee that the administration's objective in its proposed legislation is that "collective bargaining should be as free as possible from Government interference and that any legislation should serve to enhance, rather than reduce, the incentive to such bargaining."

Second, Mr. Yost has sufficiently demonstrated, without serious question we believe, that the administration has failed completely to make out a case that minor disputes cause strikes which imperil national health or safety. Accordingly, there is no valid basis for amending the Railway Labor Act as proposed by section 202 (b), (c) and (d) of the administration's bill so as to abolish the Railroad Adjustment Board and all public law boards authorized by Congress as recently as 1966 and all special boards of adjustment established to resolve disputes over the interpretation or application of collective-bargaining agreements and substitute private arbitration the costs of which will be borne by the parties. We see no justification for the Government now to refuse to finance an agreement it obtained in 1934 from railroad labor to submit such disputes to compulsory final and binding arbitration by these adjustment boards. Also, as Mr. Yost has told you, the elimination of the adjustment boards will also eliminate the import enforcement provisions of section 3, first (p) of the Railway Labor Act which Congress also amended in important respects and reaffirmed in 1966. To further complicate the picture on resolution of disputes over the interpretation or application of bargaining agreements, the administration's bill not only abolishes compulsory arbitration by the adjustment boards and substitutes private arbitration (sec. 202(b)) but it also provides in section 401(a) for law suits in the courts for violation of these same agreements. Here at the least the administration is recommending the repeal of compulsory arbitration it so avidly seeks for the resolution of major disputes.

Third, section 202(h) of the administration's bill amends section 6 of the Railway Labor Act so as to change the present procedure of open-ended agreements to the system common in industries subject to the Taft-Hartley law where contracts have fixed termination dates. But this is not all that section 6, as amended, would do. Deleted from its provisions are the status quo requirements of the present Railway

Labor Act. Section 6 now contains the important provision that "rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon" as required by the Railway Labor Act. No corresponding status quo requirement is contained in proposed section 6. The only preservation of existing terms and conditions in proposed section 6 is the requirement that for a period of 60 days after notice of intended modification or terrmination or until the expiration date of the agreement containing such terms and conditions, whichever occurs later, no change may be made. This raises some real problems.

I have some illustrative cases here that are set forth after the comment I just made on pages 7 and 8, which I will skip in the interest of time.

Let me say that anyone familiar with the judicial decisions under the Railway Labor Act knows the importance of the status quo requirements of section 6 and the deliberate effort that was made in the act through that section to delay the process of reaching impasses and strikes. This is the thing that is being removed, and this is the thing we are commenting upon, as an illustration of things that the administration's bill needlessly does.

I am now on page 9, gentlemen of the committee. Fourth, section 202 (f) and (g) of the administration's bill abolish the representation and mediation functions of the National Mediation Board and transfer them to the National Labor Relations Board and Federal Mediation and Conciliation Service. Again, we ask how will this improve the resolution of emergency disputes? As far as representation proceedings are concerned, obviously they have nothing to do with emergency disputes and as far as the Board's mediatory functions are concerned, the change might do more harm than good. Whatever harassments or frustrations have occurred under the Railway Labor Act with respect to settlement of emergency disputes the Board can hardly be blamed for them. The real evil is the lack of a practical way to strike without creating a national emergency or, in short, real collective bargaining. Until that right exists no mediation, whether it be under the auspices of the Conciliation Service or the National Mediation Board, can be really effective.

In concluding our objections to the repeal provisions of title II of the administration's bill we find ourselves in agreement with an observation made by Congressman James Harvey, a close student of this legislation, to the House of Representatives on May 13, 1971, when he said:

> First, I propose that the Railway Labor Act be retained as the statutory source for resolving major rail and air disputes. This entire body of administrative practices, mediation services, procedural precedents and judicial rulings which has been built up over 45 years is too valuable to discard lightly.

Turning to the emergency disputes provisions of the administration's bill, I am sure you are all familiar with the provisions in title I of S. 3232, and you have heard a great deal on them, and I see no need to belabor that or repeat testimony well known to you.

I would like to mention, however, that one change made in the Packwood bill from the predecessor administration bill 560 deprives Congress of the right to reject any of the choices.

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It not only enables the President to select one, two, or three choices, unlike the predecessor bill where only one could be made, but it also permits no rejection by the Congress of the President's choice.

Let me go, if I may, directly to the final offer selection, which is the heart of the emergency disputes provisions machinery of the administration's bill. I am now reading from page 12.

Of all the choices available to the President, this is by far the most controversial. It is also quite probably the one which the President is likely to choose in every case. It has the strong attraction of bringing a dispute to an end. The basic assumption underlying this choice is that it offers an equal threat to employers and unions. But this is like a game of Russian roulette. It presumes that it will encourage the parties to arrive at a settlement by negotiations. Should the negotiations fail, it presumes that each party's final offer would be realistic—that is, that it would be sufficiently fair to make it attractive to the selectors but with just an edge of an advantage for the side offering it. Less than this would make it unacceptable to the selectors, so the administration reasons, and more, would be a needless sacrifice.

Consider for a moment the complications which would likely arise under this arrangement. The typical pattern of bargaining in the railroad industry in recent years has been that when a union presents its wage package the railroad serves demands for sweeping rules changes called counterproposals. The response is the same when the union demands rules changes. Accordingly, a board that chooses an offer which, in its opinion, presents the fairer offer is apt to be making decisions not only with relation to a wage package but also with relation to rules.

The prospects of bewilderment are staggering. Even wage issues seldom are presented in pure form. They may well involve hourly rates coupled with questions of differentials, premium pay, and so forth. It is even conceivable that the selector might even be faced with the following dilemma in a simple wage submission. A union asks for an increase to $4.80 per hour and the carrier in collective bargaining negotiations offers $4.50. When they get before the final selection panel, the union's final offer is $4.60 and the carrier's final offer is $4.70. Which would the selectors select?

I raised this question in the House of Representatives and one of the Congressmen answered that he thought the answer to my question was that the panel would probably select the higher offer of $4.70, but the union leader would probably be fired by his union the following morning.

Demands which are only casually referred to in the negotiations between the parties might well be included in the final offer and as to these demands, the parties would come to the hearing without any collective bargaining on the issues and inadequately prepared to meet issues involved. In order to be prepared it would be necessary for a railroad union to assume that every demand made by the carrier and his counterproposals might well be included in its final offer and accordingly prepare testimony for presentation to the Board during its hearing on all such issues. This would place an intolerable burden upon a union.

Apart from this, at least in the railroad industry, the board would be presented with problems involving changes in work rules which

call for an exceptionally high degree of experience and understanding of railroad terminology and operation without the benefit of any discussion of the complications of the problem with third parties or the right to mediate or vary any term of either offer irrespective of what the evidence shows. Again, we say, it simply will not work.

It should be added that the draftsmen of the administration's bill are either not aware or overlook the internal laws of many railroad labor organizations. It is assumed under the administration's bill that the negotiators within 3 days can formulate for presentation an entire collective bargaining agreement involving all issues in dispute. What is disregarded is the requirement of union constitutions of ratification by general chairmen's associations or by actual referendum of the membership. Ratification by its very nature is not suited to the poker-playing aspects of the final offer selection process. I would require one side (the union) to expose its entire hand while the other side (the carriers) keeps its cards close to its chest.

There are many other practical objections to final offer selection as a method of resolving emergency disputes which could be urged by us and convincingly supported we believe, if time permitted, including the conviction that the administration is 100 percent wrong in its major premises that final offer selection would narrow the differences between the disputants and stimulate collective bargaining. Experienced arbitrators are persuaded the opposite would be the case. And I am not talking about attorneys for or representatives of labor unions in making this statement. This committee recently heard from Theodore Kheel and I know of no one more experienced or better qualified to express on objective view on the matter before you. In his opinion final offer selection was an impracticable bidding procedure which would stultify collective bargaining, constituted "compulsory arbitration at its worst," and in his judgment would not promote industrial peace or cure emergency disputes. Mr. William Simkin, former Director of this Federal Mediation Service and a highly skilled arbitrator, reasoned before you essentially as did Mr. Kheel that this form of compulsory arbitration would be completely impractical in most labor disputes. We can add little more by way of argument and must leave the judgement to be made by you on the basis of the testimony you have heard.

In concluding this testimony on behalf of the Railway Labor Executives' Association on the emergency disputes provisions of the administration's bill, let me say this by way of summary. Viewed as a whole, the intricate and time-consuming provisions for resolving emergency disputes are undeservedly punative and oppressive. They appear to rest on the supposition that strikes in the transportation industry result from hotheaded actions by impetuous union representatives. By way of illustration, the administration's bill selects as one of the three methods of resolving emergency disputes the so-called cooling off concept as though the Government was dealing with a brawl over trivia.

The realities are, as you know, quite different. Railroad labor disputes of national consequence arise out of serious economic issues, particularly today when inflation ravages paychecks. Strikes are not lightly called because they are grave undertakings. And union leaders

are conscious of their serious responsibilities and obligations to the public as well as to the employees they represent. They do not really wish to strike except as a matter of last resort, but sometimes their members demand it whether they like it or not. It is a fact of life today, perhaps as never before in our generation, that people tend to overreact when they must act. This is particularly true when employees believe that procedures for the resolution of disputes short of a strike are unfair or that the dice are loaded against them.

Let me turn in concluding this statement to the provisions of the Williams-Kennedy bill and say that the Railway Labor Executives' Association endorses and joins in the statement of support made by Mr. Yost on behalf of the Railway Employees' Department, and little more need be added to what he has said, except to answer some of the objections which have been urged to this bill by its opponents.

And for the information of the committee those attempts to answer the major objections are contained in my statement on pages 17, 18, 19, and 20.

That brings me to page 21 with respect to the other proposed legislation.

Reading from the bottom of page 21:

> It is significant to note that with the exception of the administration's bill and the bill supported by the railroads, introduced by Senator Dominick (S. 2060), about which I shall later comment, each of the other bills before you confine their proposals to the emergency disputes provisions of the Railway Labor Act and Taft-Hartley law and avoid the incursions of extraneous amendments to the Railway Labor Act which the employees we represent so bitterly resent and oppose as completely unjustified and antilabor in conception and purpose.

I have a comment here on the other bills.

Two of the six remaining bills, S. 594 (Senator Javits), and S. 1934 (Senator Brock), apply not simply to the transportation industries, but to any industry affecting commerce—which brings to mind the observations of Mr. William Simkin when he appeared before this committee this month that while the heat is now on transportation industries, in the 1940's coal was the problem industry, in the 1950's it was atomic energy, in the 1960's it was national defense, and in the next decade it might be some other industry. He also added that he believed an 8-month steel strike or a long auto strike may be worse for the country than a 10-day railroad strike. These observations raise the interesting question of whether Congress in the interest of nondiscrimination is prepared to ban the right to strike and substitute compulsory arbitration for all industries affecting commerce.

Now I also have a detailed statement on pages 23 and 24 with regard to the railroads' bill and our objections to that.

I will leave that for your later reading.

Finally, the final bill which I would like to discuss is S. 3243, introduced by Senator Stafford. This bill is similar in some respects to 11281 introduced by Congressman Harvey, which as I mentioned earlier, has been included in the committee chart of emergency dispute proposals.

We believe the Stafford bill is decidedly better than the administration's bill or the railroad's bill, and in fact better than the Harvey bill because it substitutes Government seizure for compulsory arbitration through final offer selection which is still one of the options in the Harvey bill. First, and foremost, like the Harvey bill, it adopts the

approach that the Railway Labor Act should be retained as the statutory source for resolving major disputes in the railroad and airline industries. As I mentioned earlier in this statement, it proceeds on the premise that the entire body of administrative practices, mediation services, procedural precedents, and judicial rulings which have been built up under the Railway Labor Act over the 45 years of its history is too valuable to discard.

Second, and equally important, the Stafford bill recognizes that the right of rail unions to strike to some degree must be preserved if there is to be any real collective bargaining and it implements this conclusion by permitting selective strikes and prohibiting lockouts as a management response to selective strikes unless a railroad is caused to diminish its service by a strike of all or some of its employees.

Third, it appears to prohibit the right of the railroads to serve counterproposals to those served by the employees which, like the locknut, convert a selective strike into a national emergency.

In these respects the Stafford bill is synonymous in its fundamental approach and underlying policy to the Williams-Kennedy bill. But then differences appear.

Under the Williams-Kennedy bill the number of carriers permitted to be selectively struck in each of the three regions is three provided the revenue ton-miles transported by the struck roads in the year preceding the strike does not exceed 4 percent of the total ton-miles transported by all carriers in that region during the same year. Under the Stafford bill a strike is limited to 30 percent of the regional total and this limitation is inapplicable if only one carrier is struck. I presume this was to take into consideration the fact that the ton-miles of the Penn Central Railroad in the eastern region are approximately 40 percent of that entire region.

Senator STAFFORD. Yes, that is correct.

Mr. HICKEY. Another major difference in the Stafford bill is its provisions for court injunctions of strikes which in the opinion of the President either imperil national health or safety or which exceed the limitations of the permissible regional strikes. Upon the issuance of the injunction Government seizure and operation by Executive order of all carriers involved in the dispute follow and continue until the dispute is resolved. During operation by the Government all carrier profits are to be placed in a labor-management trust fund and the employees forfeit the right to retroactivity in pay or benefits for that period. Collective bargaining is required to be resumed and if a voluntary settlement is reached it is filed with the President and the court whereupon the injunction is to be dissolved.

Court injunctions and Government seizure are avoided under the Williams-Kennedy bill and provisions are made to safeguard national health and safety by providing that the unions and the railroads shall be required to furnish transportation during a strike to the extent that the Secretary of Transportation, after consultation with the Secretaries of Defense and Labor, finds it essential. We believe this to be the preferable procedure.

Accordingly, while we cannot support the Stafford bill for the reasons given, we welcome the fact that it avoids extraneous amendments to the Railway Labor Act by confining its terms to emergency disputes,

does not impose compulsory arbitration, and also recognizes that the selective strike, with the attendant safeguards of prohibiting carrier lockouts and similar devices, must be preserved if collective bargaining is to effectively function under the Railway Labor Act.

In concluding this testimony on behalf of the Railway Labor Executives' Association may I be permitted a personal observation?

The CHAIRMAN. Certainly. We might invoke the privilege to reply.

Mr. HICKEY. I would be glad to make it on that basis.

I am convinced on the basis of my 23 years of representing rail unions and handling some of their problems under the Railway Labor Act that no act of Congress would more vitalize and improve the ills which have beset negotiations of agreements in the railroad industry than the passage of the Williams-Kennedy bill. The reason I say this is that it provides the exact spark which has been needed for too long now to ignite real collective bargaining in this industry. We just have not had it.

We have heard the Railway Labor Act blamed over the years as the cause of the breakdown in negotiations, the long delays in consummating agreements, the succession of mediation efforts by the Mediation Board, the Labor Department, and Presidential panels, and ultimately the intervention of the Congress.

It is not really the fault of the act. In my judgment the same vexations and harassments would have occurred under the Taft-Hartley Act or any other law for one major reason. The essential ingredient of a practical and effective way for the rail unions to strike without creating a national emergency has been missing. You have heard Mr. Kheel's views on March 14 that the right to strike is an indispensable element of real collective bargaining, that "the prospect of a strike forces disputants to assume the responsibility of decisionmaking," and that the only significant reason why Taft-Hartley may work better than the Railway Labor Act is the power of emergency boards to make recommendations which Taft-Hartley boards of inquiry do not. We agree with this assessment and earnestly hope it will be heeded by the Congress.

When I say assessment, I am talking about the total concept and not necessarily the comments regarding emergency board recommendations. I am not sure whether all my clients would agree that recommendations of emergency boards should or should not be made, and I venture the thought we may find some on both sides of that question. I am talking about his total assessment, that there is very little really between the Railway Labor Act and Taft-Hartley Act in terms of solving this problem. You have got to really get to the root evil of it. That root evil is an effective practical means of striking without causing national crisis.

Aware, until only recently, that any strike by labor in a national wage or rules dispute had to result in a nationwide strike if there was to be any strike, the carriers could maintain an inflexible position without fear of union retaliation secure in the knowledge that they had nothing to lose because the President and Congress would not permit a national shutdown and the dispute would be settled by what has amounted to high level arbitration.

Consequently, what has been sorely needed, and what I believe is supplied by S. 832, is an effective incentive for real collective bargaining which exists in other industries such as steel and automobiles.

I am persuaded that the whole process will come alive and quicken if a genuine right to strike by railroad employees is legislated. And by that I mean not only the negotiations of the parties themselves, but also the function of mediation which never really had a chance when no economic pressure could be applied.

I am also persuaded, contrary to what some critics of the selective strike bill have said, that if the Williams-Kennedy bill is passed with the necessary safeguards to prevent nullification of such a strike through carrier lockouts or similar devices, we shall have far less, rather than more, strikes in the railroad industry. It is a truism that the best collective bargaining occurs when the right to strike never has to be exercised.

The Railway Labor Executives' Association appreciates this opportunity you have afforded it to state its views on legislative proposals which would so vitally affect the employees its organizations represent.

I want to thank you, Mr. Chairman and each member of the subcommittee, for your patience with this very long statement.

We did not want any of the details of our opposition and our reasons for this opposition to the administration's bill to be left unsaid.

That is why this statement is as long as it is.

The CHAIRMAN. You need not apologize for the length of your statement. The subject certainly requires the fullest analysis.

In your work as general counsel of the Railway Labor Executives' Association do you get into the bargaining process at all?

Mr. HICKEY. Yes; I do.

The CHAIRMAN. So in your representative capacity you are at the table at contract time?

Mr. HICKEY. This is particularly true in the national case, the national bargaining, not so much in the more limited bargaining, but in the national cases which as you know in the railroad industry has been the pattern, I have been.

The CHAIRMAN. I just have two areas that I would like to cover briefly.

It has been stated here, and I think we can take it almost with judicial notice, that the emergency boards that have been created in these railways disputes, with their authority to make recommendations, have not been effective in bringing the collective bargaining process to an amicable settlement. They have not worked, as Mr. Kheel has pointed out to us.

Mr. HICKEY. That was his major point. Really if you read his testimony carefully, his only objection to the way in which the Railway Labor Act has been functioning, he felt that based on his experience, which is as extensive as any body I know, or more extensive, perhaps, I think he mentioned something like 10,000 cases which is a staggering amount, he felt that the power to make recommendations which resides in the emergency boards under the Railway Labor Act is the faulty factor and that the Taft-Hartley boards of inquiry of course do not have that, and confine their deliberations to factfinding. As I

say, I just read that a short while ago, and I have not really had an opportunity to sit down with all of our clients and solicit their views on it.

But I have with some, like Mr. Yost, and I think that there is a good deal to be said for that view in the minds of at least some of us.

The CHAIRMAN. Now some of these bills basically repeal much of the Railway Labor Act. Under that act a great body of the labor contract continues beyond any termination date, is that right?

Mr. HICKEY. That is correct, the whole contract.

The CHAIRMAN. The whole contract?

Mr. HICKEY. Yes. There is no termination date. The railway labor agreements sometime have termination dates, but the status quo provisions of the Railway Labor Act require that the conditions of the wages and the work conditions continue until the process under the Railway Labor Act is exhausted, thereby preventing this impact. This was a deliberate policy adopted by Congress to prevent these things from boiling over at the end of a 60-day period or the termination date of the contract.

A couple of these cases that I refer to in here illustrate this point where they had a termination date in a contract under the Railway Labor Act. Nevertheless, the court held the parties—they had to exhaust the procedures and they could not spill over and have an embroilment at that stage.

The CHAIRMAN. But the time to renegotiate that contract is fixed when the contract is entered into, there is a time fixed down the road——

Mr. HICKEY. When notices may be served, yes, Senator.

The CHAIRMAN. In other words, there is no specific date for the parties to come together and rebargain. It is on notice by either side?

Mr. HICKEY. Notices may be served at the end of such and such a period for changes in terms and conditions affected from such and such a date forward.

That is the situation in the industry today. Under most of the agreements that have been reached, you have a moratorium on the service of notice until 1973, January 1973, for new terms and conditions to become effective in July of 1973.

The CHAIRMAN. Some of these bills would repeal part of the Railway Labor Act, and what would be the situation? Would this force the industry to fix termination dates of the contract at which time the whole business would be wide open?

Mr. HICKEY. Yes, sir, precisely, the way it is under Taft-Hartley, and not only that, as I mentioned in my statement, there is no preservation of the status quo provisions either.

Mr. CHAIRMAN. I do not know. I appreciate that you have dealt with this, and no other witnesses have in such detail dealt with this possibility. It would just seem to me that this would be inviting a new chaos, and promote contention.

Mr. HICKEY. That is our view. I do not think there is any question it would create chaos.

I also do not think there is any question that it would cause my clients interminable litigation. It would cost them thousands and thousands of dollars.

The CHAIRMAN. Why would there be litigation?

Mr. HICKEY. This bill is filled from start to finish with invitations to go into the courts and litigate, and there are provisions in there that have absolutely nothing to do——

The CHAIRMAN. If the contract is dead, there is nothing to litigate. There is no contract at the end of the term.

Mr. HICKEY. Let me give you an example. There is a provision in the Packwood bill which says that either party can go into court and litigate violations of agreement.

The CHAIRMAN. This is during the period of the contract?

Mr. HICKEY. That is right.

The CHAIRMAN. There is no litigation at the end of the contract. You haven't any rights to sue on——

Mr. HICKEY. Not a day, as a result of a bargain, which railroad labor made with Congress in 1934, we have to submit all of those disputes over the interpretation of the application of all of our collective bargaining agreements to an adjustment board, not just the National Railway Adjustment Board, the focus before this committee has been much too narrow in this area. I am talking about all kinds of adjustment boards, the public law boards which Congress reaffirmed in 1966 after some very careful deliberation and by an overwhelming vote, incidentally in the Senate and House of Representatives. Now all of those disputes have to be submitted to this final and binding compulsory arbitration process today.

But under the Packwood bill, either party could sue the other in court for violation of agreements. It is in section 403 of the bill. There is also provision in there for arbitration of the same thing apparently, the disputes over the application or interpretation of agreements.

The CHAIRMAN. Whose choice is it?

Mr. HICKEY. Well, the bill does not make that very clear.

All I know is that two provisions are in there and it is documented in my statement.

The CHAIRMAN. Let me ask finally before we move on to other members, we had Mr. Simkin here who described the multitude of issues that came up in a Teamster contract. In that industry there is a termination date and everything is open.

Mr. HICKEY. Right.

The CHAIRMAN. Now it is different in the railway industry, everything is not open. You have to notice the changes that you are going to seek. I am wondering if this suggests that the railway situation is far less complex, and I am looking at this in terms of the last offer concept. Mr. Simkin said it would be impossible to have an intelligent last offer, because as he said, thousands of issues are involved——

Mr. HICKEY. So did Ted Kheel, of course.

The CHAIRMAN. Now that is Teamsters, but is that true in railway?

Mr. HICKEY. I do not have any hesitancy in saying, and I think final offer selection would be a farce in the railroad industry. I just do not think it would begin to work.

The CHAIRMAN. How many issues are before you?

Mr. HICKEY. In some of the operating organization cases there are many issues before you, and there are many issues which you do not know how serious the railroads are about, and if you ever got into this

final offer selection, where it says in the bill you must make an entire collective bargaining agreement and submit it, you would be in the ridiculous position of submitting what you are talking about, a tremendous number of issues over which there may not really be any basic disagreement.

This completely alters the give and take on the wages for example. You get all of these rules thrown in, about which the railroads may be half serious or may not be serious at all with respect to some of them. Some of them they may be very serious about. That is not the way this process is going to work. Each side has got to make a whole collective bargaining agreement and submit it and nobody can vary it.

They cannot change a term of it. They cannot talk to third parties about it. They have got to sit down and come up with one or the other. It does not make any sense.

The CHAIRMAN. David Cole yesterday suggested what would happen under the last offer selection, that a negotiator in his last offer could catch the eye of the selector by taking less than might be selected on the hourly wage, but really load it up with these complex issues that do not get into focus and perhaps it is like a decoy with a magnanimous approach on the hourly wage, but they really get more than a fair advantage on the complex other issues.

Mr. HICKEY. I think it is rather significant that the opponents of final offer selection are by no means limited to the rail unions or unions generally or to the AFL–CIO. They include some rather eloquent spokesmen for industry. I am trying to remember one, an article I read by a good friend of mine that has been representing Eastern Airlines in labor relations for years. He does not think it will work at all. He goes so far as to say that it will lead to great bitterness because you can succeed in getting too much through final offer selection and overkilling and breaking down morale of employees, Glen Harlem is his name. He has written an article on it.

The CHAIRMAN. You know his conclusions, let us do it simply and go right to compulsory arbitration.

Mr. HICKEY. I know that. I do not agree with that part.

The CHAIRMAN. He put up all the horrible possibilities of the last offer selection.

I took more time than I promised my colleagues. Senator Packwood.

Senator PACKWOOD. Do you do a fair amount of practice under the Taft-Hartley Act in addition to railroad work?

Mr. HICKEY. Very little. Some people in my firm do.

Senator PACKWOOD. You indicated some passing acquaintance with Taft-Hartley in response to Senator William's questions. He said if these contracts had a termination date, you could go into court during the existence of the contract, and you said that was what happened under the Taft-Hartley Act.

Mr. HICKEY. Wait a minute. I do not think I answered that question that way. That is not what I said. I do not think that was his question.

Senator PACKWOOD. What did you say?

Mr. HICKEY. I thought his question was when you have a fixed termination date in a contract, you are not required to restrain yourself from any strike activity.

Then another question was, did you have the right to go into court and litigate with regard to agreements and violation of agreements under Taft-Hartley, and I said, yes. I said under this bill that that right would exist with respect to violation of agreements if it were enacted in the railroad industry which it does not today.

Senator PACKWOOD. Under Taft-Hartley, we have not had chaos. We have not been plagued with court actions for suits for enforcement of existing contracts.

Mr. HICKEY. That is right, you have not, Senator.

Senator PACKWOOD. Why would we necessarily have chaos?

Mr. HICKEY. I said you would have chaos, not because you do not have it under Taft-Hartley today, but because of the fact that this Railway Labor Act has existed for 46 years, and things are pretty well geared to it. That is the chaos I am talking about. All for what? The people I represent, Senator, are asking me to ask of you as to why you find it necessary in dealing with strike crisis legislation to go into all of these things which have nothing to do with it?

Senator PACKWOOD. You are familiar with the 60-day contract reopening provision in the terminal contracts. You say on page 7 of your statement, "Suppose the parties do not reach agreement within the 60 days contemplated by the revised section 6. What are the rates of pay, rules, working conditions, and effect upon expiration without a new agreement.?"

Mr. HICKEY. What are they?

Senator PACKWOOD. What are they in the printing industry?

Mr. HICKEY. They do not have any.

Senator PACKWOOD. That is right. What happens after that?

Mr. HICKEY. They strike, I guess.

Senator PACKWOOD. That is right, but chaos does not result, does it, when they finally come back and reach agreement? Most of the working rules are still in effect unless the management has been able to get rid of them or the pay goes up. It does not go down.

Hr. HICKEY. That is right.

Senator PACKWOOD. You paint a situation as to what happens. Nothing serious does happen.

Mr. HICKEY. Let me explain, if I may. You say, yes, they can strike. We thought we were dealing with bills before this Committee the major purpose of which was to prevent strikes or at least to discourage them and encourage more collective bargaining and settlements.

Now you seem to be saying that what is wrong with striking? I would answer that and say, nothing as far as I am concerned, as a good labor lawyer, nothing. But I do not understand that to be the major purpose of these bills, and I say it is much more difficult to get away with it in a railroad industry because of the nature of that industry, and its spillovers, than it is in Taft-Hartley industries.

Senator PACKWOOD. I think that is true. There is no industry that can devastatingly affect the Nation like the railroads. I can think of no single greater detriment to the ongoing economy of this country than a railroad industry strike or lockout. If the entire railroad industry and airline industry were to shift to being governed under Taft-Hartley, I cannot conceive that you as an attorney representing the railway

unions, or that management could not adjust. You paint a picture that it is so unfathomable to you and unworkable that it could not exist.

Mr. HICKEY. I will be perfectly honest with you. One of my clients asked me the other day what I thought of the title of this act, which I think is crisis strike prevention act of 1972. I very honestly told him that I thought it could be better entitled, the labor rights prevention act of 1972 or the labor lawyer's featherbedding act of 1972, because I really believe both of those results are quite likely to flow from it.

I do not know anything that I have ever seen that would stir up more litigation than this.

Senator PACKWOOD. Mr. Hickey, let me ask you this. Let us assume that Congress wants to start with the assumption that we feel we can no longer tolerate disruptions of transportation services. How do we achieve that legislatively, to make sure that trains do not stop running and planes do not stop flying?

Mr. HICKEY. You mean if Congress——

Senator PACKWOOD. As a matter of policy wants to achieve that end.

Mr. HICKEY. Let me be sure I understand your question. They have reached the conclusion that no termination of any train services could be permitted?

Senator PACKWOOD. If we reach that conclusion, I am going to assume that people will obey the law. If you are going to assume they are not, there is no answer to any questions that we have.

Mr. HICKEY. I tell you how you can achieve that if you are prepared to do it.

Senator PACKWOOD. How is that?

Mr. HICKEY. Very simply. Forbid any strike of any kind in the railroad industry. I hope Congress is not willing to do that, but I think that answers your question. You can very simply do it.

Senator PACKWOOD. That does not forbid a lockout.

Mr. HICKEY. No.

Senator PACKWOOD. That does not guarantee continuity of transportation services.

Mr. HICKEY. If you are going to forbid any strike of any kind in the railroad industry, you do not need a lockout provision. The railroads would have precisely what they want.

Senator PACKWOOD. What you are saying is the right to strike occupies such an elevated and exultant position that no matter what the effect of a strike might be on the national economy, we should not limit it?

Mr. HICKEY. No, I did not say that.

Senator PACKWOOD. What are you saying?

Mr. HICKEY. I said quite the contrary. I said we recognize that the right of labor to strike and cause a national emergency was not tolerated. Mr. Yost made that statement. I made that statement.

I recognize as a practical matter we cannot disrupt the Nation to that extent and get away with it, notwithstanding the fact that as free citizens we should have the right as a part of our collective bargaining to strike.

It is only because of that impact on the public and the national health and safety that we have to sacrifice a part of it, and what we are here asking for is a limited strike or a selective strike, so that it will not have that national disastrous effect. That is my position.

Senator PACKWOOD. Thank you. That is what I wanted you to say. I have no other questions.

Mr. HICKEY. Thank you.

Senator STAFFORD. Mr. Chairman, I just have one observation, and that is, Mr. Hickey, on page 26 of your statement where you are describing the Stafford bill, and in one sentence state that the Stafford bill limits a strike to two carriers. I just want to call your attention to the fact that the bill does not actually limit a strike to two carriers.

The language of the bill specifically says that a strike of two or more carriers or groups of carriers operating in a system, and I am just paraphrasing now, in any one of the regions, so long as the struck carriers revenue ton-miles does not exceed 30 percent of the total revenue ton-miles for the region.

So my bill does not limit a strike to two carriers. I just wanted to bring that to your attention.

Mr. HICKEY. Thank you, sir. I am glad you did. I had not understood it that way.

Senator STAFFORD. Otherwise I appreciate your testimony very much.

The CHAIRMAN. Is there anything further?

Gentlemen, thank you very much. We will include Mr. Hickey's full statement in the record, as well as the statement submitted by Mr. E. L. McCulloch, Vice President and National Legislative Representative for the Brotherhood of Locomotive Engineers.

Mr. HICKEY. Thank you, Mr. Chairman, and thank you, Senators.

(The prepared statement of Edward J. Hickey, Jr. follows):

STATEMENT OF EDWARD J. HICKEY, JR.
ON BEHALF OF THE RAILWAY LABOR EXECUTIVES' ASSOCIATION
BEFORE THE SUBCOMMITTEE ON LABOR OF THE SENATE COMMITTEE
ON LABOR AND PUBLIC WELFARE ON S. 832, S. 560, S. 3232 AND
OTHER BILLS CONCERNING EMERGENCY LABOR DISPUTES

Mr. Chairman and Members of the Subcommittee:

My name is Edward J. Hickey, Jr. I am a lawyer and member of the firm of Mulholland, Hickey & Lyman with offices at 620 Tower Building, Washington, D.C. I have been engaged in the private practice of law in Washington since 1948. My particular field of work has been the representation of railroad labor organizations.

I appear before your Committee today on behalf of the Railway Labor Executives' Association for which Association I am General Counsel. I am accompanied here at the table by Mr. J. Taylor Soop who is the Executive Secretary of the Association.

The fifteen international or national labor organizations comprising the Railway Labor Executives' Association are the following:

American Railway Supervisors' Association
American Train Dispatchers' Association
Brotherhood of Locomotive Engineers
Brotherhood of Railroad Signalmen
Brotherhood Railway Carmen of the United States and Canada
Brotherhood of Sleeping Car Porters
International Association of Machinists and Aerospace Workers
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers
International Brotherhood of Electrical Workers
International Brotherhood of Firemen & Oilers
International Organization Masters, Mates and Pilots of America
National Marine Engineers' Beneficial Association
Railroad Yardmasters of America
Railway Employes' Department, AFL-CIO
Sheet Metal Workers' International Association

As Mr. Yost has informed you in his testimony on behalf of the Railway Employes' Department, AFL-CIO, all of the rail unions are united in their opposition to the Administration's proposals set out in S. 560 and S. 3232 and in their support of S. 832, the Williams-Kennedy bill. What Mr. Yost has had to say with respect to these three bills on behalf of the Railway Employes' Department is also the position of the Railway Labor Executives' Association. Accordingly, I shall not repeat testimony which he has already given but shall, as he has told you, deal more specifically with particular provisions of the bills he has discussed in general terms. I shall first discuss in detail our objections to the Administration's bills which are before you, next give you our reasons for support of the Williams-Kennedy bill, and also briefly comment on the other bills which are before you for consideration.

Objections to Administration's Proposals (S. 560 and S. 3232)

It is our understanding that S. 3232, introduced by Senator Packwood and supported by certain other Senators, is a revised version of S. 560 which the Administration is now supporting. Accordingly, my comments are directed to that bill.

Aside from our objections to key provisions of the Administration's bill for resolving emergency disputes about which you have heard a great deal before this Subcommittee -- and which I shall later discuss -- we

must at the outset express our vigorous objections to other extraneous provisions of the Administration's bill about which you have heard far too little. I refer to the heavy-handed repeal of provisions of the Railway Labor Act in Title II of the bill which really have nothing to do with emergency disputes in transportation industries which is the problem with which this Congress is grappling and seeking to resolve. The Packwood bill is entitled the "Transportation Crisis Prevention Act of 1972" and from that descriptive title one would naturally conclude that its provisions were addressed to this stated purpose. Some of them of course are, but many of them are purely and simply attempts to use the crisis-strike issue before the Congress as a vehicle for proposing what one observer has described as "the most vicious anti-labor bill that has been considered in this century."

The organizations comprising the Railway Labor Executives' Association regard these overkill provisions of the Administration's bill as an issue of critical importance for understanding by this Committee because their enactment under the guise of regulating emergency disputes in the railroad industry could needlessly abolish existing provisions of law which are not involved in the strike problem before you. We seriously doubt that most members of the Senate and possibly some of the members of this Committee fully comprehend the reach of these proposals and this is understandable because of the preoccupation of practically all those who have testified before you with those provisions of the

Administration's bill which admittedly are relevant to the problem of emergency disputes and their corresponding neglect of those provisions which are irrelevant to this purpose. Secretary of Labor Hodgson, the spokesman for the Administration's bill in his appearance before this Subcommittee last June and on other occasions gave scant attention to the provisions to which I should like to draw your attention and little or no justification for their inclusion. While it is true that railroad management recommends a few changes in the Act outside the area of emergency disputes to which we take exception and which I shall later discuss, even they do not support the sweeping changes which the Administration proposes be made in the Railway Labor Act. None of the bills before this Committee other than the Administration's proposes such drastic changes. In fact, we are hard put to name anyone who has sought to justify this wholesale dismemberment of the Act. Yet the provisions are there in the bill and if enacted would create chaos and cause irreparable damage to labor relations in the railroad industry.

Now let me cite to you specifically the proposals of the Administration's bill which are unrelated to the avoidance of emergency disputes or their settlement.

First, Section 403 of the Packwood bill completely eliminates the Norris-LaGuardia Act in any judicial proceedings brought under or to enforce the provisions of the proposed law. As Mr. Yost has already told you, such a provision can only be viewed as nothing short of a

completely anti-labor effort to give the courts unrestricted power to issue injunctions. We invite this Committee's attention to the fact that the inapplicability of Norris-LaGuardia is total. Even Section 8 of the Act (29 U.S.C. Sec. 108) is inapplicable. Thus a carrier can obtain an injunction without making "every reasonable effort" to settle a dispute, Likewise, Section 7 (29 U.S.C. Sec. 107) will not apply. Accordingly, there will be no opportunity to show unlawful acts. Presumably we will revert to Government by injunction with all the evils we knew before 1932. In view of the indisputable purpose and effect of Section 403 of the Administration's bill, how can we accept Secretary Hodgson's statement to this Committee that the Administration's objective in its proposed legislation is that "collective bargaining should be as free as possible from Government interference and that any legislation should serve to enhance, rather than reduce, the incentives to such bargaining."

Second, Mr. Yost has sufficiently demonstrated, without serious question we believe, that the Administration has failed completely to make out a case that minor disputes cause strikes which imperil national health or safety. Accordingly, there is no valid basis for amending the Railway Labor Act as proposed by Section 202(b), (c) and (d) of the Administration's bill so as to abolish the Railroad Adjustment Board and all public law boards authorized by Congress as recently as 1966 and all special boards of adjustment established to resolve disputes over the interpretation or application of collective bargaining agreements and substitute private arbitration the costs of which will be borne by the parties. We see no justification for

the Government now to refuse to finance an agreement it obtained in 1934 from railroad labor to submit such disputes to compulsory final and binding arbitration by these adjustment boards. Also, as Mr. Yost has told you, the elimination of the adjustment boards will also eliminate the important enforcement provisions of Section 3, First (p) of the Railway Labor Act which Congress also amended in important respects and reaffirmed in 1966. To further complicate the picture on resolution of disputes over the interpretation or application of bargaining agreements, the Administration's bill not only abolishes compulsory arbitration by the adjustment boards and substitutes private arbitration (Sec. 202(b)) but it also provides in Section 401(a) for law suits in the courts for violation of these same agreements. Here at the least the Administration is recommending the repeal of compulsory arbitration it so avidly seeks for the resolution of major disputes.

Third, Section 202(h) of the Administration's bill amends Section 6 of the Railway Labor Act so as to change the present procedure of open-ended agreements to the system common in industries subject to the Taft-Hartley law where contracts have fixed termination dates. But this is not all that Section 6 as amended would do. Deleted from its provisions are the status quo requirements of the present Railway Labor Act. Section 6 now contains the important provision that "rates of pay, rules or working conditions shall not be altered by the carrier until the controversy has been finally acted upon" as required by the Railway

Labor Act. No corresponding status quo requirement is contained in proposed Section 6. The only preservation of existing terms and conditions in proposed Section 6 is the requirement that for a period of 60 days after notice of intended modification or termination or until the expiration date of the agreement containing such terms and conditions, whichever occurs later, no change may be made. This raises some real problems.

Suppose the parties do not reach agreement within the 60 days contemplated by the revised Section 6. What are the rates of pay, rules and working conditions in effect upon expiration without a new agreement?

Consider another problem. In the case of Manning v. American Airlines, 329 F. 2d 32 (2d Cir., 1964), the carrier sought to discontinue a check-off agreement upon passage of a fixed expiration date in the agreement establishing the check-off. The union resisted the cancellation on the basis of the status quo requirements of Section 6. The carrier contended that Section 6 was inapplicable because the agreement contained a fixed termination date. The Court held with the union on the grounds that regardless of the termination date in the agreement, the intended change by the carrier brought the matter within Section 6 and with it the requirement that the status quo be maintained until compliance with all the requirements of that section. What becomes of the law established by this case in the light of the Administration's removal of the status quo requirements?

Take an even more important recent decision of the Supreme Court of the United States. In Detroit & Toledo Shore Line R. Co. v. United Transportation Union, 396 U.S. 142, 24 L.Ed. 2d 325 (1969), the Court held that under the status quo requirements of Section 6 of the Railway Labor Act which forbid unilateral action altering rates of pay, rules or working conditions while a dispute is pending before the National Mediation Board, a railroad may not make outlying work assignments away from its principal yard even though there is nothing specifically in the parties' collective bargaining agreement which prohibits such assignments. It, therefore, upheld the issuance of an injunction against the carrier's effectuation of the change pending negotiation. What becomes of the benefits of this decision to railroad labor? Presumably they would die upon the elimination of the status quo requirement of Section 6 since there are no counterpart requirements in the new Section 6 proposed by the Administration's bill aside from the 60-day period.

These examples of problems created by the Administration's proposed changes in Section 6 of the Railway Labor Act could be multiplied if time permitted. But enough has been said, I believe, to illustrate the great harm and confusion which will result from changes in a vitally important section of the Railway Labor Act which has received a settled construction through court decisions over the years and to which literally thousands of collective bargaining agreements in the railroad industry are geared. For what purpose? Certainly not for the purpose of improving settlement of emergency disputes because the elimination of the status quo requirements would clearly do the opposite by creating impasses and provoking strike action.

Fourth, Section 202(f) and (g) of the Administration's bill abolish the representation and mediation functions of the National Mediation Board and transfer them to the National Labor Relations Board and Federal Mediation and Conciliation Service. Again, we ask how will this improve the resolution of emergency disputes? As far as representation proceedings are concerned, obviously they have nothing to do with emergency disputes and as far as the Board's mediatory functions are concerned, the change might do more harm than good. Whatever harassments or frustrations have occurred under the Railway Labor Act with respect to settlement of emergency disputes the Board can hardly be blamed for them. The real evil is the lack of a practical way to strike without creating a national emergency or in short real collective bargaining. Until that right exists no mediation, whether it be under the auspices of the Conciliation Service or the National Mediation Board, can be really effective.

In concluding our objections to the repeal provisions of Title II of the Administration's bill we find ourselves in agreement with an observation made by Congressman James Harvey, a close student of this legislation, to the House of Representatives on May 13, 1971 when he said:

> "First, I propose that the Railway Labor Act be retained as the statutory source for resolving major rail and air disputes. This entire body of administrative practices, mediation services, procedural precedents and judicial rulings which has been built up over 45 years is too valuable to discard lightly."

Emergency Disputes Provisions

Let me turn now to a consideration of those provisions of the Administration's bill which repeal the existing provisions of Section 10 of the Railway Labor Act and substitute provisions of Title II of the Taft-Hartley Act (proposed as Part A) plus a new set of procedures contained in Part B of this Title. Since the provisions of Part A are the existing provisions of the Taft-Hartley law with only minor modifications and are well-known to you, I shall move directly to Part B.

Under Section 214 of the Taft-Hartley law as it would be amended, within ten days before an injunction is dissolved the President may move into the controversy and may select any one of three choices. These choices are: first, an additional 15-day cooling-off period; second, partial operation; and third, final offer selection. Presumably the choice would be made during the period that NLRB is taking its vote among the employees. At any rate, it is clear that the President is to act before the injunction is dissolved.

Among the choices open to the President is the choice not to select any of the three options given to him. If this is his choice, then he is to submit a supplemental report or recommendation to Congress. If the President selects one of the three choices, then he is to give appropriate notice to Congress. But Congress may not reject the choice. Unlike Section 215 of the earlier version of the Administration's bill (S. 560), the Packwood bill permits no rejection by the Congress of the President's choice. Moreover, unlike S. 560 the President is not limited

to one of the three options but may successively invoke all three.

Additional Cooling-off Period

Under the first choice available to the President, he may direct the parties to maintain the status quo respecting terms and conditions of employment and to continue bargaining for an additional 15-day period with the mediatory assistance of a board of inquiry and the Federal Mediation Service. If this does not result in an agreement, presumably the injunction will be lifted and the employees may strike. It should be noted, however, that the proposed legislation nowhere provides specifically for the lifting of the 80-day injunction after the expiration of the 15-day cooling-off period.

Partial Operation

The second of the three choices is partial operation. Here the President appoints a special board which is instructed to make a determination whether and under what conditions a partial strike or lockout would appear to be sufficient in economic impact to encourage the parties to make continuing efforts to resolve the dispute. The Board may determine that the partial strike or lockout cannot take place in accordance with such criteria. If so, it shall so report to the President. Presumably, although this is by no means clear, the parties have a right to court review of such a determination (Sec. 218(d)). The bill is silent as to what is the next step. Is the union entitled to a lifting of the injunction? We reach an anomalous situation. A

board could determine that a partial strike should not be granted. Presumably neither would a national strike be permitted. The result may be that the union is deprived of any bargaining power whatsoever.

On the other hand, the special board might issue an order permitting a partial strike or lockout for 180 days. The 180 days apparently start from the date of the order and thus come after the 80-day injunction, the 10 days allowed the President to make his choice, and the 30 days allowed the board to rule. An order allowing a partial strike or lockout is conclusive unless found to be arbitrary or capricious by the district court. Suppose that the court does hold that the order is arbitrary or capricious. What happens then? Does the matter go back to the special board for a new order, or does this mean that the employees are then entitled to a full strike? Are they entitled also to a lifting of the injunction?

Final Offer Selection

The last of the three choices is final offer selection under Section 219 of the Administration's bill. Of all the choices available to the President this is by far the most controversial. It is also quite probably the one which the President is likely to choose in every case. It has the strong attraction of bringing a dispute to an end. The basic assumption underlying this choice is that it offers an equal threat to employers and unions. But this is like a game of Russian roulette. It presumes that it will encourage the parties to arrive at a settlement by negotiations. Should the negotiations fail, it presumes that each party's final offer would be realistic -- that is, that it would be sufficiently fair to make it attractive to the selectors but with just an edge of an advantage

for the side offering it. Less than this would make it unacceptable to the selectors and more would be a needless sacrifice.

Consider for a moment the complications which would likely arise under this arrangement. The typical pattern of bargaining in the railroad industry in recent years has been that when a union presents its wage package the railroad serves demands for sweeping rules changes called counter-proposals. The response is the same when the union demands rules changes. Accordingly, a board that chooses an offer which in its opinion presents the fairer offer is apt to be making decisions not only with relation to a wage package but also with relation to rules.

The prospects of bewilderment are staggering. Even wage issues seldom are presented in pure form. They may well involve hourly rates coupled with questions of differentials, premium pay, etc. It is even conceivable that the selector might even be faced with the following dilemma in a simple wage submission. A union asks for an increase to $4.80 per hour and the carrier in collective bargaining negotiations offers $4.50. When they get before the final selection panel, the union's final offer is $4.60 and the carrier's final offer is $4.70. Which would the selectors select?

Demands which are only casually referred to in the negotiations between the parties might well be included in the final offer and as to these demands, the parties would come to the hearing without any collective bargaining on the issues and inadequately prepared to meet the issues involved. In order to be prepared it would be necessary for a railroad union to assume that every demand made by the carrier and his counter-proposals

might well be included in its final offer and accordingly prepare testimony for presentation to the board during its hearing on all such issues. This would place an intolerable burden upon a union.

Apart from this, at least in the railroad industry, the board would be presented with problems involving changes in work rules which call for an exceptionally high degree of experience and understanding of railroad terminology and operation without the benefit of any discussion of the complications of the problem with third parties or the right to mediate or vary any term of either offer irrespective of what the evidence shows. Again, we say, it simply will not work.

It should be added that the draftsmen of the Administration's bill are either not aware or overlook the internal laws of many railroad labor organizations. It is assumed under the Administration's bill that the negotiators within three days can formulate for presentation an entire collective bargaining agreement involving all issues in dispute. What is disregarded is the requirement of union constitutions of ratification by general chairmen's associations or by actual referendum of the membership. Ratification by its very nature is not suited to the poker-playing aspects of the final offer selection process. It would require one side (the union) to expose its entire hand while the other side (the carriers) keeps its cards close to its chest.

There are many other practical objections to final offer selection as a method of resolving emergency disputes which could be urged by us

and convincingly supported we believe if time permitted including the conviction that the Administration is 100 per cent wrong in its major premises that final offer selection would narrow the difference between the disputants and stimilate collective bargaining. Experienced arbitrators are persuaded the opposite would be the case. And I am not talking about attorneys for or representatives of labor unions in making this statement. This Committee recently heard from Theodore Kheel and I know of no one more experienced or better qualified to express an objective view on the matter before you. In his opinion final offer selection was an impracticable bidding procedure which would stultify collective bargaining, constituted "compulsory arbitration at its worst", and in his judgment would not promote industrial peace or cure emergency disputes. Mr. William Simkin, former director of this Federal Mediation Service and a highly skilled arbitrator, reasoned before you essentially as did Mr. Kheel that this form of compulsory arbitration would be completely impractical in most labor disputes. We can add little more by way of argument and must leave the judgment to be made by you on the basis of the testimony you have heard.

In concluding this testimony on behalf of the Railway Labor Executives' Association on the emergency disputes provisions of the Administration's bill, let me say this by way of summary. Viewed as a whole, the intricate and time-consuming provisions for resolving emergency disputes are undeservedly punative and oppressive. They appear to rest on the supposition that strikes in the transportation industry result from hot-headed actions

by impetuous union representatives. By way of illustration, the Administration's bill selects as one of the three methods of resolving emergency disputes the so-called cooling-off concept as though the Government was dealing with a brawl over trivia.

The realities are quite different. Railroad labor disputes of national consequence arise out of serious economic issues, particularly today when inflation ravages paychecks. Strikes are not lightly called because they are grave undertakings. And union leaders are concious of their serious responsibilities and obligations to the public as well as to the employees they represent. They do not really wish to strike except as a matter of last resort but sometimes their members demand it whether they like it or not. It is a fact of life today, perhaps as never before in our generation, that people tend to overreact when they must act. This is particularly true when employees believe that procedures for the resolution of disputes short of a strike are unfair or that the dice are loaded against them.

There is a real probability that if the Administration's bill becomes law, it will discourage rather than encourage settlement of emergency disputes. What real inducement is there for carriers to settle under legislation which offers so many avenues of escape to echelons of inquiry boards and panels plus the courts standing by to review any action which the carriers conclude is "arbitrary or capricious"? Such an arrangement is not only unfair legislation -- it is dangerous because it will encourage carriers to procrastinate and then go to the courts, spawn suspicion, frustrate unions and embitter employees.

I recognize that I have spent a good deal of time on the Administration's bill. Our justification for these extensive comments is the grave concern with which not only all of railroad labor but the AFL-CIO as well view the sweeping proposals of the Administration. We would not wish it said that any of the particulars of our opposition had failed to be stated.

Support of the Williams-Kennedy bill (S. 832)

In his testimony on behalf of the Railway Employes' Department, Mr. Yost has also stated in general terms why railroad labor and the AFL-CIO support S. 832, the selective strike bill. He has told you that this bill has the virtue of confining its provisions specifically and exclusively to the problem of more effectively preventing or resolving emergency disputes in the railroad industry rather than proposing omnibus provisions which are unrelated to the basic reason for Congressional concern for new legislation in the railroad industry.

He has also informed you of the major provisions of the bill and why the rail unions support them.

The Railway Labor Executives' Association endorses and joins in this statement of support and little need be added to it except to answer some of the objections which have been urged before you by opponents of the bill, to try to answer any questions you may have concerning its provisions, and to add a word of explanation of why we believe this sensible approach to the problem before you would accomplish the objective you seek since we are convinced that the Administration's proposed solution would not for reasons which we have already stated.

One rather surprising contention has been advanced by the railroads to the Congress that the selective strike bill would "broaden the self-help that may be exerted by the unions" under the Railway Labor Act. I say that this is surprising because it is well established under Supreme Court decisions that the rail unions are entitled to strike all the nation's carriers with which they are involved in a major dispute after exhaustion of the required procedures of the Railway Labor Act and since the selective strike obviously is less than the whole and confined by the bill to not more than three carriers in any of the three regions of the country, the bill does the opposite of what the railroads claim by reducing rather than broadening the self-help which the unions may employ. If the purpose of the statement is meant to imply that the legislation of the right to engage in selective strikes is to broaden the type of strike which may be pursued rather than the scope of the strike, the short answer is that the United States Court of Appeals for the District of Columbia Circuit held in the Delaware & Hudson case in March of 1971 (450 F. 2d 603) that a selective strike by United Transportation Union was valid under the Railway Labor Act and the Supreme Court of the United States denied a petition of the railroads to review the decision (29 L.ed 2d 689).

The railroads also opposed S. 832 on the ground that it would deprive the carriers of their right under the present law to lockout their employees. We have never agreed that the carriers have this right under present law and the claim that it is a necessary and permissible retaliation to a strike has never been judicially established. We maintain that a lockout

is a violation of the carriers' obligation to serve the public with essential transportation and the right of the employees with whom there is no dispute to continue to work. The Supreme Court's decision in the Florida East Coast Railway case (384 U.S. 238, 16 L.ed 2d 501) appears to us to confirm this view. In the course of that decision the Court said (pp. 244-245):

> "The carrier's right of self-help is underlined by the public service aspects of its business. 'More is involved than the settlement of a private controversy without appreciable consequences to the public.' Virginian Ry. v. Federation, 300 U.S. 515, 552, 81 L.ed. 789, 802, 57 S. Ct. 592. The Interstate Commerce Act, 24 Stat. 379, as amended, places a responsibility on common carriers by rail to provide transportation. The duty runs not to shippers alone but to the public. In our complex society, metropolitan areas in particular might suffer a calamity if rail service for freight or for passengers were stopped. Food and other critical supplies might be dangerously curtailed; vital services might be impaired; whole metropolitan communities might be paralyzed.
>
> We emphasize these aspects of the problem not to say that the carrier's duty to operate is absolute, but only to emphasize that it owes the public reasonable efforts to maintain the public service at all times, even when beset by labor-management controversies and that this duty continues even when all the mediation provisions of the Act have been exhausted and self-help becomes available to both sides of the labor-management controversy."

Certainly the reasoning of the decision casts sufficient doubt on the existence of the claimed right of lockout to justify the Congress in prohibiting its exercise not only so as to preclude deprivation of the public of essential transportation but also to prevent a spreading of the area of the strike into a national emergency which is the central purpose of all the bills before you.

The carriers further object to S. 832 on the ground the bill would deprive them of their right under present law to implement proposed changes unilaterally after all the procedures of the Railway Labor Act have been exhausted. This is not entirely accurate and to the extent that there is a restriction on the right of the carriers to unilaterally impose proposals we believe it is justified. Section 10(c) of S. 832 authorizes the carriers to put their proposals into effect unilaterally subject to two exceptions. The first of these exceptions is designed to prevent counter-proposals used solely for the tactical purpose of converting a limited strike into a national emergency which happened in the recent United Transportation Union selective strike. The second exception simply prohibits changes not permitted by other provisions of the Railway Labor Act.

Finally, the carriers contend that S. 532 does not prohibit national strikes. True, it does not. But the avowed objective of the bill and the reason it is supported by all rail unions and the AFL-CIO is to establish an alternative to the nationwide shutdown which heretofore has been forced upon the rail unions and enable them to exercise their full rights to collectively bargain in a limited way so as to avoid national crises. No one knows better than the rail unions that national strikes are from a practical standpoint impermissible and any likelihood of their exercise, as permitted by existing law, is highly improbable if the employees obtain the right to selectively strike with appropriate safeguards which will preserve it from escalation. Since the employment of the full right is denied only because of its

impact upon the public and considerations of national health and safety, certainly the Government owes those denied the exercise of the limited right which will avoid such impact.

Other Proposed Legislation Under Consideration

May I now undertake a brief discussion of the other bills which are before this Committee. Time will obviously not permit a complete discussion of all of them but our position on the principle proposals they contain will be stated.

We understand from the Committee chart of emergency labor dispute proposals that eleven bills are pending before this Committee as of February 1972 if we include the Harvey bill H. R. 11281 appended to the Committee chart because of its widespread support in the House. The provisions of three of those bills, S. 3232 the present Administration proposal, its predecessor S. 560, and S. 832 the selective strike bill supported by the rail unions and the AFL-CIO, have been fully discussed. That leaves eight bills which run the gamut from the arsenal of weapons approach which characterizes the Javits bill (S. 594) to the single shot compulsory arbitration provision in Senator Brock's bill (S. 1934).

It is significant to note that with the exception of the Administration's bill and the bill supported by the Railroads, introduced by Senator Dominick (S. 2060) about which I shall later comment, each of the other bills before you confine their proposals to the emergency disputes provisions of the Railway Labor Act and Taft-Hartley law and avoid the incursions of extraneous amendments to the Railway Labor Act which the employees we

represent so bitterly resent and oppose as completely unjustified and anti-labor in conception and purpose.

Two of the eight remaining bills, S. 2369 and S. 2583 introduced by Senators Fannin and Miller, respectively, apply only to industries subject to the Taft-Hartley Act and we shall leave comment on these bills to representatives from such industries.

Two of the six remaining bills S. 594 (Senator Javits) and S. 1934 (Senator Brock) apply not simply to the transportation industries but to any industry affecting commerce -- which brings to mind the observations of Mr. William Simkin when he appeared before this Committee this month that while the heat is now on transportation industries, in the 1940's coal was the problem industry, in the 1950's it was atomic energy, in the 1960's it was national defense, and in the next decade it might be some other industry. He also added that he believed an eight month steel strike or a long auto strike may be worse for the country than a ten-day railroad strike. These observations raise the interesting question of whether Congress in the interest of non-discrimination is prepared to ban the right to strike and substitute compulsory arbitration for all industries affecting commerce.

You have already heard at some length the reasons for our opposition to "final offer selection" as a procedure for resolving emergency disputes. You have also heard that opposition convincingly supported, we believe, by two neutral labor relations experts with extensive experience in arbitration, Mr. Theodore Kheel and Mr. William Simkin. In view of the fact that S. 594, S. 2060 and S. 2959 all contain that option, the Railway

Labor Executives' Association opposes these bills for this principal reason among others.

Two of the bills S. 594 and S. 3243 contain seizure provisions. While this particular procedure for resolving emergency disputes is less objectionable to railroad labor than the compulsory arbitration provisions contained in a majority of the bills before you, the Association must still oppose it because of its conviction that the provisions of S. 832 are a far better solution to the problem of emergency disputes in the railroad industry.

This leads me to a discussion of the bill supported by the Railroads (S. 2060) which is also supported by the Air Transportation Association of America, the airlines' counterpart of the Association of American Railroads. This bill is opposed by not only the rail unions but also all of labor through the AFL-CIO because it includes compulsory arbitration which means the imposition of terms and conditions governing rates of pay, rules and working conditions not agreed to by the parties to the dispute but determined by a tribunal established by law. Our position is that it is a violation of the basic principles of democracy which characterizes and separates this Nation from other forms of government to compel employees in private industry to work under terms imposed upon them by law.

Aside from its provisions for settling emergency disputes through compulsory arbitration, the Railroads' bill is also highly objectionable for another reason. It contains no less than nine separate amendments to the Railway Labor Act which have nothing to do with the settlement of

emergency disputes and are purely and simply attempts to use the crisis-strike issue before the Congress as a vehicle for improving management's position under the Act at the expense of long established rights of labor. A few examples will serve to illustrate this. They would have you abolish the right of a union to represent subordinate officials. They seek the elimination of the right of employees to ratify agreements negotiated by their representatives -- a right expressly upheld by the courts. They want to make the employer a party to disputes between unions over representation of employees. They seek the abolishment of the Railroad Adjustment Board and government financial support and a shifting of the expense of neutrals of the special boards of adjustment from the government to the parties -- a rather obvious effort to make arbitration of minor disputes unattractive to the rail unions. The Railroads also seek an amendment to the Railroad Unemployment Insurance Act to eliminate payment of unemployment benefits to employees engaged in a lawful strike.

Aside from the lack of merit in these proposals, we do not think this is an appropriate time for Congress to consider them when it is fully occupied with the problem of emergency disputes. For this reason, our objections to the provisions of Title II of the Administration's bill which seek amendments to the Railway Labor Act which do not concern emergency disputes apply with equal force here.

The final bill which I shall discuss is S. 3243 introduced by Senator Stafford. This bill is similar in some respects to 11281 introduced by Congressman Harvey which as I mentioned earlier has been included in the Committee chart of emergency dispute proposals.

We believe the Stafford bill is decidedly better than the Administration's bill or the Railroad's bill and in fact better than the Harvey bill because it substitutes Government seizure for compulsory arbitration through final offer selection which is still one of the options in the Harvey bill. First, and foremost, like the Harvey bill it adopts the approach that the Railway Labor Act should be retained as the statutory source for resolving major disputes in the railroad and airline industries. As I mentioned earlier in this Statement, it proceeds on the premise that the entire body of administrative practices, mediation services, procedural precedents and judicial rulings which have been built up under the Railway Labor Act over the 45 years of its history is too valuable to discard.

Secondly, and equally important, the Stafford bill recognizes that the right of rail unions to strike to some degree must be preserved if there is to be any real collective bargaining and it implements this conclusion by permitting selective strikes and prohibiting lockouts as a management response to selective strikes unless a railroad is caused to diminish its service by a strike of all or some of its employees.

Third, it appears to prohibit the right of the railroads to serve counter-proposals to those served by the employees which, like the lockout, convert a selective strike into a national emergency.

In these respects the Stafford bill is synonymous in its fundamental approach and underlying policy to the Williams-Kennedy bill. But then differences appear.

Under the Williams-Kennedy bill the number of carriers permitted to be selectively struck in each of the three regions is three provided the revenue ton-miles transported by the struck roads in the year preceding the strike does not exceed forty per cent of the total ton-miles transported by all carriers in that region during the same year. Under the Stafford bill a strike is limited to two carriers in any one region provided the total tonnage does not exceed thirty percent of the regional total and the regional revenue ton-mile limitation is inapplicable if only one carrier is struck.

Another major difference in the Stafford bill is its provisions for court injunction of strikes which in the opinion of the President either imperil national health or safety or which exceed the limitations of the permissible regional strikes. Upon the issuance of the injunction Government seizure and operation by Executive order of all carriers involved in the dispute follow and continue until the dispute is resolved. During operation by the Government all carrier profits are to be placed in a Labor-Management Trust Fund and the employees forfeit the right to retroactivity in pay or benefits for that period. Collective bargaining is required to be resumed and if a voluntary settlement is reached it is filed with the President and the court whereupon the injunction is to be dissolved.

Court injunctions and Government seizure are avoided under the Williams-Kennedy bill and provisions are made to safeguard national health and safety by providing that the unions and the railroads shall be required to furnish transportation during a strike to the extent that the Secretary of Transportation, after consultation with the Secretaries

of Defense and Labor, finds it essential. We believe this to be the preferable procedure.

Accordingly, while we cannot support the Stafford bill for the reasons given, we welcome the fact that it avoids extraneous amendments to the Railway Labor Act by confining its terms to emergency disputes, does not impose compulsory arbitration, and also recognizes that the selective strike, with the attendant safeguards of prohibiting carrier lockouts and similar devices, must be preserved if collective bargaining is to effectively function under the Railway Labor Act.

In concluding this testimony on behalf of the Railway Labor Executives' Association may I be permitted a personal observation. I am convinced on the basis of my twenty three years of representing rail unions and handling some of their problems under the Railway Labor Act that no act of Congress would more vitalize and improve the ills which have beset negotiations of agreements in the railroad industry than the passage of the Williams-Kennedy bill. The reason I say this is that it provides the precise spark which has been needed for too long now to ignite real collective bargaining in this industry.

We have heard the Railway Labor Act blamed over the years as the cause of the breakdown in negotiations, the long delays in consummating agreements, the succession of mediation efforts by the Mediation Board, the Labor Department, and Presidential panels and ultimately the intervention of the Congress.

It is not really the fault of the Act. In my judgment the same vexations and harassments would have occurred under the Taft-Hartley Act

or any other law for one major reason. The essential ingredient of a practical and effective way for the rail unions to strike without creating a national emergency has been missing. You have heard Mr. Kheel's views on March 14 that the right to strike is an indispensable element of real collective bargaining, that "the prospect of a strike forces disputants to assume the responsibility of decision making", and that the only significant reason why Taft-Hartley may work better than the Railway Labor Act is the power of emergency boards to make recommendations which Taft-Hartley boards of inquiry do not. We agree with this assessment and earnestly hope it will be heeded by the Congress.

Aware, until only recently, that any strike by labor in a national wage or rules dispute had to result in a nationwide strike if there was to be any strike, the carriers could maintain an inflexible position without fear of union retaliation secure in the knowledge that they had nothing to lose because the President and Congress would not permit a national shutdown and the dispute would be settled by what has amounted to high level arbitration.

Consequently, what has been sorely needed, and what I believe is supplied by S. 832, is an effective incentive for real collective bargaining which exists in other industries such as steel and automobiles.

I am persuaded that the whole process will come alive and quicken if a genuine right to strike by railroad employees is legislated. And by that I mean not only the negotiations of the parties themselves, but also the function of mediation which never really had a chance when no

economic pressure could be applied.

I am also persuaded, contrary to what some critics of the selective strike bill have said, that if the Williams-Kennedy bill is passed with the necessary safeguards to prevent nullification of such a strike through carrier lockouts or similar devices, we shall have far less, rather than more, strikes in the railroad industry. It is a truism that the best collective bargaining occurs when the right to strike never has to be exercised.

The Railway Labor Executives' Association appreciates this opportunity you have afforded it to state its views on legislative proposals which would so vitally affect the employees its organizations represent.

I thank you for your time and attention.

The CHAIRMAN. Mr. McCulloch's prepared statement will be submitted for the record.

(The prepared statement of Mr. McCulloch follows:)

BEFORE THE

LABOR SUBCOMMITTEE

OF THE

SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE

HEARINGS
ON
NATIONAL EMERGENCY DISPUTES LEGISLATION IN
THE TRANSPORTATION INDUSTRY
(S. 560, S. 832 AND RELATED BILLS)

STATEMENT OF POSITION
FOR
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
BY
E. L. McCULLOCH, NATIONAL LEGISLATIVE REPRESENTATIVE
AND VICE-PRESIDENT

I am E. L. McCulloch, National Legislative Representative and Vice-President of the Brotherhood of Locomotive Engineers. I am authorized to present the position of BLE's President, C. J. Coughlin, and for the 38,000 members of the Brotherhood who are currently employed as locomotive engineers and firemen (helpers) on the railroads of the United States. As the duly designated bargaining representative for the craft of locomotive engineers on most of the railroads in the nation, the BLE represents 97% of the individuals employed as locomotive engineers. The BLE also holds the contracts for the craft of locomotive firemen (helpers) on several major railroads as well as a substantial number of smaller railroads.

On May 13, 1971, BLE reached an agreement on wages and rules for those individuals. This goal was achieved without any government intervention. There was no mediation or an Emergency Board. This agreement was reached without the threat of a strike. Since many of the so-called work rule issues in our dispute were similar to those in another dispute with which the Committee is aware, the obtaining of this agreement was not an easy task. There were many hours and days of negotiations. Much more time was expended by the BLE negotiating team in its own discussions and in formulating proposals. The point is: Collective bargaining did work. Of course, it is difficult to precisely define the reasons why it did work in this instance. And one should not lose sight of the fact that collective bargaining also worked in the vast majority of other negotiations in this round of bargaining in the railroad industry.

In BLE's case, our negotiating team claims the attitude of the negotiators on both sides and the initiative of the labor team led to the formulation of the settlement. Although not providing finality to all of the alleged problems of the industry, the agreement does provide machinery for discussing them and possibly resolving some of them in the interim period. In short, the agreement provides the kind of problem resolving machinery that many industrial relations experts believe removes pressures on collective bargaining at the termination of the contract. Furthermore, the agreement, while not satisfying the desires of either party, did reach a conclusion on immediate matters and does provide a large measure of industrial peace for at least an additional two years.

As a member of the Railway Labor Executives' Association, BLE fully supports the position taken by the Association; that is, we do support S. 832 and unalterably oppose S. 560 or any measure, which nullifies collective bargaining or gives it secondary priority in the legislative scheme of labor relations law. We believe that S. 560 and the other bills purporting to

create some finality in labor negotiations seek to replace the collective bargaining system for the creation of the law of the shop with compulsory arbitration under a new label. In our opinion, compulsion in "major contract disputes", whether its vehicle be an arbitration board, a final offer selection panel, a labor court, or a wage control board, cannot and does not ultimately work. The proponents of final termination legislation are merely changing the confrontation between management and labor to one between the government and the employees or the industrial managers, depending upon the economic philosophy of the incumbent administration. Given differing circumstances, one wonders whether they would still favor this position. Nevertheless, it is doubtful that anyone wishes to fix the lines so firmly as they are under most of the bills, so that neither party can back away from the type of dramatic conflict that can be envisaged.

There appears to be three reasons asserted in favor of the final termination legislation. First, Congress has been involved in legislating upon five railroad disputes since 1964 and should get out of this business for once and for all times. Second, major railroad strikes, as well as in other transportation industries, threaten more hardships, reprisals and economic losses than even lengthy, extensive strikes in the automobile, steel and construction industries or by municipal employees handling waste disposal or water utilities. Third, certain cities or areas are severely hurt economically by a cut off of rail service during particular seasons. As to the very first point, Congress created this problem by the method used in intervening in the operating brotherhoods' work rules dispute of 1959-1964 and by the subsequent ad hoc legislation in the other four situations. With this experience and having laid appropriate ground work, the negotiators for the railroads found it advantageous to their position.

Knowing that their disputes would eventually end up before Congress, they engaged in conduct to achieve that end. The second and third claims are both part of the so-called "damage" argument. In the first instance, it is argued that we cannot tolerate a railroad strike, and the situation is apparently viewed from the vantage of the essentialness of the industry and the quantity of the strike and the length of time. Thus, only a two-day tie-up of railroad transportation would be tolerated, whereas the "lesser damage" of a steel strike or coal strike would permit a strike of ninety days in the former and thirty days in the latter. Any way it is viewed, the need to prevent interruption of the supply of essential goods and service would, under this argument, be applicable at some point to all of the major or essential industries. The third argument rejects any inconvenience resulting from any strike regardless of the limited area affected. Under this argument, a steel strike, which would affect a steel town, like Youngstown, Ohio, should be prohibited, although a strike of one and possibly two railroads would not affect it as much and would not necessarily be barred. The reverse would be true under the second argument.

However, a closer look at all the arguments indicates the true nature of the discussions in which Congress is now engendered. As one member of this Committee has stated during these hearings, we ought to try to settle the railroad problem, and if we start small and can find the right formula, then we will have no difficulty at that point in spreading it to other industries. This is an observation coinciding with the provisions of S. 560 which would create a Commission to determine whether its provisions should be extended to other industries. At other points in these hearings, certain members have used terminology suggesting that the problem is being viewed as a revolution, that industrial warfare must be combatted with an arsenal-of-weapons approach, and that there must be a cease fire period, partial or limited warfare, and ultimately

unconditional surrender. And some have gone so far as to attack the Administration's bill because the use of the alternative weaponry available cannot be escalated by application in seriatum.

In addition, the questioning which has revealed the last view, also establishes that the final offer selection method would be used in almost all cases, so that it can be stated without qualification that the right to strike has only been purportedly reserved by S. 560 and like pending bills.

Therefore, there is a basic philosophical question which must be answered. In view of the above evaluation, we believe this question should be posed in its purest form. Should collective bargaining, as it has evolved with the right to strike as contained in the Norris-LaGuardia Act, be abolished? Conversely, should we substitute therefor an alternative weapon in the arsenal of procedures available to the executive branch, which imposes the value judgment of a third party in such disputes, meaning therefore to us a variety of compulsory arbitration under a Madison Avenue label?

We are therefore faced with this choice in our present democratic and free enterprise society. Is the major goal of our labor policy the preservation of a large measure of free enterprise through economic self-determination requiring collective bargaining by labor unions which are equally as strong as the corporate managers; or is the important goal the need for direct government regulation to prevent strikes from interrupting the supply of essential goods and services? As noted by the United States Court of Appeals for the District of Columbia in the postal workers dispute, without the ability to strike or to threaten a strike, unions would be ineffective or would wither away in that there would be few risks in disagreement. Therefore, those who ask for complete security against strikes would in effect abolish collective bargaining and substitute government regulation of wages, hours and other terms and conditions of employment. On the other hand,

the preservation of free collective bargaining does require some payment in the form of strikes with accompanying inconveniences, economic losses, and a certain amount of suffering. No individual likes to make hard choices, but if required to do so, the latter selection has more going for it than the former and is the only choice which can be made in a free and democratic society.

With this issue in mind, I would like to present our reasons for opposing the so-called final offer selection method or compulsory arbitration in general terms and then to present our specific objections to S. 560. In doing this, I think it is well to note at the outset that simple answers may enjoy a certain political advantage, which does not make them right.

Let us turn first then to the general grounds that we have for our opposition. On the one hand, collective bargaining has brought the light of democracy into the work-a-day world. It has provided the worker with dignity -- he has a role, through his elected representatives in deciding the wages and conditions under which he works. It has meant he is not a slave to third party decisions. Deprive an employee of any role in changing or protecting his contract and it would not be long before discontent, dissatisfaction and an urge to rebel rise within him. Let us be realistic; not every provision of every agreement achieved through the collective bargaining process satisfies every member of a labor organization. But it is a far different thing for an employee to hear his representatives' explanation of why there had to be some concession on this or that issue, why this rule had to be changed or that pay increase deferred, than to have the same employee completely frustrated in his search for an explanation because the decision was made by a board or court composed of professors or lawyers never heard of by him.

On the other hand, the adoption of compulsory arbitration or of a final offer selection panel as contained in S. 560 would result in havoc in

labor-management relations. The overriding fault in the suggested plan would be the destruction that would result to the collection bargaining process. There would be no collective bargaining even though the draftsmen of S. 560 suggest that it will encourage the parties to make every effort in good faith voluntarily to adjust and settle their differences. Having the machinery of compulsion available, representatives of both labor and management would be forced to use it, rather than be second-guessed by their constituents. Introduction of third-party procedures into labor management relations excuses negotiators from their responsibilities.

The perfect examples of the use of third-party procedures in labor-management relations have occurred in the railroad industry. Both the operating brotherhoods' work rules dispute of 1959-64 and the shopcrafts' dispute of 1969 proved impossible of solution under the normal processes of the Railway Labor Act because collective bargaining was not given a chance. In both cases, the third-party, the Government, was on record as being unwilling to tolerate a nation-wide railroad strike; accordingly, the industry awaited a legislated "solution" rather than engage in constructive negotiations. As R. H. McDonald has stated in his discussion of the work rules dispute:

> "[T]he compulsory arbitration procedure it [Arbitration Board 88-108] imposed was forced upon the employee parties unwillingly and without their consent, while at the same time the arbitration procedure was being actively solicited by the management parties, who must have felt that they would thus be in a position to obtain special advantages in accomplishing the desired changes in the existing work rules subject to this dispute." Eastern, W. & Southeastern Carriers' Conference Comms., 41 Lab. Arb. 673, 698-99 (1963).

Collective bargaining cannot exist in the atmosphere created by the government's intervention in the disputes discussed above, for this atmosphere took away labor's economic weapon, the right to strike. This would be the atmosphere created by the establishment of compulsory arbitration. Labor-management

relations must consist of give-and-take decisions made by men with a genuine knowledge and understanding of the issues and who are free from outside influences; rather than by outsiders who would be obliged to attempt the impossible -- to cram a working lifetime of specialized knowledge and understanding into a space of a few days or weeks of hearings. This is particularly true in the railroad industry since most negotiations involve work rules and many extensive contractual provisions concerned with the peculiar language and situations arising from the operations in the industry.

Another problem would exist with the passage of S. 560. Compulsory arbitration in any form does not eliminate strikes. Parties to a dispute settled by compulsory arbitration do not feel the moral responsibility to live up to the arbitrated award that they feel for collectively bargained contracts. The consequences of such a situation could be disasterous in maintaining industrial peace. Compulsory arbitration or an injunction by a labor court could cause intense dissatisfaction among workers. Although a strike would be illegal, they would express their discontent in the most available manner -- by engaging in "unauthorized" slowdowns and sick leaves, by engaging in wildcat walkouts, and by protesting and demonstrating. The labor organizations like the BLE, described as one of the best disciplined of all trade unions, would lose control of their members. The organizations would be obliged to respect the decisions of third parties or be fined into immediate bankruptcy, but the individual workers would rebel and their organizations would be powerless to protect them. Robbed for their reason for being, some unions would undoubtedly disappear. In addition to creating havoc in labor-management relations, compulsory arbitration in major disputes will not accomplish the purpose for which it is designed. It will not end strikes and lockouts. A law can only make an activity illegal; it cannot prevent persons from engaging in that activity. This is exactly the situation with reference to compulsory arbitration

and strikes and lockouts. And we suggest that much of this is already occurring in the United States.

Furthermore, since 1904, Australia has had a system of compulsory arbitration. An analysis of the Australian system can lend valuable insights into the process and problems of the arbitration method in general. In Australia, each of the six Australian states has its own arbitration mechanism. In addition, at the Australian federal level, there are two distinct components to the arbitration machinery, the Conciliation and Arbitration Commission and the Commonwealth Industrial Court. The first stage of compulsory arbitration in Australia occurs when an unresolved dispute is referred by law to the Conciliation and Arbitration Commission. This Commission is composed of laymen supposedly experienced in labor-management relations. If conciliation fails, the Commission renders its award by establishing the contract provisions which were in dispute. By law, the parties are bound to accept the award and abide by it during the life of the contract. By its very nature, the system of compulsory arbitration permanently enjoins either side from engaging in a work stoppage to protest the contract provisions.

Although the Australian law says no strikes or lockouts can occur, individuals may choose to ignore the law. For this reason, the Commonwealth Industrial Court was established. This body enters into the dispute when one of the parties refuses to accept terms proposed by the Conciliation and Arbitration Commission. By establishing a second body to enforce awards of the compulsory arbitration machinery, the Australians have effectively separated the judiciary from the functions of conciliation and arbitration. If one or both parties are unwilling to accept the arbitrated award, the Commonwealth Industrial Court may order compliance or may render a court order preventing either side from contravention of the award. Should this fail to produce compliance,

the court may deregister the union or the employer who is breaking the law. This has the effect of legal "black balling" of the organization. In addition, the court may fine the union and management officials or the unions and industries themselves. If a strike or lockout does occur, the court is empowered to jail those who have caused the work stoppages.

Despite the adoption of this compulsory arbitration procedure in 1904, there have been a large number of small strikes and strikes of national emergency proportion in Australia. Considerable differences exist between strike activity in Australia and in the United States. Australian workers participate more widely in strikes. On the average, 14.7% of Australian nonagricultural workers are involved in strikes as compared to only 6.8% of American nonagricultural workers. However, the strikes in Australia tend to be of shorter duration. Eight times as many Australian workers are involved in strikes of one day or less than are American workers. These conclusions have held true over many years. During the pre-war period of 1927-1940, twice as many Australians went out on strike as did American workers. However, these Australian strikes caused only half as many days to be lost as did the United States strikes. (Industrial and Labor Relations Review, January, 1955, pages 170-171.) Thus, in Australia, although strikes are illegal, they still occur. Why they are not prevented by the compulsory arbitration mechanism is a complicated question. As a practical matter, workers are able to engage in short strikes without fear of government retaliation. The workers know that it would not be feasible for the government to punish the vast number of workers who engage in the extremely large number of short strikes that occur. The government does not wish to expend its energy and resources in punishing workers who have caused no serious harm.

In general, the majority of strikes in Australia last one day or less. The reason for these short strikes lies in the local basis of union

activity. Because compulsory arbitration and the political nature of Australian unions have weakened the collective bargaining on a local level, the rank-and-file worker often finds himself with a grievance for which he has no method of solution. In the United States, most union-management arrangements provide mechanism for peaceful resolution of grievances. Few unions have established grievance procedures in Australia. Instead, the workers exert the pressure of "wildcat" walkouts upon their employer. This is usually enough to bring the grievance to the attention of both higher labor and management officials and to start remedial action.

One of the prime reasons suggested for the passage of S. 560 is the prevention of strikes which would harm the national health, safety, or welfare. However, the Australian experience indicates compulsory arbitration can only make such strikes illegal; it cannot prevent them.

An example in Australia is the eight-month strike in the copper industry that was settled in May, 1965. While the strike was in progress, one of Australia's largest exports was not being produced. Copper had to be imported from other nations. Australian business lost $85,000,000 in foreign earnings. There was not even enough copper for domestic consumption. The nation had to pay out an additional $62,000,000 to import the copper it needed during the strike. Other losses included workers' wages and profits to companies which depended upon the domestic supply of copper. Thus, under compulsory arbitration with the strike banned as illegal, a strike of tremendous proportions was successfully conducted for over half a year. Even if the workers and their union leaders were severely punished for breaking the law, this would not recoup the losses that accrued to the nation. Nor is it certain that severe punishment for these individuals would deter other dissatisfied workers from following the same path.

On the subject of collective bargaining and compulsory arbitration, Arthur J. Goldberg said in a speech made January 9, 1967:

> "I do not believe a radically new approach is needed. And specifically, I am convinced that compulsory arbitration is not the answer * * * [C]ompulsory arbitration as an accepted and uniform method would be totally alien to the American temperment. Indeed, experience abroad has demonstrated that it will not work in any free society.
>
> "The system we have now, evolutionary as it is, reflects the genius of American democracy in the industrial fields. I believe the same judgment can be made of it as Churchill once made of democracy itself, when he said that it is the worst system of government ever devised -- except for all the others."

It appears from an examination of the Australian compulsory arbitration system that this is not the answer for labor-management relations. This is especially true under the circumstances in the United States where it is evident that neither labor nor management see compulsory arbitration as the solution to our problems in the labor relations area.

It can be said generally that neither labor nor management, nor the experts in labor-management relations, seek compulsory arbitration but rather look for methods to improve the collective bargaining processes. To reach this conclusion, one need only examine the statements of these individuals involved in labor-management relations on a day-to-day basis. W. Willard Wirtz, former Secretary of Labor, said that there is "ritual unanimity of labor, management, and 'labor expert' rejection in this country of the idea . . . of 'compulsory arbitration'." Wirtz, Choice of Procedures Approached to National Emergency Disputes, Emergency Disputes and National Policy, 149-162 (1955). And as recently as January 10, 1967, Mr. Wirtz said:

> "If collective bargaining were not strong enough or mediation not important enough, to stand the statement of the truth in a particular case, then these processes would not work -- and the penalty would be some form of compulsion." (Emphasis added).

Theodore W. Kheel said in 1961:

> "The opposition of management and labor to compulsory arbitration as a national or state policy is so deep-rooted, except in a few industries subject to public relations, that there is little chance that it will be imposed in the foreseeable future."

Mr. Kheel said further in a speech made January 19, 1967:

> "But no one as yet has devised a way to ban strikes without also destroying collective bargaining, and Congress is not about to scuttle the bargaining process. Compulsory arbitration is the only alternative ever offered as a replacement for collective bargaining when strikes are banned."

Joseph A. Beirne, President, Communications Workers of America, AFL-CIO, said in a speech made January 13, 1967:

> "In this dynamic American economy, the collective bargaining process is essential to our hope for progress and growth. Throughout the past decades, this mechanism of negotiation between labor and management has creatively produced a large variety of sociological innovations that have benefited, directly or indirectly, an overwhelming majority of the American population."

R. Conrad Cooper, then Executive Vice-President-Personnel Services, United States Steel Corporation, said in a speech made January 13, 1967:

> "I want to make a plea on behalf of collective bargaining in a free society. Too little evidence of its practice is seen today."

Virgil D. Day, Vice-President-Personnel and Industrial Relations Services, General Electric Company, said in a speech made January 9, 1967:

> "In current pressures to 'do something quick' about public inconveniencing strikes, I hope we can join together in persuading Congress to proceed on the basis that collective bargaining is useful machinery for reaching agreements, and that we need to improve the function of the machinery, the uses to which the machinery is put, rather than scrap it or, worse, prevent it from functioning properly."

The late Walter Reuther, President of the United Auto Workers, said in a speech made on January 13, 1967:

> "I have great faith in the capability of free men, our free institutions and in free collective bargaining. I believe that we can improve it, we can strengthen it, and I think we can make it equal to the complex challenges that we face in the future. And I believe that collective bargaining could provide a new and decisive dimension to our overall effort as a free society to try to translate and transform the 20th century technological revolution into a 20th century revolution of human fulfillment."

And on Labor Day, 1969, President Nixon made this persuasive argument:

> "In an increasingly complex society, one in which so many elements depend so heavily on one another, the process of collective bargaining must be strong and effective and exercised with self restraint on both sides. But this process cannot work unless the participants are free to reach their own decisions. This Administration will always respect that freedom.

These are the thoughts and ideas of many people, including a number of those most intimately involved in labor-management relations. There is no universal demand for compulsory arbitration. Actually, the railroads have long been the limited breeding ground for the strongest pressures toward the adoption of compulsory arbitration. The industry produced compulsory arbitration in 1916 and 1963, and even today the only significant pressure for compulsory arbitration emanates from this industry -- though airline management now appears to have picked up the same theme. Railroad management has refused to adopt the procedures of collective bargaining. Railroads would rather have courts issue temporary restraining orders at the least hint of a strike rather than negotiate in good faith with labor representatives. The carriers' confidence in the availability of court orders in this respect remove their incentive to negotiate a settlement. Furthermore, negotiators for the railroads knowing that their disputes will eventually end up before Congress attempt to achieve that end. In the past, this has proven advantageous to their position. It is impossible to conceive of an efficient, economical transportation system without collective agreements which the workers have helped determine. Top railroad management nevertheless continue to cry for "final and binding arbitration" of major disputes, which posi-

tion is taken in S. 2060 submitted at their request. They are almost alone among corporate managers in this position.

I have discussed collective bargaining versus compulsory arbitration in general terms, and I would like to mention the specific problems which would arise if S. 560 were adopted as law.

The legislation proposed by the Administration's bill goes much too far to remedy the defects which it states now exist under the Railway Labor Act. If enacted, S. 560 would seriously jeopardize the legitimate interests of railroad labor.

Although the Administration's bill states in its purpose clause that the present procedures tend to encourage unwarranted resort to governmental intervention rather than the utilization of collective bargaining processes to resolve disputes, no where within the bill does one find proposed procedures to limit governmental intervention and, in turn, require solution through the pure processes of collective bargaining including the right of labor to exercise the right to strike, an indispensable part of that process. Instead, S. 560 requires more governmental intervention and longer periods of delay through the successive layers of boards of inquiry, court reviews and injunctions, Presidential intervention, special boards and final offer selection panels for the resolution of a national emergency dispute. Not only does the Administration's bill apply to major disputes, but it also deals with arbitration of minor disputes, as we use those terms under the Railway Labor Act. In sum, these steps must be considered institutionalized governmental intervention.

Another fallacy of S. 560 is its second premise or finding that present procedures for dealing with disputes in the transportation industry have proved insufficient to prevent disruption of transportation services. We do not believe this conclusion can be substantiated in the trucking, maritime,

longshore and airline industries, and shall leave the rebuttal to that argument to the organizations representing labor in those industries. The facts in the railroad industry are also to the contrary. Up to this year, there had been only four instances of intervention by the President of the United States or the Congress in the forty-five year history of the Railway Labor Act.

Furthermore, up to June 30, 1970, there had been created only 236 emergency boards, of which 57 were created in the period of enactment of the original Railway Labor Act of 1926 to its amendment in 1934. Except for the aforementioned interventions, agreement was reached by collective bargaining following the recommendations of the emergency boards. Of further importance is the information derived from the following breakdown of those emergency board cases:

122	51.2%	involved 1 railroad only
33	14.0%	involved 1 airline only
22	9.7%	involved from 2-5 railroads
1	0.4%	involved 3 airlines
4	1.7%	involved railroads in 1 region
1	0.4%	involved railroads in 2 regions
31	12.7%	involved railroads in all regions (includes 3 involving short line railroads only)
5	2.1%	involved from 5-13 air carriers in all regions
17	7.2%	involved the Railway Express Agency
236	100%	

An analysis of the issues before these boards reveals that up to the last 15 years the disputes were limited to individual properties or carriers. Further, as previously shown, the emergency board procedures were rather effective in assisting the bargaining processes in those instances. However, as the carriers attempted to broaden the issues and to seek industry-wide bargaining, the col-

lective bargaining procedures were affected, the emergency board features had less effect, and then first in 1963, then in 1967, again in 1969, 1970 and 1971, Congress has become involved. In short, the tendency toward industry-wide bargaining, which was forced upon the rail organizations by management, appears to be one of the causes which has led to the breakdown in the procedures embodied in the Act. In addition, our study shows that the heaviest volume of threatened strikes and accordingly the greatest number of emergency board cases occur during or after periods of military conflict which correspond with inflationary times.

As the Committee is aware, there are hundreds of disputes each year in the railroad and airline industries. Most of these disputes are settled through collective bargaining without even the intervention of the Mediation Board. However, several hundred disputes are annually referred to the Mediation Board. The interesting point is that very few of these cases, actually only 2.8%, ever result in work stoppages of 24 hours or more. This is made clear in the following table for the eleven-year period of 1959-1969 which was contained in the Board's publication entitled "Administration of the Railway Labor Act by the National Mediation Board, 1934-1970."

Fiscal year	Mediation cases			Work stoppages			Percent of cases involving stoppages		
	Railroads	Airlines	Total	Railroads	Airlines	Total	Railroads	Airlines	Total
1959	165	83	248	3	9	12	1.8%	10.8%	4.8%
1960	153	73	226	4	4	8	2.6%	15.5%	3.5%
1961	177	52	229	10	5	15	5.6%	9.6%	6.6%
1962	152	53	205	5	1	6	3.3%	1.8%	2.9%
1963	133	66	199	4	0	4	3.0%	6.1%	2.0%
1964	198	54	252	5	1	6	2.5%	1.8%	2.4%
1965	188	48	236	4	4	8	2.1%	8.3%	3.4%
1966	200	36	236	3	1	4	1.5%	2.7%	1.7%
1967	181	61	242	0	4	4	0	6.5%	1.7%
1968	212	72	284	3	2	5	1.4%	2.7%	1.7%
1969	306	37	343	6	4	10	1.9%	1.2%	2.9%
Total	2065	635	2700	47	35	82	N.A.	N.A.	N.A.
Average per year for period 1959-69	188	58	246	4	3	7	2.1%	5.5%	2.8%

Source: NMB Annual Reports, 1959-69.

* Stoppages less than 24 hrs. not shown.

In the fiscal year ending June 30, 1969, there were only ten strikes in both the railroad and airline industries which lasted over 24 hours. These statistics are a far cry from the proclamation contained in S.560 that present procedures for dealing with disputes have proved insufficient to prevent serious disruptions in the rail industry composed of over 650,000 employees.

The error in this assertion becomes more apparent upon comparison of these disputes with work stoppages in industries not covered by the Railway Labor Act. Below we have inserted two tables taken from the Bureau of National Affairs' "Labor Relations Yearbook" for 1970 (p. 513), the source being the Bureau of Labor Statistics.

WORK STOPPAGES RESULTING FROM LABOR-MANAGEMENT DISPUTES[1]

Period	Number of stoppages		Workers involved in stoppages		Man-days idle during period	
	Beginning in period	In effect during period	Beginning in period	In effect during period	Number	Percent of estimated working time[3]
1961	3,367	---	1,450,000	----	16,300,000	0.11
1962	3,614	---	1,230,000	----	18,600,000	0.13
1963	3,362	---	941,000	----	16,100,000	0.11
1964	3,655	---	1,640,000	----	22,900,000	0.15
1965	3,963	---	1,550,000	----	23,300,000	0.15
1966	4,405	---	1,960,000	----	25,400,000	0.15
1967	4,595	---	2,870,000	----	42,100,000	0.25
1968	5,045	---	2,649,000	----	49,018,000	0.28
1969	5,700	---	2,481,000	----	42,869,000	0.24
1970[2]	5,600	---	3,300,000	----	62,000,000	0.34

[1] The data include all known strikes or lockouts involving six workers or more and lasting a full day or shift or longer. Figures on workers involved and man-days idle cover all workers made idle for as long as one shift in establishments directly involved in a stoppage. They do not measure the indirect or secondary effect on other establishments or industries whose employees are made idle as a result of material or service shortages.

[2] Preliminary estimates.

[3] The figures for idleness as a percent of estimated total working time for 1961 through 1970 are revised to include agriculture and government. The results are lower than would be the figure derived from the previous method.

Source: Bureau of Labor Statistics.

WORK STOPPAGES—MAJOR ISSUES AND DURATION: 1967 TO 1969

(Includes Alaska and Hawaii. Issues data based on stoppages beginning in year; duration data on stoppages ending in year.)

MAJOR ISSUES AND DURATION	WORK STOPPAGES			WORKERS INVOLVED[1] (1,000)			MAN-DAYS IDLE DURING YEAR (1,000)		
	1967	1968	1969	1967	1968	1969	1967	1968	1969
MAJOR ISSUES									
All issues	4,595	5,015	5,700	2,870	2,649	2,481	42,100	49,018	42,869
General wage changes	2,116	2,344	2,829	1,850	1,550	1,264	30,300	35,852	27,473
Supplementary benefits	62	93	71	16	40	16	238	487	320
Wage adjustments	248	248	292	99	86	144	830	513	1,256
Hours of work	7	6	7	2	1	1	5	6	16
Other contractual matters	47	89	88	41	48	15	321	760	259
Union organization and security	586	513	593	114	112	250	6,450	4,151	7,466
Job security	232	180	190	105	143	76	1,150	1,570	2,273
Plant administration	701	726	882	458	461	513	1,660	4,308	2,845
Other working conditions	104	142	226	51	68	99	281	461	443
Interunion or intraunion matters	470	475	500	102	136	101	892	697	499
Not reported	22	29	22	3	4	1	14	14	16
DURATION									
All stoppages	4,583	5,015	5,690	2,860	2,637	2,362	38,400	53,575	37,312
1 day	579	540	726	254	202	237	254	202	237
2-3 days	659	685	807	746	251	301	1,240	511	596
4-6 days	651	692	756	223	284	324	726	946	1,038
7-14 days	953	1,047	1,111	461	511	416	2,710	3,496	2,652
15-29 days	715	847	952	268	286	384	3,649	4,151	5,196
30-39 days	570	690	792	322	754	372	9,600	17,012	10,154
40-89 days	224	253	272	262	179	140	11,000	8,148	6,236
90 days and over	232	261	274	120	190	188	9,300	19,121	11,203

[1] Workers counted more than once if involved in more than 1 stoppage during year.

Source: Dept. of Labor, Bureau of Labor Statistics; June or July issues of *Monthly Labor Review*, and annual bulletin, *Analysis of Work Stoppages*.

From these statistics in all industry, we can see that from 1961 to 1969 the number of stoppages has increased by 2/3rds, the number of workers involved has more than doubled, and the man-days idled in establishments directly involved in a stoppage has been multiplied four times. The second table indicates that toward the end of the decade the number of work stoppages concerning wages is almost equal to the total number of stoppages on all issues in the first year of the decade. We believe these statistics establish that (1) the performance for resolving disputes under the Railway Labor Act has been far better than the record in all industries and (2) the major cause for the breakdown in the labor relations machinery has resulted to a large extent from the government's inability to control the inflationary pressures created by certain policies engaged in toward the end of the decade. Conversely, the high marks that the Secretary of Labor has given other industries doesn't hold water.

Taking these statistics as a whole, the administration's bill would necessarily have to be the first step, as we previously said, for changing the entire philosophy of collective bargaining applicable to all industries.

Consequently, it is fair to observe that the underlying assumption of need for the drastic legislation proposed are simplistic and false. The over-concentration of the Administration on the few isolated instances of Congressional or Presidential intervention have blinded its appreciation of the overall efficacy of the Railway Labor Act. Fundamentally, this stems from a failure to perceive the causes of labor unrest. Rather, the problem has been viewed solely from the standpoint of procedures with an assumption that they are at fault. If one were required to catalogue the causes of major labor disputes, we would have to contain in that list the inflationary forces; rank-and-file unrest, including the resistance to change in the many productivity-work-rules disputes and the failure of management and lack of cooperation of government to provide adequate job insurance and retraining programs; imposition upon the collective bargaining process to accomplish too much, i.e., social and welfare gains; jurisdictional disputes; governmental interference; inability of existing governmental agencies and the failure to follow defined time limits; the attitude and initiative of the parties, wherein we would include lack of authority in the negotiators (both from the standpoint of ratification on the part of some unions and the subsequent approval of the chief executives of the railroads); and the accumulation of local grievances on railroad properties due to design or the lack of authority in the subordinate official personnel to dispose of them prior to exhaustion of all grievance handling machinery. As one can see, most of these causes are not even attacked or even mitigated by the so-called new procedures. The real reason for this is simple. This is the one point at which the Administration, as well as the general public,

have the least understanding of what to do. And, really, the only solution that they have been able to present out of their frustration is the typical final all-or-nothing approach.

Thus, let us examine the cure proposed by the Administration for dealing with the major disputes in the railroad industry and, in particular, the resolution of national emergencies.

Proposed Section 6 Changes

Any consideration of the emergency disputes provision of the proposed legislation must start with the notice provisions of Section 6. Under this section, as it would be amended by the Administration's bill, parties are to go from the present procedure of open-ended agreements to the system common in industries subject to Taft-Hartley where contracts have fixed termination dates. But this is not all that Section 6 as amended does. Deleted from its provisions are the status quo requirements of present law. Section 6 now contains the important provision that "rates of pay, rules or working conditions shall not be altered by the carrier until the controversy has been finally acted upon" as required under the Act.

However, no corresponding status quo requirement is contained in proposed Section 6. The only freeze on terms and conditions in proposed Section 6 is the requirement that for a period of sixty days after notice of intended modification or termination or until the expiration date of this agreement containing such terms and conditions, whichever occurs later, no change may be made. This raises problems.

Suppose the parties do not reach agreement within the sixty days contemplated by revised Section 6. What are the rates of pay, rules and working conditions in effect upon expiration without a new agreement? True, the alternative procedures when applied appear to reestablish the former terms and conditions of employment, but there can be a very definite hiatus between the termination of the former agreement and the status quo as set by the use of those procedures.

Take another problem. In Manning v. American Airlines, Inc., 329 F. 2d 32 (2d Cir., 1964) the carrier sought to discontinue a check-off agreement upon passage of a fixed expiration date in the agreement establishing the check-off. The union resisted the cancellation on the basis of the status quo requirements of Section 6. The carrier contended Section 6 was inapplicable because the agreement contained a fixed termination date. The court held with the union on the grounds that regardless of the termination date in the agreement the intended change by the carrier brought the matter within Section 6 and with it the requirement that the status quo be maintained until compliance with all the requirements of the section. What becomes of the law established by this case in the light of the Administration's removal of the status quo requirements?

Take an even more important recent decision of the Supreme Court of the United States. In Detroit & Toledo Shore Line R. Co. v. Transportation Union, 24 L. Ed. 2d 325 (Dec., 1969), the Court held that under the status quo requirements of Section 6 of the Railway Labor Act which forbid a carrier from taking unilateral action altering rates of pay, rules or working conditions while a dispute is pending before the National Mediation Board, a railroad may not make outlying work assignments away from its principal yard even though there was nothing in the parties' collective agreement which prohibited such assignments. It therefore upheld the issuance of an injunction against the carrier's effectuation of the change pending negotiation. What becomes of the benefits of this decision to railroad labor? Presumably they would die upon the elimination of the status quo requirements of Section 6 since there are no counterpart requirements in the proposed new Section 6 aside from the sixty-day period.

In the light of the foregoing, suppose a Section 6 notice by a carrier. After the expiration of the sixty days or the agreement, whichever is later, the carrier will put its notice in effect. If the employees strike, there is grave danger that they will be enjoined, at least by the District Court. Even if the Court of Appeals reverses, months or years may pass. Moreover, carriers may in the absence of the restraint imposed by the Detroit & Toledo Shore Line decision of the Supreme Court do what they there attempted -- fail to serve a Section 6 notice but unilaterally put into effect a change in rules or working conditions. If the employees strike, the carriers would claim the dispute is a minor dispute subject to arbitration under newly proposed Section 3, First(i) and seek injunctive relief.

There are other problems presented by proposed Section 6.

The manner of transfer to a fixed date system is complex. The date for service of the first sixty-day notice shall be set by agreement. But if the parties are unable to agree, then the date shall be fixed by arbitration under Section 3, First(i) of the Railway Labor Act. The arbitrator shall take into consideration the "probable intention" of the parties as revealed by custom and practice. The date may not be set more than two years after enactment of the Act.

There is the gravest danger that no Section 6 notice, including a wage notice, could be brought to a bargaining session for two years. Consider: the parties bargain to fix a date. If they cannot agree, an arbitrator must be appointed, etc. Ultimately the arbitrator rules. Only then "may" the notice be served. Presumably a notice served prior to the award would be invalid. If the arbitrator sets the date at less than two years, there might be a court challenge to the award. But let us dismiss this possibility. The process in any event would take months, and when we add whatever time the award would

allow, plus the sixty days itself, it is clear that the two years or the better part of that period would pass, particularly if a carrier was anxious to stall.

Finally, there is the problem caused by the Administration bill's elimination of the Norris-LaGuardia Act and the effect of this on Section 6 notices served by unions to prevent unilateral changes. The carrier seeks its injunction. Heretofore, Norris-LaGuardia was a protection in this area. Now it will no longer be applicable.

Section 403 of the proposed Act states that the Norris-LaGuardia Act "shall not be applicable to any judicial proceedings brought under or to enforce the provisions of this Act." Since the Act amends the Railway Labor Act and the national disputes section of the Labor-Management Relations Act, the argument will be advanced that Norris-LaGuardia is dead for purposes of Section 6 and probably for all Railway Labor Act purposes.

Note that the inapplicability is total. Even Section 8 of the Norris-LaGuardia Act (29 USC §108) is inapplicable. Thus, a carrier may obtain an injunction without making "every reasonable effort" to settle a dispute. Likewise Section 7 (29 USC §107) will not apply. There will be no opportunity to show unlawful acts. The sole restriction will be the usual equity standards for the issuance of injunctions. Presumably, we will revert to "government by injunction" with all the evils we knew before 1932. Indeed, the courts will have additional sanction for intervention because the proposed Act creates rights of court review in several key instances. Moreover, carriers may use Section 401 (suits by and against representatives) as an additional basis for intervention by injunction.

National Emergency Provisions

As has been shown, the Administration's bill eliminates the existing procedures for resolving emergency disputes under the Railway Labor Act

(Section 10) and substitutes the existing provisions of Title II of the Taft-Hartley Act (proposed as Part A) plus a new set of procedures contained in Part B of this Title.

Dealing first with Part A, the President may invoke these provisions whenever there is a strike or lockout, threatened or actual, which affects "an entire industry or a substantial part thereof." Presumably a strike against any major carrier could be deemed to affect a "substantial part" of an industry. The President would appoint a board of inquiry to investigate the issues and ascertain the facts by holding hearings and report to him but without making any recommendations. If no agreement resulted through the board of inquiry, the President then could direct the Attorney General to seek an eighty-day injunction. Transportation industry cases would be heard by a three-judge court with a direct appeal to the Supreme Court. After the injunction is granted, the parties are directed to make "every effort" to settle the dispute. If there is still no settlement, the board of inquiry is then reconvened and is required to report to the President within sixty days as to the position of the parties and the employer's last offer. If the dispute still is not settled, the National Labor Relations Board is directed to take a vote among the employees with respect to the last offer of the employer. This step is to be taken within fifteen days. The National Labor Relations Board then reports to the Attorney General within five days and thereafter the District Court is to dissolve the injunction. The employees are then free to strike. The President reports to Congress and includes in his report the findings of the board of inquiry, the results of the NLRA balloting and his recommendations.

We now move to the second level under proposed Part B of the LMRA. Under Section 214 of the Labor Management Relations Act as it would be amended,

"within ten days" before the injunction is dissolved, the President may move into the controversy and may select any one of three choices. The choices are an additional thirty-day cooling-off period (§217); partial operation (§218) or final offer selection (§219). Presumably this would be during the period that the NLRB was taking its vote among the employees. At any rate, it is clear that the President is to act before the injunction is dissolved. Among the choices open to the President is the choice not to select any of the three options given to him. If this is his choice, then he is to submit a supplemental report and recommendation to Congress. If the President selects one of the three choices, then he is to give appropriate notice to Congress. Congress may reject the choice, and in that case the President is to make a supplemental report or recommendation to Congress (§216). If Congress does not reject the Presidential choice, then the President will proceed to implement his choice.

Under Section 217 (additional cooling-off period) the President may direct the parties to maintain the status quo respecting terms and conditions of employment. There will be bargaining for an additional thirty-day period with the mediatory assistance of a board of inquiry and the Federal Mediation Service. If this does not result in an agreement, presumably the injunction will be lifted and the employees may strike. It should be noted, however, that the proposed legislation nowhere provides specifically for lifting of the eighty-day injunction after the expiration of the thirty-day cooling-off period.

The second of the three choices is "partial operation" under Section 218. The President appoints a special board which is instructed to make a determination* whether and under what conditions a partial strike or lockout

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*The proposed Act appears to use the words "determination" and "order" interchangeably. Usually only "orders" are specifically subject to court review. There may be litigation over this question.

would appear to be sufficient in economic impact to encourage the parties to make continuing efforts to resolve the dispute. The board may determine that a partial strike or lockout cannot take place in accordance with such criteria. If so, it shall so report to the President. Presumably, although this is by no means clear, the parties have a right to court review of such determination. The Act is silent as to what is the next step. Is the union entitled to a lifting of the injunction? We reach an anomolous situation: a board could determine that a partial strike should not be permitted. Presumably neither would a full strike be permitted. The result may be that the union is deprived of any bargaining power whatsoever.

On the other hand, the special board might issue an order permitting a partial strike and lockout for 180 days. The 180 days apparently starts from the date of the order and thus comes after the eighty-day injunction, the ten days allowed the President to make his choice and the thirty days allowed the board to rule. An order allowing a partial strike or lockout is "conclusive" unless found "arbitrary or capricious" by the District Court. Suppose that the court does hold that the order is arbitrary or capricious. What happens then? Does the matter go back to the special board for a new order, or does this mean then that the employees are entitled to a full strike? Are they entitled also to a lifting of the injunction?

The last of the three choices is "final offer selection" under Section 219. The parties are directed to submit a "final offer" and an alternate final offer. There follows five-day bargaining and if that does not succeed in resolving the dispute, then the parties are directed to spend two days trying to agree upon the members of a final offer selector panel. If they are not able to agree upon the members, then the President is authorized to appoint the members of a panel. The panel is directed to hold informal

hearings. During the informal hearings the government has no right to participate. The hearings shall be completed within a thirty-day period. The panel at no time shall engage in an effort to mediate or otherwise settle the dispute in any manner other than that prescribed by Section 219. From the time of its appointment until the panel makes its selection, there shall be no communication by the members of the panel with third parties. The panel may not compromise or alter the final offer that it selects. Selection of a final offer shall be based on the content of the final offer and no consideration may be given to and no evidence shall be received concerning the collective bargaining in the dispute, including offers of settlement not contained in the final offers. The panel should select the most reasonable, in its judgment, of the final offers submitted by the parties, taking into account five factors set out in Section 219(k). These are: (1) past collective bargaining contracts; (2) comparison of wages, hours and conditions of employment with wages, hours and conditions of employees doing comparable work; (3) comparisons of wages, hours and conditions of employment as reflected in industries in general and in the same or similar industries; (4) security and tenure of employment with due regard for the effect of technological changes on manning practices, the public interest and other factors normally considered in the determination of wages, hours and conditions of employment; and (5) the public interest and other factors normally considered. The determination of the panel is conclusive unless found "arbitrary and capricious" by the District Court. Once again the proposed legislation does not spell out what happens if the District Court finds the selection to be arbitrary and capricious. Does it send the matter back to the panel for another trial? Does the court itself make the selection?

Although three new procedures will be available, only one of them is likely to be regularly employed by the President. That one is "final

offer selection." The purported justification for offering the President three choices is that it is designed to keep the parties guessing as to which one he will employ and therefore encourage the parties to collective bargaining. The fact is that an executive confronted with what is regarded as a national emergency dispute will be under pressure to terminate the dispute and thus would be impelled to the "final offer selection."

A. Additional Thirty-Day Cooling-Off Period

First let us consider the additional cooling-off period of thirty days. This follows an eighty-day cooling-off period. If the parties have been unable to resolve their dispute in an eighty-day period, it is unlikely that an additional thirty-day period would effect a resolution. A President faced with this fact and knowing that at the end of the thirty-day period a strike or lockout may occur probably would reject this choice.

B. Partial Operation

The second choice, partial operation, presents even greater complications. Only two criteria for its use are specified: first, whether a partial strike or lockout could take place without imperiling the national health or safety; and second, whether the partial strike or lockout would have a sufficient economic impact to encourage the parties to resolve the dispute. These criteria are broad -- and vague. Moreover, they look in opposite directions. To the extent a strike or lockout does not imperil national health or safety, it is unlikely to have sufficient economic impact to encourage settlement. To the extent it has economic impact, it is likely to imperil national health and safety. Application of these contradictory criteria involves extensive and complex inquiry into market considerations, competition, and other economic consequences of partial operation on the employer, the union and the public. The Board is required to make its determination within thirty days and hold a

hearing in relation thereto. Even with the assistance of experts and consultants provided for by the Act, it would be difficult to arrive at an intelligent decision within the thirty days provided. If a partial strike or lockout were permitted, there would be a long period -- up to 180 days -- of tension. If the dispute were not settled, then the President doubtless would ask Congress for an ad hoc solution. Should the Board determine that a partial lockout or strike is not feasible under the criteria, once again the President probably would ask Congress for an ad hoc solution.

There is an additional objection to the partial operation provision. This provision represents the first explicit recognition by Congress of a right by the railroads and airlines to lock out employees. A lockout involves a shutdown of the facilities. Such a shutdown cannot be reconciled with an obligation under law to provide transportation services to the public. In effect, the partial operation provision constitutes a repeal by implication of vital provisions of the Transportation Act. Moreover, such a provision would provide support for the carriers' contention that all operations may be shut down during a collective bargaining dispute.

C. Final Offer Selection

The third choice, final offer selection, is the one which the President is likely to choose in every case. It has the strong attraction of bringing a dispute to an end. The basic assumption underlying this choice is that it offers an equal threat to employers and unions. It presumes that it will encourage the parties to arrive at a settlement by negotiation. Should the negotiations fail, it presumes that each party's final offer would be "realistic," that is, sufficiently fair to make it attractive to the selectors, but with just an edge of advantage for the side making it. Less would make it

unacceptable to the selectors; more would be needless sacrifice. It is conceivable that the union's final wage offer is less than the carriers; and, in this dilemma, which should they choose.

Consider for a moment the complications which could arise under the game of Russian roulette. The typical pattern of bargaining in the railroad industry in recent years has been that when a union presents its wage package the railroad serves demands for sweeping rules changes. Accordingly, a Board that chooses an offer which in its opinion represents the fairer offer is apt to be making decisions not only with relation to a wage package, but also with relation to rules. In the operating crafts, such as locomotive engineers, wage issues are rarely presented in a pure form, but often involve questions of differentials, mileage components, arbitraries, and operating rules. Under the present system, they are not all raised at the same time. With the fixed termination date on all collective agreements, however, the entire package would be open. If industry-wide bargaining in a craft became the norm, the complicity of this feature would be compounded by the differences in the rules on each property which differences arose from the distinctive features of each railroad. But the decision of the Board with relation to the final offer selected must be made within a period of thirty days from the time the President directs the parties to submit their final offers to the Secretary of Labor. In point of fact, because of the three-day interval (for submission of offers) the five days (set aside for bargaining after the parties receive each other's offers), and the two days set aside for selection by the parties of the three-member selection panel, the Board is left with only twenty days to make a decision on these complex matters, assuming it convenes immediately upon selection by the parties or the President.

Demands which were only casually referred to in the negotiations might well be included in the final offer, and as to these demands the parties

would come to the hearing without any collective bargaining on the issues and inadequately prepared to meet the issues involved. In order to be prepared, it would be necessary for a railroad union to assume that every demand made by the carrier in its counter-offer might well be included in its final offer, and accordingly prepare testimony for presentation to the Board during its hearings on all such issues. This would place an intolerable burden upon a union. Apart from this, at least in the railroad industry, the Board would be presented with problems involving changes in work rules which call for an exceptionally high degree of experience and understanding of railroad jargon.

There are other important objections. "Final offer selection" does not take into account the fact of life of trade unionism. The leaders of a trade union represent a constituency. That constituency measures the effectiveness of their leaders primarily in terms of what they achieve in the collective bargaining process. The expectations of the constituency may be unrealistic but they play an important role in the initial bargaining demands. In almost all instances the members of a union will accept in a collectively bargained settlement substantially less than the initial demands. But it is naive to assume that the leadership can afford to take responsibility for making an offer far below the initial demands -- an offer which may become the final offer selected.

It should also be noted that the panel selectors are not free to exercise their own discretion. In fact, they are forbidden to engage in mediation and prohibited from receiving suggestions from third parties. They are limited solely to choosing a contract offered by one side or the other. Neither contract offered may be fair. Neither contract offered may reflect the balancing of interests which should be the hallmark of a collective agreement. They are not given authority to change the contract proposals submitted.

Irrespective of what the evidence shows, the only determination they can make is that one offer is fairer than the other. But this determination is not the same as a determination that the offer is a fair and a reasonable resolution of the conflicting interests of the parties.

The Administration contends that the final offer selection "does not contain those aspects of compulsory arbitration which are inconsistent with free collective bargaining." This assertion is based upon the fact that the offer selected represents the offer of one of the parties rather than a decision imposed by the selectors or an outside agency. True, but this is a vice, not a virtue. One party is saddled by law with his adversary's draft of a collective bargaining agreement. He must accept this agreement. He must accept it under compulsion of law. It is the use of governmental power to enforce a unilateral decision of one of the parties to a labor dispute -- the antithesis of collective bargaining.

Evaluation of Proposed Changes in Minor Disputes Provisions

There are a number of important objections which legitimately may be made to the legislative changes sought by the Administration in the handling of minor disputes in the railroad industry.

First, the proposed Congressional findings do not support the alleged legislative purpose. In Section 2(b)(5), Congress declares its purpose and policy to assure so far as possible that no strike or lockout in the transportation industry, or a substantial part thereof, will imperil the national health of safety -- "by amending the Railway Labor Act to eliminate reliance upon governmental machinery or intervention for adjusting grievances . . . " Accordingly, the proposed bill eliminates government-sponsored grievance arbitration and substitutes private arbitration by the parties.

However, as anyone with an understanding of the Railway Labor Act knows, the settlement of minor disputes has not had any bearing on national or local strikes or lockouts in the railroad industry, at least since the Chicago River case in 1957. Since the carriers may refer minor disputes to the NRAB unilaterally they can and do avoid strikes over such disputes. Indeed, over our objection in the courts, the carriers have often been successful in submitting what would be "major" disputes to the NRAB, thereby enjoining strikes over matters which ought not to be enjoinable under the Railway Labor Act. Moreover, even if strikes over minor disputes were not enjoinable they could hardly result in national emergency disputes since such disputes involve the employees of one carrier only. In short, grievance and minor disputes have no bearing on national or local emergency disputes in the industries covered by the Railway Labor Act.

Accordingly, whatever may be said about industries outside the Railway Labor Act where grievance and contract interpretation disputes are not subject to compulsory arbitration, there is no need for altering the Railway Labor Act scheme of settling minor disputes, at least on the purported ground that such change is essential to avoid national emergency strikes or lockouts. The findings upon which the proposed amendment is based are palpably erroneous.

Second, no industry other than the railroads and airlines has the federal government imposed compulsory arbitration of minor disputes. Even the proposed bill does not impose it in the non-Railway Labor Act industries. Compulsory arbitration of minor disputes in the railway labor field had its genesis in the 1934 amendments. Those amendments were proposed by the government and supported by both the railroad labor unions and the carriers. There is no rationale justification for requiring compulsory arbitration of minor railway disputes while, on the other hand, amending the Act to remove the

existing quasi-governmental machinery for handling those disputes. If, unlike in other industries, the government continues to require compulsory arbitration of minor disputes, the existing machinery should also be retained.

Third, only four years ago, Congress had before it the overall question of the workings of the NRAB. Congress determined only to create P.L. Boards in order to expedite decisions. It also made other changes not here relevant as to the finality of money awards and review of awards. No one suggested to Congress and Congress at that time did not contemplate scrapping the entire Adjustment Board procedures. There was no need for such change then and there has been no evidence offered to support such dissolution now. In its most current report the NMB has given no indication whatever that the method of handling minor disputes under the Railway Labor Act is not functioning well. See Thirty-fifth Annual Report of the NMB, 1969, pp. 43-47. On the contrary, NMB observed that in 1969 the NRAB disposed of 1,724 cases while receiving only 978 new cases and that P.L. Boards during 1969 had disposed of 1,652 cases (Ibid at 45 and 47). Thus, even if the government were to argue that the change from public to private arbitration ought to be made because of the delays incurred in the Adjustment Board proceedings the fact is that the delays have been materially reduced. Moreover, there is no assurance whatever that in shifting from the NRAB and P.L. Board systems to private arbitration that there would be any reduction in the delays incurred in the arbitration process.

Fourth, there are numerous other problems created by the proposed legislation. Some illustrations follow:

(a) Section 202(b) of the proposed bill provides that disputes pending before the NRAB may be removed "by the grievant" to the private arbitration process if the dispute is not then being heard by the NRAB. Who is

the grievant? The employees? Ordinarily, submissions to the NRAB are made not by the grievant but by the union representative on his behalf. Can the union remove submitted cases to the private arbitration process under the proposed bill?

(b) Section 202(b) does not expressly state that the awards rendered in private arbitration shall be final and binding. While it is probably intended that the awards of private arbitrators are to be final and binding, an argument could be made that this was not the intent of the bill. For example, Section 3, First(m) of the Railway Labor Act expressly provides that awards of the NRAB "shall be final and binding upon both parties to the dispute." However, that section relates only to awards of the Adjustment Board and the Adjustment Board passes out of existence with the proposed bill. Moreover, the proposed bill provides with respect to private arbitration that such "arbitration shall prevail with respect to such disputes until such time as the collective bargaining agreements between the parties contain no-strike, no-lockout clauses and provisions for grievance machinery terminating in final, binding arbitration." (Emphasis supplied.) It might therefore be argued that until such time as the parties agree to final and binding arbitration of disputes the awards of private arbitrators are not final and binding.

(c) The proposed legislation does not specifically amend Section 3, First(p) or (q) of the Railway Labor Act except to the extent that the amendment to Section 3, First(i) abolishes the NRAB and P.L. Boards. Section 3, First(p) provides that the unions may seek enforcement of awards against carriers in the district courts and that on the trial of such enforcement proceedings the findings and orders of the Adjustment Board "shall be conclusive on the parties" and further that the union shall be allowed a reasonable attorney's fee if it

prevails on the merits. This subsection also provides that the court may not set aside an order of the NRAB "except for failure of the division to comply with the requirements of this Act, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order." Under the proposed bill, it seems clear that the entire section on enforcement will drop out of the picture -- even though it is not expressly repealed by the proposed legislation -- because the premise of the present language is the enforcement of orders of the Adjustment Board which is dissolved. This repeal may be of serious consequence to the unions and encourage the carriers to drag their heels on otherwise valid claims. The standards for and limitations of judicial review of awards rendered by the NRAB under the Railway Labor Act have been long and painfully established in the courts. There have been numerous cases on the scope of review. In substance they hold that it is very limited. See Gunther v. San Diego and Arizona E. R. Co., 382 U.S. 257 (1965).

Similarly, under Section 3, First(q) unions or carriers may seek review of adverse NRAB awards in the district courts. While the courts are given power to affirm the order of the Board or to set it aside in whole or in part or may remand the proceeding to the Board for such further action as it may direct, on such review the findings and orders of the division of the Board "shall be conclusive on the parties" and the court may not grant relief except for the same limited reasons set forth in Section 3, First(p). These limitations on judicial review with respect to NRAB awards are not made applicable to awards rendered by private arbitrators under Section 202(b) of the proposed legislation.

(d) While technically not within the scope of this portion of our analysis which deals with minor disputes, attention should also be drawn to

the fact that Section 402 of the proposed bill repeals entirely Section 5 of the Railway Labor Act. Section 5, Second of the Act imposes the duty on the NMB of interpreting the specific terms of mediation agreements. Since 1934 the NMB has disposed of 116 cases under this provision of the Act. Thirty-fifth Annual Report of the NMB, 1969, p. 44. Under Section 202(g) of the proposed bill all functions of the NMB which in the judgment of the President are primarily related to mediation shall be transferred to the Federal Mediation and Conciliation Service. The question arises whether the NMB's interpretative function under Section 5, Second of the Railway Labor Act is to be transferred to the Federal Mediation and Conciliation Service. Even if it could be considered as a transferred function, where in the amended Railway Labor Act is there any provision or authority for interpretation of mediation agreements since Section 5, Second is repealed?

In summary, we raise the following objections to the Administration's bill. The status quo provisions contained in present law should be strengthened rather than eliminated as proposed by S. 560. The proposed mechanism for converting from open-end agreements to fixed expiration dates could delay for two years the right of a union to demand even wage changes. The elimination of Norris-LaGuardia's applicability to any judicial proceedings under the new law will prejudice Section 6 notices served by unions to prevent unilateral changes by carriers and invites the resurrection of unrestricted "government by injunction."

The Administration's proposals for resolving emergency disputes are based upon invalid and unsupportable findings; would unavoidably cause more rather than less delay in the resolution of such disputes; violate the premise upon which they purport to be based of encouraging more collective bargaining by introducing more rather than less governmental intervention;

expressly invite the courts into the negotiating process at several crucial points, thus opening the door to injunctions, appeals and attendant delays; and realistically appraised the so-called three choices of action dissolve into one, the final offer selection, which is an unacceptable method for resolving disputes.

Viewed as a whole, the intricate and time-consuming provisions for resolving emergency disputes are undeservedly punitive and oppressive. They appear to rest on the supposition that strikes in the transportation industry result from hot-headed actions by impetuous union representatives. By way of illustration, the Administration's bill selects as one of its three methods of resolving emergency disputes the "cooling-off" concept -- as though the Government was dealing with a brawl over trivia.

The realities are quite different. Railroad labor disputes of national consequence arise out of serious economic issues, particularly today when inflation ravages paychecks. Strikes are not lightly called because they are grave undertakings and union leaders are conscious of their serious responsibilities and obligations to the public as well as to the employees they represent. They are also aware -- as they are entitled to be -- that the strike remains labor's ultimate resort and that the right to strike, after all other prescribed means have failed to resolve a dispute, has been preserved under the Railway Labor Act and, at least theoretically, under the proposed legislation. But the right to strike is considerably weakened under the Administration's bill because it is circumscribed with a maze of new procedures promising greater delays and with almost unlimited judicial intervention.

Whether we like it or not, it is a fact of life, today as perhaps never before in our generation, that people tend to over-react when they must act. There is a real danger that if the Administration's bill becomes

law it will tend to thwart settlement of emergency disputes. What real inducement is there for carriers to settle under legislation which offers so many avenues of escape to echelons of inquiry boards and panels plus the courts standing by as guardian angels to rectify any action which they may conclude is "arbitrary or capricious?" Such an arrangement is not only unfair legislation -- it is dangerous because it will encourage carriers to proscrastinate and then go to the courts, spawn suspicion, frustrate unions and embitter employees.

In addition, the proponents of S. 560 fail completely in showing that minor disputes in the railroad industry cause strikes or lockouts which imperil national health or safety. There is no justification for amending the Railway Labor Act so as to substitute compulsory private arbitration in this area. The 1966 amendments to the present provisions have served their purpose. In fact, the proposed revision of the minor disputes provisions would appear to have as their major purpose the elimination of the judicial enforcement and review provisions of Section 3, First(p) and (q) of the Railway Labor Act, which Congress enacted in 1966.

With respect to the miscellaneous provisions contained in Title IV of S. 560 , Section 401 and 403 are entirely objectionable in not only changing the existing labor relations law philosophy in the railroad industry but also in improperly involving the judiciary in labor relations matters and creating the possibility of burdening the judicial process with additional litigation when it is presently overtaxed to administer its existing case load. Section 401, a counterpart of Section 301 of Taft-Hartley, would precipitate a flood of litigation since it permits court actions by carriers against unions for alleged violation of agreements or arrangements in the district court where the union maintains its headquarters or in any district where its officers or agents are servicing members.

Section 403 prohibits the use by any court of the restraints against injunctions contained in the Norris-LaGuardia Act in any judicial proceedings brought under or to enforce the provisions of the Railway Labor Act. Such a provision can only be viewed as completely anti-labor. The courts have already severely limited the application of the Norris-LaGuardia Act in cases brought to require compliance with affirmative requirements of the Railway Labor Act, but the purpose of the Administration in doing away with it entirely insofar as the Railway Labor Act is concerned can be viewed as nothing short of an effort to give the courts unrestricted power to issue injunctions.

Having raised our objections and comments on S. 560 and other bills with similar intent, we believe it in order to describe our reasons for supporting S. 832.

First, passage of S. 832 would create the necessary conditions for returning to those aspects of labor relations in the railroad industry which existed at the passage of the Railway Labor Act and which caused the procedures in the Act to work for so many years. Second, it is the only alternative that would reduce the alleged serious and adverse affects of emergency disputes, the sole basis of the recent rash of legislation, and yet provide a palatable alternative permitting some semblance of free collective bargaining and free enterprise to remain alive in the railroad industry.

As the information and statistics we have supplied establish, collective bargaining in the railroad industry at the time of the passage of the Railway Labor Act was on a local or carrier basis. Since the parties directly involved in the dispute met with each other, many of their disputes were resolved through the processes of the Act. Even in those instances where the Section 10 or emergency board provisions were invoked, the board's activities dissipated most of these head-to-head confrontations. And in the very few

cases where agreement was not reached on that basis, there was no true serious interruption to commerce or adverse effects upon the public. Basically, we are saying that the Act did work when its procedures were confined to the problems of each railroad, for common logic dictates that the individual railroad can best decide the conditions under which that particular railroad can adequately operate, and that direct dealings between management and the representative of its employees enable them to appropriately dispose of their problems. In short, there is nothing basically wrong with the Railway Labor Act in itself. We believe the history in the airline industry, particularly the collective bargaining between individual air carriers and the Air Line Pilots Association, is a further testimonial to the basic soundness of the Act.

If there has been a breakdown in collective bargaining in the railroad industry in recent years, it has stemmed from the tendency to deviate from the spirit and intent of the Act to bring about what has been termed "obligatory" industry-wide bargaining which was never intended under the Act, and from the easy availability to rail carriers through government intervention through the issuance of court orders and injunctions or by Presidential or Congressional intervention.

The first point may be exemplified by the first steps in our own negotiations which were concluded on May 13, 1971. As you all know, the processes of the Act are activated through the service of a Section 6 notice. A General Chairman serves that notice on his railroad; or the railroad may serve a notice on the General Chairman of a particular organization. Under the Act, a conference is to be held by them on the property within 30 days after the notice is served. In our dispute, however, where an individual chairman served notice, some railroads, including one of the largest merged railroads, refused to recognize the formal notice and did not establish the

initial conference. On the rest of the railroads, the conferences were only long enough to inform the General Chairman that that railroad had given its power of attorney to the Chairman of the National Railway Labor Conference, Mr. J. P. Hiltz, Jr. A number of the General Chairmen requested Mr. Hiltz to meet with them; but they were informed that all bargaining regarding wages and operating rules must be done on an industry-wide basis.

During the subsequent conferences at the national level, it became apparent that though the National Railway Labor Conference demanded that our negotiating team represent all committees on all items involved in the settlement of the current issues, which could have effects on hundreds of different agreements and practices, the representatives of the individual carriers were never able to agree on just what authority they had given their negotiators at the national level or what issues they had fully transferred for handling by their Washington labor experts.

Furthermore, at the initial stages of the meetings between the BLE and the NRLC, the carriers merely threw across the table an offer which was in substance an enlargement upon the work rule propositions recommended by Emergency Board No. 178 as its proposed settlement for another organization in a matter that was outside the purview of the existing dispute involving the BLE.

Even though we ultimately reached an agreement between ourselves, the fact remains that the carriers created a significant number of obstacles as a barrier to meaningful collective bargaining. By consistently keeping the Carriers Conference Committee at the bargaining table through various proffers and counterproposals which were made item by item, we were finally able to reach a period of time when the carriers' attitude had changed in that they could no longer cope with the intricate turns which had been taken in their

grand strategy. In other words, they had been estranged from their usual lifeline so that they were willing to meet and treat.

Assuming that an agreement had not been reached, this organization would have been faced with other problems which have been encountered by us and the other organizations. After the many months of attempting to progress our notices, we would have been forced to participate in mediation sessions before the National Mediation Board. This again, along with the probability of the appointment of an Emergency Board, has allowed the carriers to evade their obligations rather than providing for the prompt and orderly settlement of these contract disputes. With this lapse of time, the so-called "cooling-off" period can be considered a "heating-up" period. The initial period of time may be considered as being charged against us, but there is no reason to permit the Mediation Board to hold on to a dispute for more than 30 days. Unlike the Federal Mediation and Conciliation Service, the Mediation Board can retain jurisdiction for months and even years. As an aside, we suggest that Congress may wish to resolve this problem by providing definite time requirements, particularly applicable to the mediation process.

Finally, assuming none of these procedures led to an agreement, the organizations, after having been involuntarily required to bargain on an industry-wide basis, would have been required by the Federal courts -- at least until the Delaware & Hudson decision in April of this year -- to engage in national strikes, thereby creating the emergencies about which there have been complaints by the members of this Committee.

Now that the courts have applied the law as it was written and intended to be applied, S. 832 will statutorily codify that principle and will provide the definitive meaning of a selective strike. Further, it will properly prevent those carriers, which are continuing to operate, from creating a nation-wide emergency through a national lockout. Most importantly, it

will reverse the trend by railroad management of not seeking to resolve their own labor problems. We point, for example, to the most recent dispute where the Chicago and North Western Railway, and also the Central of New Jersey, were able to satisfactorily work their way out of the same problems by individual handling. Since the pattern principle has become a fact of life in this industry, the agreement on North Western, while tailored to its specific needs and requirements, bears in all major respects similarity to our agreement as well as the August settlement of another organization. In the event the carriers and the organization involved in a future dispute desire to carry out nation-wide bargaining, it is a valid assumption that the agreement to do so would include a provision for terminal disposition of that dispute.

Since S. 832 is in line with the philosophy upon which our federal labor relations law has been built, we believe it should be allowed the test of time. It is the only alternative that has been raised which will preserve the free collective bargaining system and which is in accord with our other democratic institutions. Surely, compulsory arbitration does not fit that description. Compulsory arbitration may be the substitute in a completely regulated industry in a society which dictatorially enforces its commands. The Brotherhood of Locomotive Engineers does not believe that we live in that kind of environment, that we need that kind of government, or that the average citizen wants or will accept that kind of government.

The CHAIRMAN. We will have another meeting shortly on the same subject. Thank you.

(The meeting was adjourned at 12:10 p.m. It was recessed to reconvene at the call of the Chair.)

NATIONAL EMERGENCY DISPUTES, 1971–72

THURSDAY, APRIL 6, 1972

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

The subcommittee met, pursuant to notice, at 10:15 a.m. in room 4232, New Senate Office Building, Senator Harrison A. Williams, Jr. (chairman of the subcommittee) presiding.

Present: Senators Williams, Javits, and Packwood.

Staff members present: Stewart E. McClure, staff director; Robert E. Nagle, general counsel; and Eugene Mittelman, minority counsel.

The CHAIRMAN. The Subcommittee on Labor is continuing its hearings on labor disputes legislation. We have as our first witness F. L. Wyatt, senior vice president of the Weyerhaeuser Co. representing the Forest Industries Council.

STATEMENT OF F. L. WYATT, SENIOR VICE PRESIDENT, WEYERHAEUSER CO., ON BEHALF OF THE FOREST INDUSTRIES COUNCIL, ACCOMPANIED BY JOSEPH B. McGRATH, VICE PRESIDENT, GOVERNMENT AFFAIRS, NATIONAL FOREST PRODUCTS ASSOCIATION, AND RALPH KITTLE, VICE PRESIDENT, CORPORATE AFFAIRS, INTERNATIONAL PAPER CO.

The CHAIRMAN. You are based here?

Mr. WYATT. No, I am not based here.

The CHAIRMAN. We appreciate your coming here and we look forward to your thoughts on this very important matter.

Mr. WYATT. Thank you.

Senator, I have with me at the table this morning on my left Mr. Ralph Kittle, vice president for corporate affairs of the International Paper Co., and as my counsel on my right Mr. Joseph B. McGrath, vice president for government affairs of the National Forest Products Association.

The CHAIRMAN. How long has Mr. McGrath been in that position?

Mr. WYATT. A few months, since November of last fall. Before that time he was with the National Association of Homebuilders.

The CHAIRMAN. We have seen him in that capacity in another committee.

Mr. WYATT. I have submitted my statement to the committee which I respectfully request be accepted. I will attempt to shorten it in the interests of your time. I will skip some of the reading.

The CHAIRMAN. All right. I personally have read it, but other members might not have. I appreciate that abbreviation. The whole statement will be in the record at the end of your testimony.

Mr. WYATT. Mr. Chairman and members of the committee: My name is F. L. Wyatt and I am senior vice president of Weyerhaeuser Co. with headquarters in Tacoma, Wash.

I am appearing before the subcommittee today as spokesman for the Forest Industries Council, a policy coordinating body composed of the Nation's organized lumber, plywood, pulp and paper, and allied manufacturing industries. The council's producing members are the National Forest Products Association, the American Pulpwood Association, the American Paper Institute, and the American Plywood Association.

We appreciate the opportunity to present our views on the various measures concerning strike legislation under consideration before this committee. Our allied industries are completely dependent upon all surface public transportation facilities, particularly upon railroads and trucking, and to an important but lesser degree, upon inland and intercoastal water carriers.

Although most of our products are consumer domestically, a significant element of our industry is also involved in foreign commerce by ocean transport. Consequently, a strike in any of the surface transportation industries affects us directly. Prolonged strikes can and have caused closures of plant and mill operations in our industry and others.

There are some large corporations in our industry which can weather losses resulting from transportation stoppages. However, there are some 36,000 forest products operators, 95 percent of whom are classified as small business.

Individually, they are incapable of protecting themselves from transportation problems, which, under extreme conditions, can affect their very existence.

Our industry, as a major employer of union labor, appreciates the problems attendant to the consideration of any legislation affecting labor management relationships. I am personally familiar with many of these conditions and have been involved for almost 30 years during my professional career as a spokesman for management in labor relations in California and on the west coast.

The transportation industries perform a public service to shippers and users who are never parties to disputes between transportation management and labor. Nevertheless, they suffer extreme hardships as a result of such disputes. The effects of major transportation stoppages ripple throughout the economy, even though the specific tieup may be considered technically only a regional dispute.

In addition to the direct economic damage which transportation strikes impose on dependent shippers are those passed on through the distribution chain to the ultimate consumers. A graphic example is the plight of Hawaii during the west coast dock strike, with which the members of this committee are well acquainted. It was settled only after Congress passed ad hoc legislation to halt it.

In that case both management and labor maintained their adversary positions without any visible regard for the hardships their actions imposed on others who were not parties to the dispute.

We feel that both management and labor should be held accountable to the public for such actions. For that reason we urge congressional action which will cause both, transportation management and labor to face up to their responsibilities in the public interest.

The labor laws which govern transportation labor disputes were written more than a generation ago. They were designed for a transportation system vastly different from that which exists today, and in 1926, when the Railway Labor Act was passed, the railroads had virtually a monopoly on long haul and bulk traffic.

There was no such thing as commercial air traffic and trucking as an industry was in its infancy. More than that, neither the structure of the national economy today nor the position of labor in that economy bears much resemblance to the time when these laws were written.

Even more dramatic effects are caused by a breakdown in the national railroad transportation industry as was demonstrated by the 3-day strike in May 1971, by the Brotherhood of Railway Signalmen.

The effect of the transportation stoppage on the entire Nation was so readily apparent that the Congress promptly passed emergency ad hoc legislation sending them back to work for 4 months while negotiations continued.

It is pertinent here to note that those negotiations dragged on for the full 4 months allowed by Congress. They were concluded only at the last minute before the phase II wage guidelines would have gone into effect whereby the wage-benefit terms would be subject to review and possible rollback by the Pay Board.

Then in July of last year the United Transportation Union conducted 18 days of "selective" strikes which caused much congressional debate over possible passage of permanent legislation—such as we are discussing today. That strike was concluded only under presidential pressure, and only because that pressure had the potential of actually bringing about emergency strike control legislation.

At the present time the sheet metal workers are working only because the President called for an emergency board to avert a possible strike on April 1. Also the threatened strike by the United Transportation Union against the Penn Central on April 1, was similarly delayed by presidential intervention.

However, at the end of 60 days, on June 1, if there still has been no agreement all the mechanics of the Railway Labor Act will have been exhausted, and both unions will be free to resort to self-help. The only resource to end the strikes would be an act of Congress.

As Secretary of Labor Hodgson testified before this committee last January 25, the Congress has been obliged five times in the past 4 years to pass special legislation so that crippling transportation strikes could be headed off. The recent west coast dock strike has provided public proof that the U.S. Government has no present laws strong enough to control a powerful union which defies control.

Each act of union defiance requires an act of Congress.

The forest products industry is vitally interested in maintaining the health of all transportation industries. Domestically, the railroads transport 78 percent of all lumber, plywood, and other wood products, and 86 percent of all pulp, paper, and allied products.

Together these represent the single largest revenue from shippers to the railroad industry, totaling $1.562 billion in 1970, or 13 percent of

the total railroad industry revenue. These are primarily long haul shipments. We are at the time heavily dependent upon the trucking industry for short haul to rail terminals.

But in addition much of our long haul traffic is by truck. Trucking is particularly vital in the Southern and Eastern United States. For instance in the 12 Southern States, 84.9 percent of southern pine lumber was hauled by truck in 1970.

Strikes in these basic industries not only are an economic blow to our industry, they damage the health of the transportation industry and ultimately the unions dependent upon them. A railroad strike creates a mad scramble by shippers to find alternative modes of transportation. This often results in permanent loss of revenue to the railroad. And as revenue dwindles, jobs are lost.

The transportation labor laws must be brought up to date to reflect the changes in the system and in the economy which have come about in the past 30 years. Otherwise we will continue to face crisis after crisis in the transportation industry. Such crises have been occurring more and more frequently in the past few years. The laws we now operate under are anachronistic.

Our industry has studied and compared the bills now before this committee. We are addressing ourselves only to those dealing with transportation strikes controls. We are concerned that any legislation which might be passed should be fair to labor as well as to management.

But most importantly, we are concerned that it will accomplish the purpose of providing continuity and reliability of transportation in all parts of the country at all times. We feel that the measure proposed by Senator Packwood, S. 3232, would be equitable to both parties in a transportation dispute. It would, at the same time, protect the interests of users of transportation services who are not parties to the dispute.

We agree with the findings and purpose of S. 3232, and with its approach to the settlement of transportation crisis disputes.

Continuation of the present 80-day cooling off period injunction process, as now provided for under Taft-Tartley is a generally helpful step. Experience has demonstrated that it often results in fruitful collective bargaining.

Beyond the initial 80-day injunction, we think it makes sense to arm the President with a series of alternative steps, as contained in S. 3232. We believe this provides a maximum of discretionary authority and a high degree of flexibility to meet situations which are inherently fluid and variable.

Accordingly, we support and urge enactment of the sections which provide for an additional 15-day cooling off period for partial operation and for final offer selection.

These portions of the bill are complicated in their practical application and execution, but they provide a more effective legal framework for the resolution of national transportation disputes than anything presently in the law.

The final offer selection proposal as contained in S. 3232, is certainly not, in our opinion, an abridgement of the collective bargaining process nor does it constitute mandatory arbitration. The collective bargaining process remains unchanged. Furthermore, no third party

or parties are permitted to alter the terms of either labor's or management's final proposal.

The final offer selection proposal simply guarantees that any stalemate will be resolved by an impartial selection of either labor's or management's final offer, and that it will be binding upon both. In addition, it provides for judicial appeal.

Our industry also endorses title III of S. 3232 which would establish a National Special Industries Commission to study ways to revise the collective bargaining process so as to minimize work stoppages which really create national emergencies. Whereas title II of S. 3232 provides for some immediate and much needed relief in the vital transportation industries, title III provides for a soundly based study to see if further revision of any legislation relating to the collective bargaining process is indicated in the national interest.

Your committee and the sponsors of S. 3232 may consider further amendments to improve its provisions, and if so, we have the following recommendations:

1. In establishing the criteria for determining when a labor dispute will imperil the Nation or a substantial sector thereof, the bill should stipulate that the economic impact of the dispute will also be taken into account in addition to its effect on health and safety.

We urge an amendment to S. 3232 adding the word "welfare" to the pertinent sections of the bill, so that the criteria will read, "Imperil the national health, safety or welfare, or the health, safety or welfare of a substantial sector of the Nation."

2. Under the partial cooling off provisions (page 8 of the bill) in the proposed section 218(b)(1), the second sentence should be amended to read, "The board shall not issue any order when a greater economic burden is placed on any party than that which would be caused by a total cessation of operations." As presently phrased, we feel the sentence is ineffective and too general to constitute a legal standard for administrative action. The amendment we propose states the intent of the section much more clearly.

3. With respect to judicial review of the final offer selection procedure, under section 219(n), we think the criteria for review should be broadened to include a decision "not funded in fact" as well as one which is found to be "arbitrary or capricious." The latter two criteria are rare, in any event, but a board's decision, especially with respect to the grounds for a partial operation, should certainly be well founded on the facts developed in the record of this case.

I would like to depart from the text of the statement to share with you a reflection on other testimony presented before this committee, and with respect to the final offer selection; it is in the nature of a personal suggestion, or convention.

A great deal of time has been spent in debate as to whether this is, in fact, a provision which is compulsory arbitration pure and simple, called by another name.

I don't share that view. I do not think it is the same, and I believe that the real objective of final offer selection is not to get a final offer selected, but to provide the parties for what might be the first time in a long negotiation a real knowledge of what the other party is willing to stand on, or is willing to submit and have selected, or rejected, against the other parties' final offer.

Consequently, the most helpful input to a free process is the fact that the final offer selection procedure has as its terminal facility, if you will, the fact that somebody may select one final offer or another, but in the meantime makes available to both parties that position that the other one is willing to take. That suggests to me that free collective bargaining can certainly take place in that period of time to the benefit of the public and to both parties.

So, if I had a suggestion to make personally, I would hope that the 5-day period now provided in the legislation between a determination that this alternative is going to be used and the time that the matter is before the impartial committee could be extended while the parties consult the individuals they represent, it has a real opportunity of bringing about a great many settlements without finally resorting to the final offer selection, with somebody selecting one or the other.

However, I would like to emphasize that we strongly support S. 3232 as presently written. We believe it is a sound bill as currently drafted. Our recommendations are simply to refine and to improve its provisions.

We especially commend S. 3232 because it concentrates on the problems of the transportation industry. We recognize that there are serious labor dispute problems in other industries. However, those in transportation are crucial to the entirety of commerce in the United States.

They cannot wait for generalized labor-management solutions. Furthermore, the approach in S. 3232 will unify the treatment of labor disputes in the total transportation industry, and this is a good thing in itself. We urge and support early and favorable action on S. 3232 both in this committee and in the Senate.

Thank you for this opportunity to appear and to present our views.

The CHAIRMAN. Thank you, Mr. Wyatt.

Senator Javits, do you have anything?

Senator JAVITS. No. I appreciate very much the testimony. I notice the support of the bill introduced by my colleague, Senator Packwood, and I know the corporation which is here concerned, and something about their problems.

For many years, probably my closest friends in the world were the Zellerbachs.

I appreciate very much the testimony.

The CHAIRMAN. Senator Packwood.

Senator PACKWOOD. Mr. Wyatt, you mentioned your background in labor management relations. I wonder if you might detail a little more your experience in arbitration?

Mr. WYATT. I will be happy to, Senator. I began in labor relations work at about the time of World War II. I have been in it continuously from about 1946 along with other management responsibilities.

For a period of somewhere between 5 and 10 years, I served as president of an organization known as the California Processors and Growers which was a collective-bargaining association representing the entire California canning industry. In that capacity I represented 46 canning companies, large and small, in their collective bargaining relationships with the International Brotherhood of Teamsters. At the same time, I was employed in private industry as director of personnel and labor relations for two different companies.

In 1957, I came with the Weyerhaeuser Co. in Tacoma as vice president of personnel, and also supervised labor relations with the major woodworking industries and the forest products industry, both in pulp and in the solid woods part of the industry.

In that capacity I served as chairman and spokesman for six of the larger operators in the solid wood side, and represented the Weyerhaeuser Co. in negotiations nationwide for the Pulp & Paper Workers as well.

Senator PACKWOOD. In the past, you have both negotiated new contracts and arbitrated grievances under existing contracts?

Mr. WYATT. Yes, I have.

Senator PACKWOOD. The charge has been made with relation to final offer selection that it is impossible to apply in many industries where the arbitrator will not be able to make a fair decision because the multitude of issues is so complex.

Would that be your experience?

Mr. WYATT. No, it is not, Senator. It is no more difficult to delineate that multitude of issues by final offer selection than by any other means. We need to find out on both sides of the table where the bodies are buried, and what is the real problem as to the problem that is asserted as being the problem.

We have all that complexity of issues to finally get down through to the settlement agreement or a new contract. I suggest no further complications than already exist in putting my position before the impartial board and say, "I am willing for you to look at this."

Senator PACKWOOD. Isn't it also true that when you get down to the final offer, most of the issues have already been resolved in the bargaining? You are not talking about the whole package of unresolved issues, you're talking about a few major ones.

Mr. WYATT. I think that is true. There are many times, also, that you are already into a strike without knowing the score—the sore point. You may have ideas about it. You may even have talked privately with the union representative, but you are not sure he is really leveling. He may be asking for 25 cents an hour when he is really concerned about your overtime provisions or your pension plan, and that is why I think the final offer selection (which I happen to think is extremely innovative and creative, a terminal facility, if you will), avoids the parties preparing for arbitration instead of preparing for settlement, and it does make available to us a position that we might be unaware of until we are well into a strike.

Senator PACKWOOD. It is also alleged that the politics governing both the professional negotiators for the unions and management would allow neither side to really put forth what they think their final offer is for fear they would be booted out or discharged as negotiator.

Would that be your experience?

Mr. WYATT. I don't think that changes the difficult responsibility that the professional negotiator always has who recognizes that he has people in the back room behind him, and yet he realizes he has to come to rest with the other side of the table.

Under the terms of the final offer selection, I don't conceive of the position being any different. He is always in that position, and there is also the faithful union negotiator who says, "I understand you, but the boys in the back room won't buy it."

Senator PACKWOOD. That isn't any different from when you negotiate the contract and have to go back and say "Fellows, that is the best I can do."

I have nothing further.

The CHAIRMAN. Mr. Wyatt, something may have gotten by me here. Under the final offer selection procedure it has been suggested that most of the issues in dispute will have been settled, and only a few major matters remain. As I read the Packwood bill, there is nothing in there to eliminate from the final offer those agreed upon areas.

In other words, all the issues are subject to the final offer on either side, as I read it. Is that your understanidng?

Mr. WYATT. Yes, I would read that the same way, and I think Senator Packwood's question and my answer do not ignore that fact. But only that we start out with 35 issues by management and 15 by the union, and by the time you get through the injunction period and you are down to final offer selection, it is in a large number of cases true that a great number of those have been removed in one way or the other.

As I understand the bill, we would indeed have to detail those in our final offer to make it a complete contract as the bill requests, but the facts are that many of them will have been settled and understood.

Consequently, presumably it would appear in the same form in both final offers.

The CHAIRMAN. When there is arbitration, the parties submit only those remaining issues, and not those that have been agreed upon.

I would think that this would be fraught with danger. You haven't isolated those that have been agreed upon and leave for the final offer only those that are remaining in dispute.

Senator PACKWOOD. May I comment?

The CHAIRMAN. Yes.

Senator PACKWOOD. It is almost a moot point. Under arbitration you resolve the unresolved differences, that is one thing. Under final offer selection, if each side agrees on 80 or 90 percent of the contract terms, presenting identical terms on how many holidays, how many weeks of vacation after so many weeks of work, the final offer selector has no choice on those items. He merely determines "reasonableness" based on one or the other of the total offers, and the basic discussion will come on the few unresolved issues.

The CHAIRMAN. There is nothing requiring the parties to put the agreement into the final offer, though.

Senator PACKWOOD. No. What I am saying is that they may have agreed to 7 holidays, or 2 weeks vacation after 1 year of work. Either side could change it, if they want to. If one side says they don't want to stick to that, that is possible. But in practicality, it is very unlikely, because in the experience I have had, and I think Mr. Wyatt's, both sides negotiate in good faith, once they agree on certain items, like the holidays and the health and welfare plan, they don't renege on that.

The CHAIRMAN. Well, I think it is worthy of exploration, because this is pioneering thought.

Mr. WYATT. It certainly is.

The CHAIRMAN. What do you call your industry?

Mr. WYATT. Pulp and paper industry.

The CHAIRMAN. How does the industry bargain on labor contracts? Is it broadly on an industry basis, or company by company?

Mr. WYATT. We have been through both procedures, Senator, for a number of years under the leadership of Zellerbach, as the Senator referred to it, and we have an agreement which is a multiemployer contract whereby all employer participants bargain together in a single entity to a single contract.

That particular method blew up, to coin a phrase, about 6 years ago over pension issues and other things, and we have had new elections, new unions came in, and at the present time there is very little multiemployer industrywide bargaining.

The CHAIRMAN. Who was included when it was multiemployer, the paper people?

Mr. WYATT. Yes.

The CHAIRMAN. As well as the lumber people?

Mr. WYATT. No, the people involved at the time of the multiple employer agreement, if you will, was up to some 80 percent of the total production, perhaps, 75 percent, only on the west coast.

Mr. KITTLE. This was a regional thing.

Mr. WYATT. The Pacific Northwest is a large producing area. These were the Crown Zellerbach and Scott Paper warehouses. They did not include the lumber producers.

On the solid wood side, as we call it, or the lumber and plywood, it is essentially an every man-for-himself operation. There are two major unions involved; the Lumber and Sawmill Workers and the International Woodworkers of America.

There are some groups that bargain together; our company bargains together with some four others to a single settlement on a multiemployer basis. There are some associations of employers that sort of bargain together, but they are not bound to the result; they are free to accept it when it is decided, or to go their own way. Essentially, the pattern is individual now on the building material side. It has been multiemployer for the paper side, but it is not now.

I happen to have been appointed by the industry chairman of the committee to see if we can get the parties back together into a multiple-employer effort again. There has been so much division in the last 6 years I am not sure it is possible to do it.

The CHAIRMAN. Your company has joined with four other companies in a multiemployer bargaining unit?

Mr. WYATT. Yes. We started that in 1963.

The CHAIRMAN. It is with two unions?

Mr. WYATT. Yes, sir.

And those contracts for the entire industry, both in western Canada and the United States expire on June 1st of this year. It will be, I think, if my information is correct, the largest opening in 1972 in terms of number of employees affected.

The CHAIRMAN. Do you have anything in your present contract that includes anything like the final offer, or anything in the agreement that takes you to arbitration?

Mr. WYATT. In the lumber and plywood side of the industry, I know of no such provision, either final arbitration or final offer selection.

In the pulp and paper side, there is an arbitration procedure for grievances, but not at the contract expiration.

The CHAIRMAN. What do you think of that idea, of the parties agreeing to ultimately put the tough and unresolved issues to arbitration?

Mr. WYATT. I think when the parties really agree to it across the table that that is a desirable terminal facility, and it is a desirable direction. As a matter of fact, traditionally in the logging industry and the lumber industry, it has been a test of economic strength. If we don't like what you did, we will hit the bricks, or "Why don't you go ahead and hit the bricks?"

I think the integration of that industry into homebuilding has rendered that technique obsolete and another one needs to be developed. In the current negotiations which opened this month for the contracts expiring in June, we have asked the unions for grievances during the course of the agreement to be submitted to final and binding arbitration, and that we have a no-strike, no lockout provision as being more relevant.

This is something the employers would have resisted 15 years ago.

The CHAIRMAN. You are not resisting now?

Mr. WYATT. No.

The CHAIRMAN. I think there is only one strike now where the employees—I could be off on this, because it was a casual reading—where the employees want to submit to arbitration and the employers don't.

That is the baseball strike. I think the players have offered to have their pension differences arbitrated. Be that as it may, you have put your whole case for emergency procedures in your industry on the welfare aspect; that is, a threat to the economic welfare of the Nation. It seems to me that you have a health and safety argument. I will tell you, as you look at our Nation, as poorly housed as it is in many areas, you are right in the middle of our hope for a well-housed country, are you not?

Mr. WYATT. Yes, we are. I agree with your statement, Senator. I did not mean to eliminate that from our consideration. I think we are concerned, just as you suggest, and it is one of the reasons that whereas I was once representing employers who would have resisted a union attempt to bring about grievance settlements during the course of a contract through arbitration, I represent five employers today who are asking me to see if the unions won't agree to it as a better procedure than simply work stoppages until the economic effect is sufficient to cause one side or the other to collapse.

I think it is an outmoded technique and not necessary. I do differentiate as to the contract settlement, or at the time the contracts have expired, beween intervention which forces us to a process of arbitration as opposed to a process which makes it clear that we are being asked to get together.

That is opposed to having to prepare a legal case.

The CHAIRMAN. Some of the legislation reaches into other areas beyond just transportation.

Mr. WYATT. Yes, sir.

The CHAIRMAN. I am sure that there will be efforts at some point in our legislative process to broaden it to other industries. How would you in your industry feel about the partial operation and the last offer selection options applied to this vital industry?

Mr. WYATT. May I begin by saying that for 30 years I have conscientiously believed the best method of serving the public interest was

the militant protection of the free collective bargaining process, and I still feel that way. I feel in the transportation industry the evidence is clear that threats to the national health and safety exist.

If there are no terminal facilities to the free process, I look at the final offer selection as aiding and abetting, and enhancing, the ability of the parties to get together without directed verdicts, if you will, or by directed outcomes. I think that title III of this bill, in asking that 2 years be spent in examining the possibility that similar threats to the public welfare exist in other industry, is a sound way to approach it, because I don't believe that the Government intervention, even in what I consider to be well thought out or at least creative innovative procedures that ought to be tried should be taken lightly.

We should understand clearly—and I think the benefit of that 2-year review would be most helpful and prudent in being sure—we are weighing the fact that we are bringing a third party in (selector) albeit desirable in my view, we are bringing them in, and it does change that result.

So, I would like to see the benefit of that study. Now, to your question, sir, given that that kind of a review were made and that that kind of a study were made, I would be inclined to agree that there will no doubt be found situations to which such procedures should be extended other than transportation.

I would feel we were unduly hasty in view of the issues involved if we were to simply sort of pick 1, 2, 3, steel, auto, whatever you may grab today, and say that then it belongs under the same category; but I believe—well, I would agree that there are no doubt other situations that could be found that need, or would benefit from the same kind of procedure.

I am hard put now to tell you which ones they ought to be or to tell you what the priorities ought to be.

The CHAIRMAN. Do you have anything further, Bob?

Senator PACKWOOD. I have nothing further.

The CHAIRMAN. You had a chance to review some of the statements that have been made here by Mr. Simkin and others?

I think you were referring to that in part, weren't you?

Mr. WYATT. Yes, I was. It is what gave rise to my feeling that I would like to see a maximum opportunity for the parties to continue to bargain even when faced with final offer selection, because it seems unfortunate to me that we get caught up in whether it is or is not compulsory arbitration. The effect of its operation is very practical. They are just not the same thing.

The CHAIRMAN. Wouldn't you suggest that should be central to our work, that finding of the key that would encourage the hardest kind of earnest bargaining toward a private settlement?

Mr. WYATT. I would, indeed, Senator. I certainly agree, and I appreciate your courtesy in the hearing this morning, and I appreciate Kittle's input.

The CHAIRMAN. I thought you were meeting our demands on time scheduling, and you think we are meeting yours. Everybody is happy. Thank you.

(The prepared statement of Mr. Wyatt follows:)

STATEMENT OF F. L. WYATT

For the Forest Industries Council
Before the Subcommittee on Labor
Committee on Labor and Public Welfare

United States Senate
Thursday, April 6, 1972



Presented in behalf of:
FOREST INDUSTRIES COUNCIL
1619 Massachusetts Ave., N.W.
Washington, D.C.

Producing Organizations
American Paper Institute • American Plywood Association • American Pulpwood Association • National Forest Products Association

STATEMENT OF F. L. WYATT

FOR THE FOREST INDUSTRIES COUNCIL
BEFORE THE SUBCOMMITTEE ON LABOR
COMMITTEE ON LABOR AND PUBLIC WELFARE

UNITED STATES SENATE

April 6, 1972

Mr. Chairman and Members of the Committee:

My name is F. L. Wyatt and I am Senior Vice President of Weyerhaeuser Company with headquarters in Tacoma, Washington.

I am appearing before the Committee today as spokesman for the Forest Industries Council, a policy coordinating body composed of the nation's organized lumber, plywood, pulp, paper and allied manufacturing industries. The Council's producing members are the National Forest Products Association, the American Pulpwood Association, the American Paper Institute, and the American Plywood Association.

We appreciate the opportunity to present our views on the various measures concerning strike legislation under consideration before this Committee. Our allied industries are completely dependent upon all surface public transportation facilities, particularly upon railroads and trucking, and to an important but lesser degree upon inland and intercoastal water carriers.

Although most of our products are consumed domestically, a significant element of our industry is also involved in foreign commerce by ocean transport. Consequently, a strike in any of the surface transportation industries affects

us directly. Prolonged strikes can and have caused closures of plant and mill operations in our industry and others.

There are some large corporations in our industry which can weather losses resulting from transportation stoppages. However, there are some 36,000 forest products operators, 95 percent of whom are classified as small business. Individually, they are incapable of protecting themselves from transportation problems which, under extreme conditions, can affect their very existence.

Our industry, as a major employer of union labor, appreciates the problems attendant to the consideration of any legislation affecting labor-management relationships. I am personally familiar with these considerations and have been involved for almost 30 years during my professional career as a spokesman for management in labor relations in California and on the West Coast.

The transportation industries perform a public service to shippers and users who are never parties to disputes between transportation management and labor. Nevertheless, they suffer extreme hardships as a result of such disputes. The effects of major transportation stoppages ripple throughout the economy, even though the specific tie-up may be considered technically only a regional dispute.

In addition to the direct economic damage which transportation strikes impose on dependent shippers are those passed on through the distribution chain to the ultimate consumers. A graphic example is the plight of Hawaii during the West Coast dock strike, with which the members of this Committee are well acquainted. It was settled only after Congress passed ad hoc legislation to halt it.

In that case, both management and labor maintained their adversary positions without any great regard for the hardships their actions imposed on others who were not parties to the dispute. We feel that both management and labor should be held accountable to the public for such actions. For that reason we urge Congressional action which will cause both transportation management and labor to face up to their responsibilities to the public interest.

The labor laws which govern transportation labor disputes were written more than a generation ago. They were designed for a transportation system vastly different from that which exists today. In 1926, when the Railway Labor Act was passed, the railroads had virtually a monopoly on long haul and bulk traffic. There was no such thing as commercial air traffic, and trucking as an industry was in its infancy. More than that, neither the structure of the national economy today nor the position of labor in that economy bears much resemblance to the time when these laws were written.

The Taft-Hartley law, passed in 1947, declares as policy: "Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein granted."

That policy clearly states that the free flow of goods in commerce in the interest of the public is protected by law. It says further that elimination

of any practices obstructing such free flow of commerce is a necessary condition to the assurance of labor's rights under the law. Experience has demonstrated that such practices have not been eliminated, and that further measures are needed before they will be eliminated.

Since World War II, the United States has become the most highly industrialized and mobile nation in the world. Every segment of the economy is dependent upon fast, efficient transportation. But breakdowns in the transportation system during the past 12 months have had a severe adverse economic impact on the national economy. They occurred at a time when our country was struggling to pull itself out of a domestic economic recession and to bring our foreign balance of payments within an endurable level. As an example, figures provided by the Bureau of International Commerce, Department of Commerce, indicates that there was a NET loss of half a billion dollars in export trade in the later months of 1971 directly attributable to the 134-day West Coast dock strike. This does not take into consideration the loss of import trade, nor does it consider losses in wages or other domestic economic losses.

When the economic effects of the combined West and East Coast dock strikes are considered, the impact is tremendous. The National Income Division, Office of Business Economics of the Commerce Department, on February 18 of this year stated:

"The fourth quarter featured a $2.5 billion gain in business inventories, following a drop of about $1.25 billion in the third. Final sales (GNP less inventory change) increased $15.75 billion, against $19.25 billion in the third quarter. The slower expansion in final sales was mainly attributable to a $4.5 billion

drop in net exports in goods and services. This decline was partly due to the dock strikes, which distorted foreign trade in the second half of 1971." The Income Division vierified that this represents a fourth quarter drop of $3.3 billion in final sales, and that there was a $4.6 billion decline in net exports, partially reflected in the accumulation of inventories.

Much of this loss in exports may be permanent due to loss of foreign markets to other countries. Preliminary figures in a Federal Maritime Commission Study show that prior to 1971 approximately 368,000 short tons of export liner-type cargoes were diverted through Canadian ports. This represents some 21,000, 20-ft. container equivalents and a sizable amount of non-containerizable cargoes such as lumber and tractors. The FMC study also shows that about 255,000 short tons of liner-type cargoes were diverted from Canada through U.S. ports. Commenting on this, FMC Chairman Helen Bentley last month concluded that because of the dock strikes beginning in 1971, the cargo diversion flow through Canadian ports may have been as much as ten times this traffic and that perhaps as much as twenty percent will remain permanently lost to the U.S. transportation network.

This condition extends to all foreign markets where competition exists from other countries. For example, our European customers for pulp and paper products are turning to Scandinavia for their source of supply. They have told us in no uncertain terms that they will not do business with us until we get our transportation labor problems settled because our deliveries are undependable. And, keep in mind, these severe economic disruptions resulted from what were considered by Congress to be regional strikes, not affecting either the national health or welfare.

We make these points to emphasize the interrelationships of commerce and the nation's dependence upon an uninterrupted transportation system.

Even more dramatic effects are caused by a breakdown in the national railroad transportation industry as was demonstrated by the three-day strike in May 1971, by the Brotherhood of Railway Signalmen. The effect of the transportation stoppage on the entire nation was so readily apparent that the Congress promptly passed emergency ad hoc legislation sending them back to work for four months while negotiations continued. It is pertinent here to note that those negotiations dragged on for the full four months allowed by Congress. They were concluded only at the last minute before the Phase II wage guidelines would have gone into effect whereby the wage-benefit terms would be subject to review and possible roll-back by the Pay Board.

Then in July of last year the United Transportation Union conducted 18 days of "selective" strikes which caused much Congressional debate over possible passage of permanent legislation -- such as we are discussing today. That strike was concluded only under Presidential pressure, and only because that pressure had the potential of actually bringing about emergency strike control legislation.

At the present time the sheet metal workers are working only because the President called for an emergency board to avert a possible strike on April 1. Also, the threatened strike by the United Transportation Union against the Penn Central on April 1 was similarly delayed by Presidential intervention. However, at the end of 60 days, on June 1, if there still has been no agreement, all the mechanics of the Railway Labor Act will have been exhausted, and both unions

will be free to resort to self-help. The only resource to end the strikes would be an act of the Congress.

As Secretary of Labor Hodgson testified before this Committee last January 25, the Congress has been obliged five times in the past four years to pass special legislation so that crippling transportation strikes could be headed off. The recent West Coast dock strike has provided public proof that the United States Government has no present laws strong enough to control a powerful union which defies control. Each act of union defiance requires an act of Congress.

There is currently the possibility that the West Coast International Longshoremen's and Warehousemen's Union may strike again as a result of the rollback by the Pay Board of their wage-benefits agreement. But of equal significance is the fact that the East Coast International Longshoremen's Association may decide to strike again once its wage-benefits agreement has undergone Pay Board review. These are only a few of the major transportation labor agreements still to be settled this year. More will be coming up next year.

The forest products industry is vitally interested in maintaining the health of all transportation industries. Domestically, the railroads transport 78 percent of all lumber, plywood and other wood products, and 86 percent of all pulp, paper and allied products. Together these represent the single largest revenue from shippers to the railroad industry, totaling $1.562 billion in 1970, or 13 percent of the total railroad industry revenue. These are primarily long haul shipments. We are, at the time, heavily dependent upon the trucking industry for short haul to rail terminals. But, in addition, much of our long haul traffic is by truck. Trucking is particularly vital in the southern and eastern United States. For instance, in the 12 Southern producing states, 84.9 percent of southern pine lumber was hauled by truck in 1970.

Strikes in these basic industries not only are an economic blow to our industry, they damage the health of the transportation industry and ultimately the unions dependent upon them. A railroad strike creates a mad scramble by shippers to find alternative modes of transportation. This often results in permanent loss of revenue to the railroad. And as revenue dwindles, jobs are lost.

The transportation labor laws must be brought up to date to reflect the changes in the system and in the economy which have come about in the past 30 years. Otherwise we will continue to face crisis after crisis in the transportation industry. Such crises have been occurring more and more frequently in the past few years. The laws we now operate under are anachronistic.

Our industry has studied and compared the bills now before this Committee. We are addressing ourselves only to those dealing with transportation strike controls. We are concerned that any legislation which might be passed should be fair to labor as well as to management. But most importantly, we are concerned that it will accomplish the purpose of providing continuity and reliability of transportation in all parts of the country at all times. We feel that the measure proposed by Senator Packwood, S. 3232, would be equitable to both parties in a transportation dispute. It would, at the same time, protect the interests of users of transportation services who are not parties to the dispute.

We agree with the findings and purpose of S. 3232 and with its approach to the settlement of transportation crisis disputes. Continuation of the present 80-day cooling off period injunction process, as now provided for under Taft-Hartley, is a generally helpful step. Experience has demonstrated that it often results in fruitful collective bargaining.

Beyond the initial 80-day injunction, we think it makes sense to arm the President with a series of alternative steps, as contained in S. 3232. We believe this provides a maximum of discretionary authority and a high degree of flexibility to meet situations which are inherently fluid and variable. Accordingly, we support and urge enactment of the sections which provide for an additional 15 day cooling-off period, for partial operation and for final offer selection. These portions of the bill are complicated in their practical application and execution, but they provide a more effective legal framework for the resolution of national transportation disputes than anything presently in the law.

The "final offer selection" proposal as contained in S. 3232 is certainly not, in our opinion, an abridgement of the collective bargaining process nor does it constitute mandatory arbitration. The collective bargaining process remains unchanged. Furthermore, no third party or parties are permitted to alter the terms of either labor or management's final proposal. The final offer selection proposal simply guarantees that any stalemate will be resolved by an impartial selection of either labor's or management's final offer, and that it will be binding upon both. In addition, it provides for judicial appeal.

Our industry also endorses Title III of S. 3232 which would establish a National Special Industries Commission to study ways to revise the collective bargaining process so as to minimize work stoppages which create national emergencies. Whereas Title II of S. 3232 provides for some immediate and much needed relief in the vital transportation industries, Title III provides for a soundly based study to see if further revision of <u>any</u> legislation relating to the collective bargaining process is indicated in the national interest.

Your Committee and the sponsors of S. 3232 may consider further amendments to improve its provisions and, if so, we have the following recommendations:

(1) In establishing the criteria for determining when a labor dispute will imperil the nation or a substantial sector thereof, the bill should stipulate that the economic impact of the dispute will also be taken into account in addition to its effect on health and safety. We urge an amendment to S. 3232 adding the word "welfare" to the pertinent sections of the bill, so that the criteria will read, "imperil the national health, safety or welfare or the health, safety or welfare of a substantial sector of the Nation."

(2) Under the partial cooling-off provisions (page 8 of the bill) in the proposed Section 218(b)(1), the second sentence should be amended to read, "The board shall not issue any order when a greater economic burden is placed on any party than that which would be caused by a total cessation of operations." As presently phrased, the sentence is ineffective and too general to constitute a legal standard for administrative action. The amendment we propose states the intent of the section much more clearly.

(3) With respect to judicial review of the final offer selection procedure, under Section 219(n), we think the criteria for review should be broadened to include a decision "not founded in fact" as well as one which is found to be "arbitrary or capricious." The latter two criteria are rare, in any event, but a board's decision, especially with respect to the grounds for a partial operation, should certainly be well founded on the facts developed in the record of the case.

I would like to emphasize that we strongly support S. 3232 as presently written. We believe it is a sound bill as currently drafted. Our recommendations are simply to refine and to improve its provisions.

We especially commend S. 3232 because it concentrates on the problems of the transportation industry. We recognize that there are serious labor dispute problems in other industries. However, those in transportation are crucial to the entirety of commerce in the United States. They cannot wait for generalized labor-management solutions. Furthermore, the approach in S. 3232 will unify the treatment of labor disputes in the total transportation industry, and this is a good thing in itself. We urge and support early and favorable action on S. 3232 both in this Committee and in the Senate.

Thank you for this opportunity to appear and present our views.

(Whereupon, at 10:55 a.m., the subcommittee recessed, subject to the call of the Chair.)

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