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DISPUTE BETWEEN THE RAILWAY CARRIERS AND FOUR OPERATING BROTHERHOODS

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Mr. Humphrey, from the Committee on Labor and Public Welfare, submitted the following

REPORT

together with the

MINORITY VIEWS

DISPUTE BETWEEN THE RAILWAY CARRIERS AND FOUR OPERATING BROTHERHOODS

REPORT OF THE SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE

On February 22, 1951, the Committee on Labor and Public Welfare opened hearings in Washington, D. C., on the labor dispute between class I carriers by rail and four labor unions representing the operating employees of those carriers, namely, the Brotherhood of Railroad Trainmen (BRT), the Order of Railway Conductors (ORC), the Brotherhood of Locomotive Firemen and Enginemen (BLF&E), and the Brotherhood of Locomotive Engineers (BLE). Together, these organizations represent approximately 375,000, the great majority of railway operating employees.

The operating employees are those who work on the trains while they are in motion, including engineers, firemen, conductors, and brakemen, and are distinguished from the nonoperating employees, such as clerks, machinists, maintenance of way employees, and so forth. At the hearings, each of the four operating brotherhoods was represented by one or more witnesses, and each by its chief executive. The carriers, by their own decision, were represented by Mr. Daniel P. Loomis, chairman of the Western Carriers' Conference Committee. Mr. John Thad Scott, chairman, and Mr. Francis P. O'Neill, member, appeared in behalf of the National Mediation Board. Mr. Karl R. Bendetsen, Assistant Secretary of the Army, who is in charge of railway operations for the Army, also testified. The committee extended an invitation to Dr. John R. Steelman, assistant to the President, to appear and testify, but Dr. Steelman declined the invitation.

On April 5, the hearings were recessed on call of the chairman. The following interim report is a brief summary of the testimony to date, and the committee's conclusions based thereon.

HISTORY OF THE DISPUTE

On March 15, 1949, the ORC and BRT served on the carriers notices of demands for changes in rules and working conditions. On the same date, the carriers served notices upon the ORC and BRT (p. 329).[1] These notices were filed in accordance with the Railway Labor Act. Negotiations on the individual railroads did not result in agreement, and on June 21, 1949, the ORC and BRT wrote letters to the carriers requesting that regional carriers' conference committees be set up (p. 330, ff). These requests were in accordance with the pattern of collective bargaining which has been evolved by the brotherhoods and the carriers to arrive at settlement of national wage and rules movements. The railroads involved are divided into three conference groups, namely, the Eastern Carriers' Conference, Western Carriers' Conference and the Southeastern Carriers' Conference. In national wage movements each group designates a committee to bargain for it with the employees and, as a general rule, the three conference committees bargain as a unit with representatives of the brotherhoods involved. On July 1, the eastern and western railway groups complied with the request of the brotherhoods and listed the conference committees which would represent them. On July 21, the southeastern group designated its conference committee.

Formal negotiations between the brotherhoods and the conference committees did not commence until September 22, 1949 (p. 339). Among other changes, the brotherhoods had demanded that yardmen,[2] who regularly work 48 hours a week, be placed on a 40-hour standard workweek and receive the same pay they had previously received for 48 hours of work, that is, a 40-hour week with no diminution in take-home pay. Early in the negotiations it developed that the parties were widely separated with respect to wage demands, and the carriers therefore suggested that the wage demands be held in abeyance and that they proceed to work out rules for the application of a 40-hour week (p. 339). By the middle of December, according to the carrier representative, a large part of the rules involved in the application to the yardmen of a 40-hour week had been agreed upon. However, many other demands remained unresolved. At that time, therefore, the brotherhoods requested a statement from the carriers as to their exact position with respect to the items in negotiation. The carriers indicated that they were not ready to agree upon 48 hours' pay for a 40-hour week, and that unless the brotherhoods were willing to withdraw that demand the carriers were not prepared to make any wage proposal at that time (p. 340). The brotherhoods were unwilling to withdraw the demand, and negotiations were terminated on December 14, 1949. On December 15, in accordance with the Railway Labor Act, the carriers invoked the services of the National Mediation Board (p. 353).

[1] Citations in parentheses are to pages in the printed transcript, unless otherwise noted.

[2] The yardmen involved in this dispute are those operating employees who work on the trains in motion in the yards. They are to be distinguished from operating employees in road service and from nonoperating employees.

The first conference held by the National Mediation Board was on January 17, 1950, and the Board's mediatory services continued until February 14, 1950, but failed to produce an acceptable settlement. Thereupon, the National Mediation Board proffered arbitration. The carriers accepted the proffer, but the brotherhoods declined (p. 354).

On February 17, 1950, negotiations having reached a deadlock, the two brotherhoods set a strike date for February 27. On February 24, 1950, acting under the Railway Labor Act, the President acknowledged the existence of an emergency and appointed an emergency board to investigate and make recommendations with respect to the matters at issue. The Emergency Board consisted of Roger I. McDonough, Chairman, Mart J. O'Malley, and Gordon S. Watkins (p. 355). The McDonough Emergency Board opened hearings at Chicago on March 2, 1950, and concluded them on May 9, 1950. A summary of the issues in dispute and the recommendations of the Emergency Board is attached hereto as appendix 1.

The time therefore having been extended by mutual consent, the McDonough Emergency Board filed its report to the President on June 15, 1950. On June 20, the brotherhoods advised the carriers that they did not accept the recommendations of the Emergency Board (p. 358), and that therefore all of their original demands were again before the carriers (p. 679). On June 22, the carriers notified the President that they accepted the McDonough Emergency Board report and recommendations and were willing to negotiate agreements in accordance therewith. On June 25, the National Mediation Board again proffered its services. On July 11, the brotherhoods notified President Truman that they had rejected the Emergency Board report and recommendations, and characterized it as "the most undemocratic, unfair and promanagement report in the history of the Railway Labor Act."

From June 25 until August 3, 1950, the National Mediation Board continued to mediate without success. On August 4, the brotherhoods in a telegram to the President requested the Government to seize and operate the railroads pending settlement of the dispute (p. 296).

Following receipt of the aforesaid telegram, Dr. John R. Steelman invited the parties to confer with him at the White House, and from August 5 until August 23 endeavored, with the help of the National Mediation Board but without success, to find a basis for settlement. Commencing August 16, the organizations commenced calling 5-day strikes at critical railroad centers. During the course of these strikes, and on August 19, Dr. Steelman suggested to the parties a proposed basis for settlement, which included the recommendations of the McDonough Board, with the following additional features:

1. Call off strikes.
2. Establish 40-hour week for yardmen at 23 cents per hour increase.
3. For the period of this agreement set aside the 40-hour agreement, establish 6-day workweek, men required to work seventh day to receive time and one-half. No new guaranty.
4. Settle all rules, including 40-hour-week rules, in accordance with President's Emergency Board.
5. Five cents an hour for roadmen.

6. Quarterly adjustment in wages on basis of living index, 1 point to equal 1 cent an hour.

7. Agreement to be effective until October 1, 1953, at which time either side can serve notice to change under provisions of Railway Labor Act.

The carriers accepted this Steelman proposal, but it was promptly rejected by the brotherhoods.

On August 23 a crucial conference was held at the White House. It soon became apparent that another deadlock had been reached. There was a discussion of the 5-day strikes. The chief executives of ORC and BRT notified those present that all of the 5-day strikes would end on schedule, and that no more of such strikes would be called (p. 9). Considerable misunderstanding regarding this statement later developed. Dr. Steelman, the Mediation Board, and the carriers construed it as a pledge that no strike of any kind would be called. The witnesses representing the brotherhoods testified that the only pledge they gave referred exclusively to the 5-day strikes, and that they made no statement of any kind regarding a national strike. This testimony was literally substantiated by the statements of the Mediation Board members (p. 378). Soon after this conference and on the same date, the brotherhoods called a strike on all class I carriers to commence on August 28.

On August 25, 1950, President Truman issued Executive Order No. 10155 providing for Government seizure of the class I carriers effective August 27, and providing for their operation by the Secretary of the Army. The strike was thereby averted. From August 29 to September 13, 1950, Dr. Steelman and the National Mediation Board continued to attempt to mediate the dispute without success.

Brotherhood of Locomotive Firemen and Enginemen and Brotherhood of Locomotive Engineers

On November 1, 1949, the B. L. F. & E. served on the carriers notices of proposed changes in wages and working conditions, and on the same date was served with similar notices from the carriers. Similar reciprocal notices were filed by the carriers and the BLE in January 1950 (p. 307). These demands included for yardmen a 40-hour week with no diminution in take-home pay and for members of BLE, extensive rules changes. During February and March, 1950, conference committees were designated by the carriers and the B. L. F. & E. and BLE to negotiate these demands. The negotiations continued intermittently until October 5, 1950, when the carriers met with both brotherhoods (pp. 977–979). No settlement having been reached, on October 24 the BLE and carriers jointly invoked the services of the National Mediation Board, which commenced its mediation proceedings on October 30. For the time being the conference committee of the carriers and the B. L. F. & E. continued to negotiate. On November 3, 1950, the BLE served on individual carriers a second notice demanding a 20-cent wage increase for roadmen, and the individual carriers served on that brotherhood notices of additional demands for rules changes (p. 980).

Thus, during November 1950, negotiations were in progress between the carriers and all four of the operating brotherhoods: Dr. Steelman was directing mediation involving ORC and BRT; the

Mediation Board was assisting Dr. Steelman in the latter negotiations and at the same time mediating between the carriers and the BLE; and the B. L. F. & E. and the carriers were negotiating separately. There is some disagreement as to who took the initiative in consolidating these several negotiations. However, on November 21, conferences were resumed at the White House with all four operating brotherhoods, and with the assistance of Dr. Steelman and the members of the National Mediation Board (p. 980).

"WILDCAT STRIKES"

On Monday, December 11, 1950, in Birmingham, Ala., there was a walk-out of yardmen belonging to the BRT. On Tuesday, similar walk-outs occurred at Chicago, Ill., and thereafter spread throughout the Nation. At their peak, 14 major railroads and approximately 10,000 yardmen were involved in these "wildcat strikes."

Union officials disowned responsibility for the walk-outs, and made efforts to recall their rebellious yardmen. In public statements, they warned, however, that the yardmen were angry because their demand for a 40-hour week with 48 hours' pay had been rejected, and the dispute had remained unsettled for more than 21 months. Spokesmen for the carriers said they were skeptical of the union executives' disclaimer of responsibility and declared that the walk-out "was too well organized and the activities of local brotherhood leaders too conspicuous to lend credence to the claim that it was not a planned strike."

The Assistant Postmaster General gave public notice that the "wildcat" strikes were crippling postal deliveries. The Army, engaged in moving critical supplies to the Korean front, described the walk-outs as a blow to the national defense effort.

The memorandum of agreement of December 21, 1950

Dr. Steelman and the Mediation Board continued their mediatory efforts. On December 19, 1950, a conference was convened at the White House. It consisted of the chief executives of the brotherhoods, the chairmen of the carriers' conference committees, the Mediation Board, and Dr. Steelman, and remained in almost continuous session until the early morning hours of December 21. During this conference, the representatives of the carriers and the organizations met separately. Dr. Steelman and the members of the Mediation Board would discuss proposals first with one group and then with the other, and carry proposals and responses back and forth between them.

A tentative draft of a proposed settlement of the interdivisional run rule was drafted and initiated by all the parties. In addition, Dr. Steelman proposed to the parties a tentative basis for settlement which was embodied in a written instrument entitled "Memorandum of Agreement" (pp. 1096–1097). This memorandum was signed by the representatives of the brotherhoods, the representatives of the carriers, and by Dr. Steelman. The hearings make clear that Dr. Steelman and the carriers believed that it constituted a final settlement.

It is equally clear, however, that all four of the chief executives of the brotherhoods had repeatedly stated, in the presence of one or the other member of the Mediation Board, that they did not have author-

ity to make a binding settlement, that any tentative settlement reached at that conference would have to be submitted to their general chairmen and ratified by them before it could become effective. It is also clear and uncontradicted that, at least with respect to BLF&E, the carriers themselves were on notice that the chief executive did not have authority to reach a final settlement, but that any memorandum tentatively agreed on must be considered by the negotiating committee and general chairman and ratified by them before it could become effective. It also should be noted that following the signing of the Steelman memorandum, at a press conference called by Dr. Steelman in the White House, at which spokesmen for all parties were heard, Mr. J. P. Shields of the BLE formally announced to the press and for a television program that the agreement was only tentative and required ratification by the appropriate bodies of the four organizations.

This tentative agreement, which had been proposed by Dr. Steelman (pp. 1096–1097) and the Board of Mediation as a basis for settlement, may be summarized as follows:

(1) It provided prospectively for a 40-hour week for yardmen, but the 40-hour week would not in any event go into effect until January 1, 1952, and then only if the mobilization program did not require yardmen to work a 6-day week.

(2) Yardmen were to receive a 23-cent hourly wage increase retroactive to October 1, 1950, and an additional 2 cents effective January 1, 1951. If and when the 40-hour week was put into effect, they were to receive an additional 4-cent increase, which would make their total increase under a 40-hour week 29 cents an hour. (The demand of the ORC and BRT for these yardmen had been 48 hours' pay for a 40-hour week, which on the average would have amounted to approximately 31 cents an hour.)

(3) The roadmen, numbering approximately 180,000, were to receive a 5-cent hourly increase retroactive to October 1, 1950, and an additional 5-cent increase effective January 1, 1951.

(4) Both types of employees were to receive quarterly "cost-of-living adjustments" of 1 cent for each one-point change in the Bureau of Labor Statistics Consumers' Price Index, that is, a 1-cent increase if the index advanced one point; a 1-cent decrease if the index declined one point. The first adjustment was to be made on April 1, 1951, computed on an index of 176.

(5) Dining-car stewards (most of whom belong to BRT) were to have their hours of service reduced from 225 to 205 a month, but were to be paid the same monthly pay as for 225 hours, plus a 2-cent increase effective January 1, 1951. They were also subject to the cost-of-living adjustments.

(6) The memorandum provided that no party thereto would initiate any movement for a change in pay, rules of working conditions for a period of 3 years. An exception to this so-called moratorium was to be made if the Government's wage-stabilization policy permitted workers to receive annual improvement increases, in which event the parties could meet with Dr. Steelman on or after July 1, 1952, to discuss whether or not further wage adjustments for rail employees were justified. If an agreement could not be reached at such conference, a referee was to be appointed by the President to make the final decision.

(7) The moratorium was not to be construed as a bar to negotiations for changes in wages and working conditions on the individual railroad properties.

(8) Eight demands for changes in working rules were to be controlled by the agreement, and any disagreement as to these rules was to be submitted to Dr. Steelman for his decision. The eight rules involved were as follows:

1. Initial terminal delay (conductors and trainmen).
2. Interdivisional runs.
3. Pooling cabooses (conductors and trainmen).
4. Reporting for duty.
5. More than one class of service.
6. Switching limits.
7. Air hose (conductors and trainmen).
8. Western differential and double header and tonnage limitation (conductors and trainmen, and all territories).

(9) Dr. Steelman was also designated as the arbiter of any disagreement with respect to the terms of the agreement itself.

Following the conference of December 21, the four brotherhoods submitted the tentative settlement to their negotiating committees and general chairmen, and in January 1951 notified the carriers and Dr. Steelman that the settlement had been rejected by all four brotherhoods. On January 15 the chief executives and negotiating committees of the brotherhoods returned to Washington and notified the carriers and the White House that they were ready to resume negotiations.

On February 2, 1951, a secretary to the President issued a statement to the press criticizing the brotherhood chief executives on the assumption that they had signed the memorandum of December 21 in bad faith.

Following the rejection of the memorandum of December 21 by the brotherhoods, sporadic walk-outs occurred on various railroads. Within a few days yardmen in nearly all important terminals were reporting sick and remaining absent from duty, and the entire railroad system was crippled.

Federal court orders

As a result of the sporadic walk-outs, the Army sought and obtained orders of the Federal district courts in Chicago, Cleveland, and the District of Columbia, enjoining BRT from striking. When the walk-outs continued, the BRT was cited for contempt. In the Chicago court, the BRT was fined $25,000 for civil contempt. In Washington, D. C., having plead guilty of contempt, the BRT was fined $25,000 for civil and $50,000 for criminal contempt (p. 307). Since the latest court action there have been no walk-outs reported.

On Feb. 8, 1952, the Department of the Army Operations of Railroads issued General Order No. 2 directing (a) that any employee who failed to report for duty within 48 hours without proof of incapacity would be dismissed with loss of all seniority rights; and granting (b) yardmen and yardmasters an increase of 12½ cents an hour and road service employees an increase of 5 cents an hour retroactive to October 1, 1950. In compliance with this directive practically all of the yardmen returned to duty, and full operation of the railroads was resumed.

General Order No. 2 did not provide any increase for dining-car stewards, chefs, or cooks. In response to questioning at the hearings and correspondence with the chairman, on April 11, 1951, the Department of the Army issued its General Order No. 2, which granted an increase of $11.25 a month for dining-stewards, effective as of February 8, 1951. No increase has as yet been granted by the Army to chefs and cooks.

Commencing with the conference of February 24, between the carriers and the BRT, and at least until the last committee hearing on April 5, the BRT has continued to negotiate separately with the help of the National Mediation Board. The other three brotherhoods have apparently continued joint negotiations.

FINDINGS AND RECOMMENDATIONS

This railroad labor dispute, which at this writing has still been only partially settled, continued, in the case of ORC and BRT, for more than 2 years, and in the case of BLE and BLF & E, for more than 1 year.[3] In every dispute of such duration it must be that both parties are somewhat at fault. Regardless of blame, the dispute has kept the employees of our great railroad system restless and discontented for more than 2 years during which we have been engaged in the mobilization program upon which the very life of the Nation depends. Moreover, our whole economic system is so closely integrated with railroad transportation that even in peacetime serious disruption of railroad service imperils the public safety. The time has come when neither the Government nor the public can tolerate national railroad strikes or lock-outs for an extended period; and yet the strike constitutes the ultimate economic power of a labor union, and the right to strike is fundamental to democratic labor relations. These conflicting facts present a paradox which must be resolved in a way that will insure efficient functioning of the railroads and the right of railroad workers to decent wages and to decent and improving standards of living.

There have been for some time suggestions that collective bargaining has not been as effective in recent years as it should be.

In an effort to pass upon the validity of these suggestions, this committee authorized for its guidance an investigation into the dispute between the four operating brotherhoods and the carriers. Hearings on these disputes extended over a considerable length of time and extensive testimony was obtained for use by this committee in determining what special difficulty, if any, existed in collective bargaining in our railroad industry.

The committee wishes to emphasize that authorization of the investigation into this dispute was prompted by suggestions as to the existence of a special problem in collective bargaining in the railroad industry and was not intended nor should it be so interpreted as an intervention in the dispute or as a precedent for intervention into other specific labor disputes.

The hearings have disclosed that the public has received an inaccurate and distorted picture of the positions and acts of the parties concerned at the time of the events in question. Impressions were

[3] On June 13, 1951, the Wage Stabilization Board announced approval of a settlement previously reached by BRT and the carriers, on May 25, 1951.

created which misled the public, with the result that the patriotism of large groups of loyal American citizens has been impugned. The record and the testimony before this committee refute these impressions.

1. The no-strike pledge of August 23, 1950

As we have seen, the BRT and ORC, after the White House conference on August 23, 1950, called a strike for August 28. It was charged that this strike call was in violation of a promise that there would be no national strike, at least until further notice. The committee finds that no such promise had been given. The chief executives of the BRT and ORC did promise that the 5-day strikes then in progress on individual railroads would be terminated on schedule and that no more 5-day strikes would be called. This promise was kept. The committee finds that the discussion at the conference could and probably did mislead the representatives of the carriers and the Mediation Board into believing that a no-strike pledge had been given. This was a misunderstanding of the facts which is not properly attributable to the brotherhoods. The committee finds that the public announcements that the no-strike pledge had been violated by the brotherhoods were not justified, and that they seriously impaired the position of the brotherhoods in further negotiations and in public esteem.

2. The memorandum of December 21, 1950

As we have seen, the members of the National Mediation Board were informed by the chief executives of the brotherhoods that any settlement proposed at the conference ending December 21, 1950, would be only tentative in nature, that it would have to be submitted to the negotiating committees and general chairmen of the brotherhoods for ratification, and that it could not be binding until so ratified. It is possible that the carriers were not similarly advised. If Dr. Steelman was not so advised, then the committee feels that the members of the Mediation Board were remiss in their duty to keep him fully informed. Certainly at the press conference on that date Mr. J. P. Shields stated that the settlement there announced was not and could not be final and binding until it had been ratified by the general chairmen of the brotherhoods. The committee is compelled to find, therefore, that later statements to the effect that the brotherhoods had repudiated a binding agreement were unjustified. It is clear that these statements again had the effect of discrediting the chief executives and their brotherhoods and impairing their position in further negotiations.

3. The proposal of February 24, 1951

The conference on this date involved only the carriers and the BRT. During the course of the hearings spokesmen for the BRT repeatedly stated that they were unwilling to accept Dr. Steelman as an arbitrator and that his designation as arbitrator in the memorandum of December 21, 1950, constituted one of the main bases for their rejection of that proposal. The carrier representative testified that, in spite of this objection to Dr. Steelman as an arbitrator, in a mediation meeting on February 24, 1951, the BRT made an offer of settlement which embodied, with slight amendments, the provisions of the memorandum of December 21 and continuance of Dr. Steelman as arbitrator. This statement of the carrier representative, if true,

would of course convict the BRT of duplicity. However, the testimony of BRT representatives and of two members of the Mediation Board at the committee hearings made clear that the proposal of February 24 did not originate with the BRT but with the Mediation Board itself, and that the role this proposal imposed on Dr. Steelman was not acceptable to the BRT.

THE ROLE OF DR. STEELMAN

During many years of distinguished public service Dr. John R. Steelman has established an unassailable reputation as an outstandingly competent and effective mediator. For years he was the Director of the Federal Mediation and Conciliation Service, and largely because of his direction that agency became a powerful force for industrial peace. The committee desires to make clear its conviction that Dr. Steelman is a public servant of the highest caliber, and that the following comments are not to be construed as a reflection on his ability or his integrity. The Nation was threatened with a national strike which would have paralyzed our economy and the mobilization program. Dr. Steelman responded to this crisis with characteristic courage and energy. That he came as near as he did to effecting a settlement is a great credit to him. The committee finds, however, that in his zeal for the public good, Dr. Steelman became involved in the dispute in a manner which compromised his effectiveness and placed the President in an unnecessarily difficult position.

Acting in conjunction with the National Board of Mediation, Dr. Steelman labored through arduous months as the chief mediator of the dispute. Then, after a conference which had lasted more than 48 hours (p. 413), and probably when the parties were exhausted, Dr. Steelman was named in the Memorandum of Agreement as the arbitrator of disputes arising out of the very settlement which he thought had been produced by his mediation. It is generally accepted that mediators in labor disputes will not, at least without the urging of all parties, become arbitrators in the same dispute. This rule of practice inevitably flows from the conflicting roles involved in mediation and arbitration.

An arbitrator is a judge, charged with judicial duties and authorities, and required to render his service in a judicial manner. He must hear the evidence, must weigh the issues on the basis of the record, and must decide in accordance with the preponderance of the evidence. He ought not to look outside the record in reaching his decision. He ought not to be influenced by the crosscurrents of negotiation. He ought not to act opportunistically, to compromise facts or principles, to trim his judgment to the winds of controversy. His decision is binding upon the parties. They have submitted their rights and their demands to his impartial judgment, and must act as he decides.

A mediator, on the other hand, is not a judge of the merits of the dispute. His primary function is to lead the parties to a conscionable compromise of their differences. He proceeds by the rule of give-and-take, he is a bargainer, he must trade this concession by one party for that concession by the other. He ought not later to become the judge of the same matter.

In the present dispute, Dr. Steelman, as mediator, had urged upon both parties the compromises which became the memorandum of

December 21 (p. 414). In the opinion of the committee, he became a vulnerable target when he consented to become the arbitrator of questions arising out of that memorandum.

GOVERNMENT SEIZURE OF THE RAILROADS

When a labor dispute reaches a stalemate and is of sufficient magnitude to endanger the Nation's entire economic life and its vital security, when the failure or the refusal of the parties involved to reach agreement threatens to paralyze the economy and imperil national security, it is necessary that Government should have the power to take and should take whatever steps are necessary to avert such effects.

The committee believes that the President unquestionably has the power, under the Constitution and under existing laws, to take necessary steps including, if appropriate, seizure and operation of facilities involved in such a dispute, pending the settlement of the dispute between the parties involved. The President has not only the power but the duty and responsibility, under the conditions described above, to take the required measures.

In the case of a dispute affecting the Nation's entire rail transportation system, the possible paralysis of the national economy and the threat to the national security are obvious. In the dispute dealt with in this report, the President acted in accordance with the need—to seize the railroads and to operate them pending the settlement of the dispute—a seizure and operation which are still in effect as this report is written, despite the settlement of the dispute with one of the brotherhoods involved, the Brotherhood of Railway Trainmen.

In the seizure in question, the President based his action upon the powers vested in him by the Constitution and on existing statutory authority, especially the act of August 29, 1916 (ch. 48, sec. 1, 39 Stat. 645, 10 U. S. C. sec. 1361), which reads:

> The President, in time of war, is empowered, through the Secretary of War, to take possession and assume control of any system or systems of transportation, or any part thereof, and to utilize the same, to the exclusion as far as may be necessary of all other traffic thereon, for the transfer or transportation of troops, war material and equipment, or for such other purposes connected with the emergency as may be needful or desirable.

Government seizure of the railroads in this case was accomplished pursuant to Executive Order No. 10155, issued August 25, 1950. In this Executive order the President directed the Secretary of the Army to seize approximately 199 designated class I and short-line railroads, and to operate them.

The Secretary of the Army, having seized the railroads, assigned the responsibility for operations to the Assistant Secretary of the Army, Mr. Karl R. Bendetsen.

Mr. Bendetsen requested the operating brotherhoods then involved to continue their members in their normal positions during the period of Government operations, and simultaneously requested the managements of the carriers to carry on their normal duties under Government orders. Both groups agreed to these requests.

Mr. Bendetsen designated the Army's Chief of Transportation as the Chief of Operations for the entire railroad system placed under Government control. As consultant to the Chief of Operations,

Secretary Bendetsen named a New York attorney who had served through World War II as executive officer for the Chief of Transportation of the United States Army and who had had previous experience with Government seizures (575). As Assistant to the Chief of Operations, Mr. Bendetsen named a reserve brigadier general who, in civilian life, was a vice president of the Pennsylvania Railroad (576).

Mr. Bendetsen established seven regions, each manned by a director, deputy director, an executive officer, a public information officer, and other minor functionaries.

This staff organization was described by Secretary Bendetsen as his "channels of communication" with the railroads (1141). This organization was, in effect, the structure through which the will and power of the Government were exercised, and through which Secretary Bendetsen obtained his advice and counsel concerning the operation of the railroads.

All the members of this staff organization were Reserve officers recalled to active duty for this specific emergency. It is noteworthy that all but one of the top positions in this staff—the Assistant to the Chief of Operations and every one of the seven regional directors—are, in their civilian capacities, top-ranking executives of the railroads involved. Thus the Assistant to the Chief of Operations is vice president of the Pennsylvania Railroad; the heads of the various regions are the presidents, respectively, of the Southern Railroad, the Norfolk & Western Railway, the Baltimore & Ohio Railroad, the New York Central Railroad, the Chicago, Rock Island & Pacific Railroad, and the Northern Pacific Railroad. Subordinate positions on the Government staff structure were similarly filled with individuals high in the hierarchy of railway management.

The viewpoint of railway management was thus not only largely but almost exclusively represented in the staff organization which functioned on behalf of Government under Secretary Bendetsen and the Chief of Transportation of the United States Army.

The Department of the Army was not, of course, established to operate railroads. It does not have at its regular disposal a sufficient number of officers trained and experienced in the operation of railroads to accomplish that operation without drawing upon the industry for assistance. The Assistant Secretary testified that he, himself, had had no previous experience in the operation of railroads. With the organizational structure which he established, however, there is no doubt that the railroads contined to function smoothly and efficiently under Government seizure. For this, Mr. Bendetsen and the Department of the Army deserve full credit. As far as the general railroad-using public was concerned, there was no difference from private management. As has been shown, moreover there was little real, difference from private management in any respect.

The committee believes that it is important to bear in mind the purposes for which Executive Order No. 10155 was issued. This order was not issued to settle the dispute. It was issued primarily to keep the railroads going at a time when a general stoppage of railroad transportation was threatened. Government seizure, however, was to last only until such time as the parties, through negotiation and collective bargaining, could agree upon terms and conditions under which they themselves could resume normal operations. It is of the utmost importance that the mechanisms which are established by the

Government to operate a seized plant, facility, or industry are adapted to achieve both of these purposes. While the plants, facilities, or industry involved must be kept going at maximum efficiency, the national interest and sound public policy requires that to the maximum extent possible, equality of bargaining position as between the parties be preserved.

When Government operation of the railroads becomes necessary, it is of course essential and proper that the Government should have the benefit of the skill and experience of railroad management to insure efficient operation. The committee does not condemn, but specifically approves, the commissioning of railroad management officials to serve on the Government's operational staff, as was done in this seizure.

In the committee's judgment, it is unfortunate that in connection with the seizure and operation of the railroads the Department of the Army did not consult with nor seek the services of any representative of organized labor. Unfortunately, not a single member of any railway labor organization was placed in any position in the Army structure charged with operation of the railroads. Advice and information was not sought from any representative of the brotherhoods. The committee believes that the skill and experience of railway labor would have contributed greatly to efficient operation, and particularly to harmonious labor relations.

Under the organizational set-up actually established, the railroad employees could not help but feel—and this feeling was strongly reflected in the testimony presented to the committee by representatives of the brotherhoods—that Government policies and decisions were simply those of management, further armed with the power of Government. This feeling, in turn, could not help but prejudice the prospects for an early settlement of the strike by negotiations between the brotherhoods and the carriers, and thus enable the Government to end its seizure.

Thus the pay increases granted under General Order No. 2 could be—and were—represented to the employees as having been unilaterally promulgated by management in the middle of a labor dispute—an action which if performed in any other industry by management would have been condemned under the Taft-Hartley Act as an unfair labor practice.

While it was certainly appropriate for the Army to obtain the benefit of the experience, knowledge, and judgment of railway management in staffing the Government control set up under conditions of Government seizure, there is every reason to believe that that operation would not have suffered, but would in fact have benefited—as has been stated—through the designation in equally responsible positions of competent and experienced railway labor personnel. Furthermore, this would have had the very desirable tendency of equalizing the relative positions of railway management and labor in their highly necessary and important negotiations and collective bargaining, looking to the achievement of a stable agreement under which private operation of the industry could be restored.

It is important that Government seizure itself should not be a device to be invoked because of its anticipated benefits to either of the parties in a labor dispute. Government seizure which protects the position of one of the parties as against that of the other, unfairly relieves that party of the necessity to continue good-faith negotiations

and collective bargaining. Such action is harmful to the achievement of fair and stable labor-management relations. This kind of seizure inevitably places the power of Government on the side of one party to the dispute.

Seizure should be undesirable for both sides in a labor dispute so they will both strive earnestly to avoid it. Also, the effects of seizure should be unpredictable so that it will constitute a risky speculation, and so that both parties may find amicable settlement through collective bargaining more profitable than the uncertainties involved in Government seizure and operation. Government operation should be a last resort to protect the public interest, rather than a tactical aid to one or another side in a labor dispute.

The committee must point out that Government seizure and operation of the railroads in this case followed a pattern laid down by past Government seizures. Although the testimony presented to the committee did not go into this background, it is necessary to make this observation in order to absolve the Army and Assistant Secretary Bendetsen of any original fault in connection with the observations made above.

The committee recognizes that the practices and procedures relating to Government seizure and operation of plants, facilities, or industries involved in labor disputes have developed pragmatically, on a case-by-case basis. The principles which should govern the invocation of the Government's power to seize and operate and its objectives and motives of operation under Government seizure have never been carefully defined by the Congress. An effort to do so was undertaken during consideration of legislation to repeal the Taft-Hartley Act in 1949, but this attempt proved to be abortive.

In the absence of a clear definition of the principles which should govern Government seizure and operation in labor disputes, the various Government agencies upon which the responsibility to keep an industry going in a particular case fall, must use their own best judgment as to the manner in which the Government's power is to be used.

In general, the question of whether or not seizure will result in economic gain to the owners does not ordinarily arise until the period of seizure is over and negotiations are in process with the Government concerning the terms of the Government's release of the properties to the owners.

In this case, too, it is to be noted that the question whether seizure will result in economic gains to the owners will not be answered finally until the period of seizure is over and negotiations are completed between them and the Government concerning the terms under which the Government will release the seized properties to the owners.

As Secretary Bendetsen pointed out in a letter to the committee (committee exhibit 11):

> In the past, at the conclusion of operations by the Government, the practice has been to negotiate with each road what in effect is an exchange of releases. This is based upon advice of the Attorney General that the fairest measure of damage under the Constitution for taking of the railroad systems is the amount of profit which the owners would have made for the period concerned had it not been for the seizure. In consequence, it is our hope that the Government will be able successfully to conclude, at the end of the period of operations, with each of the 195 roads concerned, an agreement under which each road holds the Government harmless from all liability on account of the taking in return for a release

on the part of the Government of profits which would have accrued to each road but for the taking. Under such arrangements no profit would accrue to the Government as a result of these operations. Conversely, operation losses would also accrue to the owning corporations. (p. 596).

Even under this procedure, which is based, as has been observed, on an unfortunate absence of stated principles to govern the invocation of the Government's power to seize and operate properties involved in a labor dispute, the Government is still in a position, in the present railroad dispute, to use the power it has—the power of temporary possession—to prevent unjustified economic advantage to either of the parties to the dispute.

In this connection, of course, it is important to bear in mind the fact that there have been cases in which the railroads have sued the Government for claims arising from Government seizure. Some of these cases are still pending in the courts. This, in itself, raises the problem of how the Government may be properly absolved of fiscal liability for claims arising out of seizure, when seizure is clearly essential for the protection of the vital national interest. This, in turn, raises the question of how seizure may be carried out without freeing the carriers of liability for such losses as might occur as a consequence of seizure.

The present practice, as is seen from Secretary Bendetsen's letter, is to depend upon Government negotiations with the railroad owners, prior to return of the property, for a settlement of the questions raised above.

In any event, the instant dispute certainly indicates and underlines the need for thorough and careful study of the whole question of Government seizure and of the means by which Government seizure, when it occurs, may preserve the quality of bargaining power of the disputing parties, and thus promote, rather than impede, sound and democratic labor-management relations.

THE MERITS OF THE DISPUTE

1. The 40-hour week

Probably the demand of the brotherhoods which has produced most disagreement is the demand for a 40-hour week with 48 hours' pay for the yardmen. The committee finds that during the period from 1933 until the present most great American industries have adopted a 40-hour week with no diminution in take-home pay (p. 606ff; but see pp. 346–348). At the beginning of the period most industries, including the railroad industry, were working a regular workweek of 48 hours or more. Commencing with the labor agreements developed under the NIRA and continuing to the present, one industry after another has reduced the working week to 40 hours while maintaining and even increasing weekly rates. The railroad industry was a striking exception to this rule until 1949 when, in accordance with the Leiserson Emergency Board report (committee exhibit No. 7), the nonoperating employees, constituting the large majority of railroad employees, were awarded a 40-hour week with 48 hours' pay. This was due in no small measure, it should be pointed out, to the fact that railway labor, as well as management, preferred to leave the regulation of their hours to collective bargaining and was, in consequence, exempted from the

overtime provision of the Fair Labor Standards Act when it was enacted in 1938. At the present time, with the exception of a few substandard industries, railroad yardmen are the only large group of American employees who still have a regular workweek in excess of 40 hours a week without penalty overtime. The hearings certainly revealed that railroad yardmen believe they are the victims of unjust discrimination. The committee believes that this differential will continue to threaten peace on the rails until some equitable adjustment has been made.

2. Deterioration of railway wages

Committee exhibits Nos. 16 and 17 show the ranking of 124 individual industries, manufacturing and nonmanufacturing, including railroads, for the years 1939, 1945, and 1949 (pp. 640–655). It will be seen that in average hourly earnings railroad employees ranked thirty-seventh in 1939, and sixty-fourth in 1949. In average weekly earnings railroad employees ranked fifteenth in 1939, and thirty-second in 1949. This decline in rank demonstrates a marked deterioration in the relative wage position of railroad workers. With respect to the number of hours worked per week, the average of railroad employees in 1949 was 45.2 hours, as compared with an average of 39.5 hours for all manufacturing industries (p. 655). Thus, although the number of hours worked per week by railroad employees now greatly exceeds the average for manufacturing industries, their weekly earnings, that is, their take-home pay, has shown a marked decrease. Railway labor has been considered as among the "aristocrats" of Nation's labor. It is therefore significant to note the sharp deterioration in their earnings and the continuing high level of their hours of service. These facts alone, in the judgment of the committee, are a primary and understandable cause of the restlessness and discontent which have marked railroad labor-management relations during the past 2 years. The railroads constitute a favored industry, one vested with a public interest. They enjoy the advantages of monopoly. The committee does not believe that there is justification for substandard wages and working conditions on American railroads, conditions which generate unrest among the employees responsible for the efficient operation of the Nations transportation system.

The hearings have also established that, in spite of increased traffic and earnings for the carriers (pp. 141–145), unemployment has seriously increased among operating employees in recent years (pp. 295, 321). This trend may have been temporarily halted by the mobilization effort. But with continuing improvement of railroad facilities and per capita productivity, unemployment of operating employees presents a long-range problem of serious magnitude to the Nation. Railroad labor is highly skilled, especially in the operating groups. The skills acquired by experience on the railroads are, unfortunately, not readily adaptable to other industries, so that an unemployed operating craftsman has great difficulty finding comparable employment elsewhere.

RAILWAY LABOR ACT

Generally speaking the hearings demonstrated that the Railway Labor Act is practical and sound and that it has been administered well. Indeed, the National Mediation Board is to be commended for the patience, skill, and zeal with which it has endeavored to settle

this dispute. That it has not yet succeeded is to be attributed to the recalcitrance of both parties and to the failure of the carriers to keep pace with American industry in matters of wages and hours, rather than to any defect in the act or any deficiency in its administration.

However, the hearings have demonstrated the need for certain minor amendments to the act. The nature of these amendments is briefly indicated below:

1. It was agreed by all parties that the emergency boards provided for by the act could perform their functions more efficiently if they had the aid of experts in the field of railway wages and rules. The committee therefore finds that the act will be improved by an amendment enlarging the Emergency Board to five members, provided that one of the additional members shall be designated by the carriers, and the other by railroad labor.

2. Delays in negotiations and in advancing from one step of the mediation process to another contribute greatly to labor unrest. The committee finds that the act would be improved by an amendment further limiting the time within which the parties must meet and commence negotiations after the filing of notices and at other stages of the mediatory process.

The committee will prepare and consider legislation embodying the foregoing proposed amendments.

MEDIATION AND ARBITRATION

Enactment of the two amendments proposed would leave basically unchanged existing machinery for settling railway labor disputes. In recent years this machinery has proved adequate for the settlement of all disputes between the nonoperating employees and the carriers. The following comments therefore only apply to disputes involving the operating brotherhoods. The brotherhoods have rejected every emergency board recommendation during the past 6 or 8 years (pp. 356–362). The emergency board procedure has therefore proved to be a prescribed but wholly ineffective step in the settlement procedure.

It must be borne in mind that emergency boards appointed pursuant to section 10 of the Railway Labor Act are not boards of arbitration. Neither do they constitute mediation boards. Their functions are to find the facts and to make recommendations to the parties. The parties are not under any obligation to accept the recommendations. Either party to any dispute has the clear legal right to accept or reject an emergency board report. It is also quite clear that the Railway Labor Act does not impose even a moral obligation on the parties to a railway dispute to accept and act upon the recommendations of an emergency board. If the parties were required by law to accept the recommendations of an emergency board, that would constitute compulsory arbitration, which is repugnant to the American concept of collective bargaining.

The brotherhoods contend that the emergency boards appointed for their disputes have consisted of members who did not have sufficient knowledge of the industry and of the questions involved to decide justly on the merits. The remedy on the absence of legislative action to enlarge the boards would seem to be the appointment of experts as members of the boards. The committee strongly recommends that only prominent persons thoroughly familiar with railway wages and rules be appointed to emergency boards. Perhaps a panel

of such experts should be created, on joint recommendation of the carriers and the organizations, from which emergency boards could be selected.

In many important disputes involving the operating brotherhoods, when arbitration has been proposed by the Mediation Board, it has been accepted by the carriers but rejected by the labor organizations. The witnesses for the brotherhoods have outlined the reasons for their opposition to arbitration. The hours of service, overtime rates, and other conditions of employment of operating employees are governed by very technical and highly complicated working rules, calling for the payment of so-called arbitraries. It is sufficient for this report to note that these rules have been evolved in collective-bargaining sessions extending over many years. They usually originated in demands of the brotherhoods designed to spread employment or to penalize certain practices of the carriers which the employees regarded as unfair. These demands almost universally met with stiff resistance from the carriers. Their embodiment in collective-bargaining agreements has thus represented victory for the employees after hard struggle. All of these rules, the brotherhoods say, were "bought and paid for"; i. e., that to win these rules they have been obliged, over the years, to make many concessions in the form of reduced wages or other economic benefits. Once such a rule has been established it is clear that, in submitting it to arbitration, the employees have nothing to gain and everything to lose, since any change in the rules would be to their comparative disadvantage. In a sense, these views of the brotherhoods are correct. However, in a larger sense, they are unsound, and the committee feels that progressive improvement of railroad service may require a change of attitude on the part of the brotherhoods. Mature collective bargaining must be a two-way street. It cannot be exclusively concerned with the demands of employees. The rightful demands of employers are also entitled to be heard and to be negotiated in good faith. Otherwise bargaining is a unilateral process, a one-sided exercise of economic force.

We are not suggesting that railway labor abandon any of the gains for which it has fought so long and so courageously. It is undeniable, however, that some of the working rules governing railway labor were adopted at a more primitive stage of development of railroad transportation. The public demands and is entitled to continuing improvement of its railroad facilities. If any of the working rules should constitute a substantial bar to such improvement the committee feels that the rule must give way to progress. Surely that will be to the long-range advantage of railway labor as well as to management and the public. To this extent, the committee feels that the brotherhoods ought to consent in the interest of sound collective bargaining as well as progress, to utilize the techniques of arbitration to break otherwise insoluble deadlocks. The committee is aware that in perhaps most cases the working rules set up bargaining processes by which necessary changes can be effected. The committee believes that these processes must be simplified and speeded up to meet the needs of our swiftly moving times. And the simplification of these processes, the committee believes, constitutes the proper scope of arbitration with respect to the working rules.

Arbitration, as we have previously said, is a judicial process. The efficient functioning of the judicial process is dependent on the utmost

clarification of the issues. It goes without saying that any agreement to arbitrate ought to be precise in its terms of reference. The issues must be clearly and unambiguously stated. The limits of the authority of the arbitrator must be carefully and sharply defined. With these precautions the committee believes that voluntary arbitration is a sound and useful tool in the settlement of labor disputes.

APPENDIX 1

Recommendations on Proposals of the Organizations

DAILY EARNINGS MINIMUM GUARANTY

1. With regard to an increase of 2½ cents per hour in the basic rate of all classes of yard service employees and the elimination of the daily minima guaranty.

That in lieu of the existing daily earnings minimum guaranty of 20 cents per day there be an increase of 2½ cents per hour in the basic daily rates of all classes of employees presently included under said guaranty.

BASIC 5-DAY, 40-HOUR WORKWEEK

With regard to the 5-day workweek

(*a*) That effective October 1, 1950, the carriers shall establish for all yard service employees represented in this matter, a workweek of 40 hours, consisting of 5 calendar days of 8 hours each, with 2 consecutive days off in each 7; that carriers shall have the right to stagger workweeks in accordance with their operational needs and requirements; and that employees shall have the right to expect that whenever practicable, from the standpoint of the carriers' operating necessities, the two consecutive days off occasionally shall be on Saturdays and Sundays.

(*b*) That the yard service employees represented in this matter shall receive a basic wage rate increase of 18 cents per hour, or $1.44 per basic day, beginning October 1, 1950.

OVERTIME PAY

With regard to overtime for service in excess of 8 hours each day (24-hour period) or in excess of five 8-hour days (40 hours) in a week

That all services in excess of five 8-hour days (40 hours) in a week shall be paid for at the rate of time and one-half.

SUNDAY AND HOLIDAY WORK

With regard to time and one-half rates for work on Sundays and holidays in yard service.

That the organizations' request for punitive rates of pay on Sundays and holidays be withdrawn.

RULES AND PRACTICES TO EFFECTUATE THE 40-HOUR WEEK

With regard to rules and practices required to effectuate the 5-day workweek

That in view of the practical necessities of the operations involved, and the fact that the parties are so close to an agreement in the matter, the rules and practices required to effectuate the workweek of five 8-hour days shall be remanded to the parties for joint negotiation and determination.

SAVINGS CLAUSE

With regard to the savings clause

That the adjustments contemplated within the scope of the Board's recommendations shall not modify any basic day or monthly rule or any other rules or practices now in effect which are deemed more favorable to the employees.

2. CAR RETARDER OPERATORS' DIFFERENTIAL

Recommendation

That the request be approved and that the basic daily rates for car retarder operators be determined by adding 80 cents to the basic daily rate of yard conductors (foremen).

3. FOOTBOARD YARDMASTERS' DIFFERENTIAL

Recommendation

That the daily rate for yard conductors (foremen) who also act as yardmasters shall be not less than two-thirds of 1 hour's pay in excess of the yard conductors' (foremen's) daily rates.

4. GRADUATED RATES OF PAY

Recommendation

That the request of the organizations be withdrawn.

5. RESTORATION OF STANDARD RATES BETWEEN TERRITORIES

Recommendation

That all existing basic daily rates in effect applying to road train service employees on railroads in the Western Territory be adjusted so as to eliminate the 1 percent differential, and that simultaneously all doubleheader rules in Western Territory be abandoned.

6. EQUALIZATION OF MILEAGE—BASIC PASSENGER DAY

Recommendation

That this request be withdrawn.

7. PASSENGER SERVICE OVERTIME

Recommendation

That the proposal for overtime rate in the passenger service be withdrawn.

8. INITIAL TERMINAL DELAY

Recommendation

That train service employees in all classes of road service be given an initial terminal delay rule comprehending a 60-minute maximum preparatory period for employees in the passenger service and 75-minute maximum preparatory period in the freight service, the details of the rule to be formulated by joint agreement.

9. EXPENSE AWAY FROM HOME TERMINAL

Recommendation

That the organizations' request for expenses away from home terminal be withdrawn.

10. UNITED STATES MAIL HANDLING ALLOWANCE

Recommendation

That within the applicable rule the allowance to baggagemen for the handling of United States mail be increased from 34 cents to 46 cents per day.

11, 12, 13. DINING CAR STEWARDS

Recommendation

That the basic hours of stewards be reduced from 225 hours to 205 hours. It is also recommended that penalty overtime shall not accrue until 240 hours have been worked and that hours between 205 and 240 be paid for at the pro rata rate. It is further recommended that the monthly salary to be paid for the 205-hour month shall be $9.65 less than the salary now received for the 225-hour month. Recommendation to be effective October 1, 1950.

YARDMASTERS

Recommendation

After examining all the evidence submitted in this case, the Board now submits the following findings and recommendations:

1. That a 5-day workweek is feasible for yardmasters and that it should be adopted.
2. That the salaries of yardmasters should be reduced one-sixth.
3. That the sum of 18 cents should be added to the hourly rate of yardmasters. This increase to be figured on the new rate and determined according to the formula set out above.

4. The suggested increase in the hourly rates of yardmasters should place their rates and earnings in their proper position when considered in the light of comparative studies of the relative rates of other supervisory officials of the same or equivalent grade in the railroad industry, and the relative rates of those whom they supervise.

5. The recommendation of this Board is that the suggested change be made as of October 1, 1950. It is felt this will give ample time to make all necessary arrangements both as to assignments and rules. It is the feeling of the Board that the rule changes should be made by negotiations and in conformity with our suggestions contained in the above discussion.

EFFECTIVE DATE OF CERTAIN RECOMMENDATIONS

As regards certain of the above proposals relating specifically to the daily earnings minimum guaranty, car retarder operators, footboard yardmasters, and the handling of United States mail, the Board recommends that these adjustments should become effective July 1, 1950.

RECOMMENDATIONS ON PROPOSALS OF THE CARRIERS

INTERDIVISIONAL RUNS

Progress and the forces of competition suggest that restrictions on interdivisional runs be eliminated for both assigned and unassigned services. Equitable distribution of the work would protect seniority rights and the only condition to be exacted should be the giving of fair and reasonable notice (carriers' proposal 7).

POOLING CABOOSES

Pooling cabooses should be permitted, and any rule or practice limiting the right of use of cabooses for crews generally should be eliminated. Of course, proper provision should be made at terminals for locker space or other accommodations for employees who, under present rules, have assigned cabooses, and for the general care and upkeep of cabooses and equipment (carriers' proposal 8).

COUPLING AND UNCOUPLING AIR HOSE

There are many rules that require that where carmen are available, trainmen and yardmen are not required to couple and uncouple air, steam, and signal hose. We recommend that, where such rules are in existence, the parties should meet and redefine the import and intent of the rule so that its application will be limited to those situations in which carmen are at the immediate point where the coupling or uncoupling is necessary. It is further suggested that where arbitraries are specified for this specific work, a clause should be added thereto limiting such arbitrary to the member of the crew performing the work (carriers' proposal 9).

MORE THAN ONE CLASS OF ROAD SERVICE

We suggest that the parties include a rule providing that when more than one class of road service is performed in a tour of duty, the rate to be paid for the entire working time shall be the highest rate applicable for any class of service performed (carriers' proposal 12 (2)).

YARD SWITCHING LIMITS

It is suggested that the parties agree that as switching needs expand or contract, management should be permitted to expand or contract such yard limits to conform to the needs of service (carriers' proposal 14).

REPORTING FOR DUTY RULES

Call and reporting rules should be examined and changed so that less time would elapse between the call time and the actual time of commencement of work. This would probably aid the carrier in reducing initial terminal delay time (carriers' proposal 16).

GENERAL RECOMMENDATIONS

It is recommended that rule change requests of the carriers, not covered herein, be withdrawn.

If the parties are unable to agree upon a rule for any one or more of the above suggestions, then in that event the parties should agree to arbitrate such question or questions.

MINORITY VIEWS TO MAJORITY REPORT ON DISPUTE BETWEEN THE RAILWAY CARRIERS AND THE FOUR OPERATING BROTHERHOODS

We are unable to concur in the report of the majority on the dispute between the railway carriers and the four operating brotherhoods because—

(1) We seriously question the wisdom of the committee holding hearings and publishing a report on a pending labor-management dispute;

(2) We do not think it is the proper function of the committee, nor do we believe the committee is qualified, to make recommendations concerning the merits of a pending labor-management dispute;

(3) We think the hearings and the report are inadequate and inappropriate as a basis for sound legislative proposals by the committee in the field of labor-management relations in the railway industry.

The policy of holding hearings on pending labor-management disputes is one that has serious and unfortunate implications both for the committee and for labor-management relations generally. We feel that the experience of the committee in the recent hearings on labor-management relations in the telephone industry and in the textile industry have made it clear that such hearings have a tendency to obstruct rather than to facilitate collective bargaining. In the case of the railway dispute there was, perhaps, an outside chance that hearings before the committee might resuscitate effective collective bargaining after protracted negotiations had apparently bogged down. In spite of informal mediatory efforts by the chairman of the committee, however, the hearings concluded without a settlement being achieved. While the trainmen finally did make an agreement with the carriers several weeks later, it is doubtful if the hearings contributed to this agreement. It is significant that the other three brotherhoods have not yet settled with the carriers.

It seems obvious to us that it is impossible for the committee to publish a report on a pending labor dispute that does not, in effect, constitute an intervention in the dispute and a precedent for intervention into other specific labor disputes. The majority specifically denies that this investigation was intended to do either of these things,[1] but whatever the purpose of the majority, a careful reading of the report clearly shows that this is exactly what it has done.

In our judgment, the publication of the majority report may well delay a settlement rather than encourage one because it represents an attempt to cast the committee in the role of an emergency board—a role for which the committee is eminently and understandably unsuited. We believe that the primary and proper function of the com-

[1] See p. 8. All references are to majority report.

mittee is to develop evidence on the basis of which it may form intelligent judgments concerning possible defects and deficiencies in legislation affecting labor-management relations and in the administration of such legislation; and then to translate those judgments into practical legislative recommendations to be acted upon by the Congress, or into practical recommendations concerning administration for the guidance of appropriate agencies of Government. While this function is not completely neglected in the report of the majority, it is certainly subordinated.

It is not necessary to look beyond the majority report itself to find a clear statement of the reason why the committee should not attempt to pass upon the merits of the issues in dispute during a pending labor dispute, especially in one so complex as that involved here. The report recognizes that "the hours of service, overtime rates, and other conditions of employment of operating employees are governed by very technical and highly complicated working rules, calling for the payment of so-called arbitraries." [2] It further states that "the organizations contend that the emergency boards appointed for their disputes have consisted of members who did not have sufficient knowledge of the industry and of the questions involved to decide justly on the merits." [3] Apparently concurring in this conclusion, which appears to us a reasonable one, the majority recommends quite logically that "the emergency boards provided for by the (Railway Labor) Act could perform their functions more efficiently if they had the aid of experts in the field of railway wages and rules." [4]

In view of the above statements it is incomprehensible to us how the majority can maintain that it is sufficiently "expert" to make recommendations concerning the disputed issues and even to announce that this report is merely of an "interim" nature,[5] thus leaving open the possibility for future excursions into these same disputed waters.

We think it is fair to summarize the recommendations of the majority on the issues in dispute as follows: The 40-hour week should be granted to yardmen without diminution of take-home pay; wages and working conditions of operating employees are "substandard" and should be improved; "otherwise insoluble deadlocks" over existing working rules that constitute a "substantial bar" to "continuing improvement of * * * railroad facilities" should be submitted to arbitration, but the scope of such arbitration should be limited to the "simplification" of the "bargaining processes by which necessary changes" in these rules "can be effected," and railway labor should not "abandon any of the gains for which it has fought so long and so courageously." [6]

For the reasons already quoted from the majority report we do not feel qualified to substitute our judgment for that of the majority on the merits of the dispute. (By the same token, while we have great respect for the ability of the majority members of the committee and of the committee staff, we do not consider them "experts" in the field

[2] P. 18.
[3] P. 17.
[4] P. 17.
[5] P. 2.
[6] PP. 15–18.

of railway wages and rules.) We agree with the majority that only such experts are qualified to make intelligent recommendations on the merits of labor-management disputes in the railway industry. We do not think that even the recent prolonged hearings were of sufficient scope or duration to allow those relatively unfamiliar with this industry to acquire a bare minimum of expert knowledge about the complexities of this dispute.

In addition to succumbing to the temptation to make recommendations on the merits of the issues in dispute, and to imply that additional recommendations may be forthcoming in a subsequent report, the majority has shown a distressing lack of objectivity at several points in its report.

For example, the majority presents most persuasively the case of the brotherhoods concerning the disputed status of the memorandum dated December 21, 1950.[7] We agree that the evidence in the hearings indicates that the representatives of the brotherhoods affixed their signatures to this memorandum with the reservation, so far as they were concerned, that this action represented merely tentative agreement to its terms, subject to the unpredictable possibility of ratification by the membership. But we have searched the report of the majority in vain for any mention of what we consider to be the equally persuasive case for the carriers and the Government representatives, namely, that the signing of the agreement carried with it a strong and almost self-evident moral obligation for the brotherhood representatives to recommend acceptance of the terms of the memorandum to their membership as the basis for a formal agreement. From a practical point of view, it seems obvious that the nub of this unfortunate misunderstanding was not so much the question of whether the memorandum of December 21 could be properly interpreted to be officially final and binding. It was rather that the carriers and Government representatives considered it a foregone conclusion that the brotherhood representatives would urge its acceptance by their membership, while the brotherhood representatives apparently felt no such obligation.

We fail to see either in the evidence relating to this misunderstanding or in that relating to the equally unfortunate misunderstanding concerning the "no-strike pledge of August 23, 1950," [8] any reason to believe that the responsibility can be aimed at any one party, or that any one party can be absolved of responsibility. At the same time we hold no brief for the public announcements by the Government and the carriers at critical stages in the dispute placing the responsibility on the brotherhoods for alleged broken pledges or failure to honor agreements.

The majority report devotes only half of one page to what we consider to be the primary function of the committee, namely, the effectiveness of the Railway Labor Act and the desirability of amendments thereto or of changes in its administration. Although the proportion of the hearings devoted to this subject was similarly small, the majority feel justified in stating that "generally speaking the hearings demonstrated that the Railway Labor Act is practical and

[7] P. 9.
[8] P. 9.

sound and that it has been administered well." [9] While it may be true that the act is "practical and sound," and well administered, this statement is certainly neither "demonstrated" by the hearings nor justified in the report.

For instance there was very little discussion in the hearings of the procedure of the National Railroad Adjustment Board and no mention whatsoever of this subject in the majority report. Since this bipartisan board—or so-called referees appointed by the National Mediation Board in case of deadlocks—hands down compulsory decisions on disputes concerning the interpretation of working rules, it can hardly be dismissed as an insignificant part of the labor-management picture.

Furthermore, although the question of the control of railroad rates and other significant aspects of railway operation by the Interstate Commerce Commission, and the relation of such control to the ability of the carriers to grant improvements in wages and working conditions was briefly raised in the hearings, there was no comprehensive discussion of this vital question and no mention of it whatsoever in the majority report. The indefensibly oversimplified statement by the majority that "the railroads constitute a favored industry, one vested with a public interest" enjoying "the advantages of monopoly" [10] well indicates the superficial character of the majority's analysis of the fundamental problems underlying labor-management relations in this industry.

In fact the majority makes a seriously misleading statement regarding an important provision of the Railway Labor Act itself when it declares that "It is also quite clear that the Railway Labor Act does not impose even a moral obligation on the parties to a railway dispute to accept and act upon the recommendations of an emergency board." [11] We think that the legislative history of this law would show most convincingly that labor, management, and the Congress felt at the time the act was framed and passed that the principal value of the emergency board procedure lay in the moral force of the Board's recommendations. In recent years this force seems to have lost much of its vigor, but while these recommendations clearly were intended to carry no legal obligation, we submit that they were intended to carry a significant moral force, if not a moral obligation. In fact, the recommendations of the majority concerning the emergency boards seems to us to represent an attempt to restore the somewhat diluted moral strength of these boards.

We are inclined to agree with the majority that the pending dispute, as well as other recent disputes, indicate that there exists a "special problem in collective bargaining in the railroad industry" [12] deserving of investigation. However, the hearings and the majority report herein discussed are certainly completely inadequate to determine the true nature of this problem and to serve as a basis for sound recommendations for its solution.

ROBERT A. TAFT.
H. ALEXANDER SMITH.
RICHARD M. NIXON.

[9] P. 16.
[10] P. 16.
[11] P. 17.
[12] P. 8.

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