Dr. Halverson came to us in 1981 after an already distinguished pastorate at Bethesda's Fourth Presbyterian Church. There, as here, he tried to build a strong community—a community that supported each other and strengthened each other's faith.

Dr. Halverson was not a spiritual leader as much as he was a spiritual coalition builder. He knew that the needs of Senators were so unique that any chaplain had to do more than pray for us once a day. He knew that cultivating faith and goodwill required more than the skills of a single professional clergyman. That Reverend Halverson led us to appreciate and seek out the spiritual strengths in each other was perhaps his greatest achievement as chaplain.

To those who view the Senate on C–SPAN or even from the inside vantage point of the press galleries, the office of Senate Chaplain may appear to be superfluous. But, Dr. Halverson's gentle outreach to all Senators—of both parties and of all religious denominations—made the chaplaincy a living example of exactly the kind of men and women we all strive to be: kind, forgiving, honorable, and joyful. I believe that most Americans support the idea that these qualities ought to exist somewhere in the hustle and bustle of what goes on under this great Capitol dome.

I, for one, will miss hearing his cheerful ''God bless you'' when passing him in the corridors. There is not a one of us here who would not admit to feeling better upon hearing that; sometimes it changed the perspective of the entire day.

His ministry here has been well-served and now his retirement is well-deserved. I wish to join all Senators in wishing Dr. Halverson a rewarding and happy retirement.

TIME FOR COMMON COURTESY: WELCOME TAIWAN'S PRESIDENT TO OUR SHORES

Mr. HELMS. Mr. President, I am happy to participate in calling the Senate's attention to a travesty in the modern conduct of U.S. foreign relations. The question all Americans should confront is, how and when did the United States reach the point in United States-Taiwanese relations that United States foreign policy could possibly forbid a visit to the United States by the highest-ranking, democratically elected citizen of Taiwan?

Though I seldom disagree with Ronald Reagan—I did strongly disagree on a few occasions and one of those was when President Reagan's advisors made a bad decision—one which so jeopardized our relations with Taiwan by cuddling up to the brutal dictators in Beijing.

Since that time, the United States has been forced to hide behind a diplomatic screen to demonstrate our commitment and loyalty to the Taiwanese people.

Mr. President, at the time President Reagan's advisers cast their lot with the Red Chinese Government, Congress was promised that the United States would nonetheless continue to ''preserve and promote extensive, close and friendly * * * relations'' with the people on Taiwan. But one administration after another failed to live up to that promise.

How in the world could any one consider it close and friendly to require the President of Taiwan to sit in his plane on a runway in Honolulu while it was refueled? I find it hard to imagine that United States relations with Red China would have come to a standstill because a weekend visit to the United States by Taiwan's President Lee was allowed.

The President's China policy is in poor shape at this point—even members of Mr. Clinton's team recognize that. So, how can anyone really pretend that allowing President Lee to travel to his alma mater—or to vacation in North Carolina—would send our already precarious relations with Red China plummeting over the edge?

Last time I checked the mainland Chinese were obviously and understandably enjoying their relations with the United States a great deal. We would be enjoying them, too, if only American taxpayers could be benefiting to the tune of $30 billion every year as a result of United States trading with Red China.

Time and again, the U.S. Congress has urged the administration to grant President Lee a visa. We have even amended United States immigration law so that it now specifically mentions the President of Taiwan. Congress has passed resolution after resolution encouraging the President to allow President Lee into the United States for a visit. All to no avail.

Now's the time, Mr. President, We encourage you to allow President Lee to visit the United States when he so chooses. Bear in mind that some of us in Congress will never cease our support for one of America's greatest allies, the oldest democracy in the Asian region—the Republic of China on Taiwan.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. Will the Senator from Massachusetts withhold so that we can go back to the pending business?

Mr. KENNEDY. I thank the Chair.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, morning business is closed.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 889, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 889) making emergency supplemental appropriations and rescissions to preserve and enhance the military readiness for the Department of Defense for the fiscal year ending September 30, 1995, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Bumpers amendment No. 330, to restrict the obligation or expenditure of funds on the NASA/Russian Cooperative MIR program.

Kassebaum amendment No. 331 (to committee amendment beginning on page 1, line 3), to limit funding of an Executive order that would prohibit Federal contractors from hiring permanent replacements for striking workers.

The PRESIDING OFFICER. The Chair recognizes the Senator from Massachusetts.

Mr. KENNEDY. Madam President, during the course of our discussion last week about the action of the President of the United States in issuing the Executive order on the permanent replacement of striking workers, there were a number of issues that were raised. One was the question of whether the President had the authority and the power to issue the Executive order; a second was whether there was a sound public policy rationale to do so. I would like to take a few moments of the Senate's time this afternoon to address those issues specifically, and then to make some additional general comments.

Madam President, I understand that earlier in the course of the Senate session there may have been a statement by the majority leader as to how we were going to proceed on the Kassebaum amendment. We initially had the cloture vote called for at 5:30 this afternoon but now that vote will occur on Wednesday at a time to be worked out by the leaders. I believe that I am correct. That is my understanding as how we are going to proceed. I was inquiring of staff whether that had actually been announced in the Senate for the benefit of the membership. Could I make that inquiry?

The PRESIDING OFFICER. Consent was obtained to postpone the vote on the Kassebaum amendment to Wednesday, March 15 at 10:30 a.m..

Mr. KENNEDY. I thank the Chair.

Madam President, when we debated the issue of permanent striker replacement last year and again on the floor last week, our opponents argued that the use of permanent replacements is too infrequent to justify a legislative response. But the tens of thousands of workers around the country who have lost their jobs for exercising their legal right to strike bear witness to the need for action. Study after study has shown that the permanent replacement of strikers has exploded, and that the use—or threat of use—of permanent replacement is now a routine practice in collective bargaining negotiations. I

took a few moments when we were meeting last Friday with charts to demonstrate the rather dramatic increase in the utilization of permanent strike replacements in recent years.

In a survey of employer bargaining objectives conducted by the Bureau of National Affairs earlier this year, an incredible 82 percent of the employers surveyed said that if their employees went on strike, they would attempt to replace them, or would consider doing so. And of those employers, more than one in four said the replacements would be permanent.

The historical evidence also leaves no doubt that this has become a serious problem, and that it is getting worse. Let me just review for a moment the results of a study by Teresa Anderson-Little of the economics department at Notre Dame University.

By searching through electronic data bases, published legal articles, and National Labor Relations Board case reports, Ms. Anderson-Little was able to identify 632 strikes involving the use of permanent replacements which occurred between 1935 and 1991—the largest data base of any of the studies that have been conducted to date. Her research confirms that the use of permanent replacements was extremely rare in the first 40 years following passage of the National Labor Relations Act, and that the increase has been dramatic in recent years.

From 1935 through 1973, there were on average only six strikes per year in which employers hired permanent replacements. But beginning in 1974 and continuing through 1980, the average number of strikes per year involving permanent replacements nearly triples. And from 1981—the year President Reagan permanently replaced the striking PATCO workers—through 1991, the average rose to 24 strikes per year—4 times the average prior to the mid-1970's.

Our opponents like to claim that the ability of employers to permanently replace workers helps to promote more cooperative labor-management relations, and prevent disruptions to the economy caused by strikes. But Ms. Anderson-Little's study also confirmed that the use of permanent replacements significantly prolongs strikes and prevents disputes from being settled.

While the average duration of all strikes in the United States has historically ranged from 2½ to 4 weeks, strikes involving permanent replacements have consistently lasted an average of 7 times long as strikes where permanent replacements were not hired.

Since the Bureau of Labor Statistics stopped keeping comprehensive data on strike duration in the 1980's, Ms. Anderson-Little's findings involved strikes only through the end of the 1970's. However, studies involving more limited samplings of strikes during the 1980's and 1990's affirm the impact of striker replacements on strike duration.

Using a GAO-compiled data base of strikes that occurred in 1985 and 1989, Professors Cynthia Gramm and Jonathan Schnell of the University of Alabama found that the mean duration of a permanent replacement strike was three times as long as the mean duration of strikes where permanent replacements were not used.

A survey of strikes involving members of the Steelworkers Union from 1990 to the present found that where temporary replacements were used, the average duration of an economic strike was 121.9 days, but when the employer hired permanent replacements, average strike duration lengthened to 284.1 days.

Why is that strikes involving permanent replacements last so long? The answer is that once permanent replacements are hired, the union and the employer are immediately placed at opposite extremes on the issue of reinstatement of strikers, which becomes the sole topic of bargaining. Since it is an irreconcilable issue, the strike continues until either the union or the employer concedes.

The union finds it impossible to give in, since accepting the employer's position means by definition that the employees have been replaced and can't have their old jobs back. The employer, for its part, has little incentive to capitulate once it has hired and made commitments to new, permanent workers.

Studies like the Gramm-Schnell study have consistently found that employers now hire permanent replacements in 20 percent of all strikes, and threaten to hire replacements in another 15 percent of strikes.

The notion that we can sit back and let this practice continue because workers are permanently replaced in only 1 out of 5 strikes is both heartless and absurd. Every single worker who is permanently replaced is one too many.

Lest no one doubt that there are real, flesh-and-blood workers behind these statistics. When we debated this issue last year, we were presented with a list of individual names of more than 19,000 strikers who were permanently replaced in strikes that occurred in the eighties and early nineties. Those are names from just a limited sample of strikes that occurred during that period. And since last year, the numbers have kept growing.

In my own State of Massachusetts, at least 450 workers have been permanently replaced just since 1988, including workers at ADT Security Systems, Brockway Smith, Kraft S.S. Pierce, and Olson Manufacturing.

To these workers and their families, this is not some minor issue that is undeserving of congressional attention—this is about their jobs, their livelihood, their families' future.

Lori Pavao, a former nurses' aid at a nursing home in Fall River who was permanently replaced when she and other nurses' aides and members of the dietary and housekeeping staff went on strike on 1989, recently described her feelings about what happened to her:

> I worked there for 8½ years. A lot of patients were like family to me. I felt lost for awhile. I didn't want to start all over somewhere else.
>
> You always hear about people going out on strike and people going back. I just never dreamed that it would be over that way. I thought I was going to retire from the place.

Although opponents of the President's Executive order make much of that fact that permanently replaced strikers do have the right to be placed on a preferential hire list to be considered for future openings if the permanent replacements leave, the fact is that very few workers actually do over return to work with their previous employer.

And many never recover, financially or emotionally, from the devastating experience of being thrown out of their jobs for exercising what is supposed to be a legally protected right.

Banning the permanent replacement of striking workers has overwhelming support not just from labor, but also form religious groups, civil rights groups and women's groups. They understand that this issue is not about some abstract power struggle between big business and big labor. This is about real people who are being deprived of the only leverage they have to counteract the enormous power that employers have to dictate terms and conditions on the job.

This is about workers like the women at Diamond Walnut, who gave decades of their lives to that company, who agreed to 30 percent paycuts in their meager wages to help their company survive when it was in trouble, and who then were thrown out on the street when the company was back making record profits because of their sacrifice.

This is about the workers at Burns Packaging in Kentucky—45 percent black and 40 percent female—who were making $4.70 an hour when they decided to form a Union. What they asked for was a 5 percent increase, to just $4.95 an hour, and a grievance and arbitration procedure for resolving complaints about unfair treatment. But when they struck after 6 months of fruitless negotiations at the bargaining table, they were immediately permanently replaced.

(Mr. GRAMS assumed the chair.)

Mr. KENNEDY. The President's Executive order will not change the law regarding permanent replacements. But by banning the practice of permanent replacements on Federal contracts, it will help to prevent the terrible injustice to working people that is caused by the current system.

In the end, what is at stake here is the standard of living for working men and women. The country has experienced a 20-year decline in real wages.

Hourly compensation has fallen compared to other major industrial nations.

Since the early 1980's, we stand virtually and ominously alone in the industrial world as a Nation where the disparity in income between the rich and the poor grew wider. That is not a healthy trend for any country, and certainly not for ours, which is based on the principle of fair opportunity for all.

The facts are disturbing. The ratio in earnings between the top 10 percent of wage earners and the bottom 10 percent is wider in the United States than in any other industrial country. The bottom third of American workers earn less in terms of purchasing power than their counterparts in other countries.

American workers are actually working harder than workers in other industrial nations. The U.S. workers now labor 200 hours more a year than workers in Europe. While vacation and leisure time have increased over the past 20 years for Europeans, they have declined for most Americans.

Yet, according to the Congressional Budget Office, between 1977 and 1989, the after-tax income of the top 1 percent of families rose by more than 100 percent, while that of the bottom 20 percent fell nearly 10 percent.

Here we are seeing an extraordinary phenomenon, which is really unique in terms of the whole American experience in this centry. For decades, all of us moved along together, as we increased productivity and output, and as we adopted new technology and new skills, as we saw corporate profits increase, the standard of living for working families also increased, so that each generation was better off than the past generation. That is generally what most Americans experienced, it is no longer true for the current generation.

We are seeing that working families are working longer and harder, and with less to show for it in terms of their real incomes. The only factor that has really enabled families to maintain a stable income over the last 15 years is the enormous infusion of second family earners—workers' wives, for the most part—into the labor market. It is only by having their spouses come into the work force and augmenting and supplementing the family's income that working families have been able to offset the effects of declining real wages.

Now what we are seeing, even with all these women who are wives and mothers in the work force, is that families have effectively stagnated and real purchasing power, is in decline.

That is what is happening. And there is no further adjustment that working families can really make to deal with that problem. Most families already have everyone in the family is able to work out there working. So they can't put another family member to work to make up for the fact that in real terms, their wages are declining.

Too many of those other members of the family who are trying to go out and find work to help supplement the family's income jobs are finding that the only jobs available are minimum wage jobs, and that is another issue which we must address. The real purchasing power and the minimum wage continue to decline. So the ability of those other members of the family to contribute to the income of the family is reduced. This whole issue presents to the Senate and the House of Representatives the question of whether we are going to truly honor and reward work in our society.

Are we going to say to people that are prepared to work 40 hours a week, 52 weeks a year, that you will earn a living wage and have a future? Or are we going to say that you can be treated like wornout and antiquated machinery and put on the junk heap while we hire other younger people that will work for a good deal less in terms of their benefits, because younger people are healthier and they do not have the health-care costs and needs that older workers do.

The phenomenon we are seeing, Mr. President, is that while the after-tax income of the top 1 percent of the families rose more than 100 percent, that of the bottom 20 percent fell nearly 10 percent. Who are those 20 percent who are seeing their real earnings decline? They are the workers who are out there every single day, playing by the rules, doing their bit and participating. And they are the workers who, if they have the nerve to try to gain another 5, 10, 15 cents an hour in wages, are being permanently replaced by their employers. They are the ones who are taking it on the neck.

The President of the United States says that if those companies are going to go ahead and dismiss those workers and hire permanent replacements for them, we are not going to give them an additional leg up by entering into contracts with them that allow them to make profits with taxpayers dollars; we are just not going to do that.

And now we have an amendment on the defense appropriations bill which seeks to block the President from implementing that policy, an amendment which is effectively a legislative initiative on an appropriations bill, which is not appropriate, and which is tying up the Senate and preventing us from doing our basic work in terms of dealing with defense appropriations. Our Republican colleagues have insisted on offering and pressing this amendment. So we are here responding to their arguments.

Mr. President, another phenomenon that is happening out there in the real world for workers is that health care for the American workers is becoming increasingly expensive.

Union workers who went without pay increases in order to obtain good health care have seen their health benefits cut back. They have been asked to pay greater percentages of health costs. Since 1980, the share of workers under 65 with employer-paid health care has dropped from 63 to 56 percent. The percent of workers covered by employer-provided pension plans is also rapidly decreasing.

What we are seeing is that the coverage of workers by employers for their health care costs is on a downward slide. And those pensions that were out there to give workers some degree of additional security so they would be able to live their golden years in peace and dignity are also being cut back. But by God, if you complain about those cutbacks that are taking place every single day across America, off you go—you're permanently replaced, put on the junk heap. And that is what is happening.

We have a President who is saying, to the extent that he has the authority and the power, he is going to say ''no'' to the use of permanent strike replacements on Federal contracts. That makes a good deal of sense.

This President's action on permanent replacements offers us a chance to take a stand against all of these disturbing trends: ending the practice of permanently replacing workers on Federal contracts will not solve all of the problems of working Americans, but it can help turn the tide, and by affirming this country's commitment to collective bargaining, we are reaffirming our commitment to a fair balance between labor and management.

We will be standing up for the original historic intent of the labor laws, which have done so much for the country in the past half century. The President's Executive order closes the loophole that undermines good relations between business and labor, and I urge the Senate to support it and reject the amendment.

Mr. President, many of our Republican colleagues have said that they are troubled by the President's action in signing the Executive order. They complain that it takes away the rights of Congress.

But this is not what they are really concerned about. Not one of them, not even the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Texas [Mr. GRAMM], nor the Senator from Vermont [Mr. JEFFORDS], not a single Republican Senator stood up to complain 3 years ago when President Bush signed an Executive order on project labor agreements that changed the national labor law and prohibited Federal contractors from doing something the National Labor Relations Act allowed them to do.

On October 23, 1992, President Bush signed Executive Order No. 12818, which prohibited contractors on federally funded construction projects from entering into otherwise lawful prehire labor agreements. The Executive order prohibited contractors from requiring their subcontractors be bound by their labor agreement, even though section 8(e) of the National Labor Relations Act explicitly permits such agreement. President Bush, unlike President Clinton, overrode an explicit congressional

statement about national labor policy passed by both Houses of Congress and signed into law by the President.

Did any Republican complain? No, not a one. Why not? Could it be they have no real concern about the President overriding congressional labor policy as long as the President's actions are anti-union and are designed to thwart collective bargaining and diminish the power of working Americans? Isn't their only real problem with President Clinton's Executive order a partisan political problem—that they will support an activist Republican President but lash out at a Democrat? Certainly, there is no consistency of principle amongst our Republican friends who are attacking the President now.

Every Republican who voted for S. 55 is opposing the Executive order now. They are putting partisanship above principle.

President Clinton's Executive order does not conflict with an explicit congressional statement of labor policy. There is nothing in the National Labor Relations Act that specifically authorizes the use of permanent replacements for strikers. Yet there is a provision in section 8 of the National Labor Relations Act that makes project labor agreements legal. So why are the Republicans who were not concerned when President Bush issued his Executive order on project labor agreements now so concerned about President Clinton's order on permanent striker replacements?

The Republicans are deeply troubled by this order. We heard a great deal about that. We are deeply troubled by the action of President Clinton. We are deeply troubled by the implication of this Executive order. We are deeply troubled by what this is going to mean in terms of labor relations. We are deeply troubled that somehow we are interfering in the balance between workers and management. We are all deeply troubled.

Well, none of them was deeply troubled at the time when a Republican President issued an Executive order which was in conflict with the National Labor Relations Act. No, none of them were deeply troubled at that time. A Senator who truly finds President Clinton's action troubling would have been far more troubled by President Bush's much more direct challenge to congressional authority.

No, the problem is not the President's authority. Congress gave the President clear authority to control the practices of Federal contractors in the Federal Property Administrative Services Act, 40 U.S.C 471. As the Justice Department's legal analysis points out, that authority is broad-ranging.

As that legal analysis states:

> We have no doubt, for example, that section 486(a) grants the President authority to issue a directive that prohibits executive agencies from entering into a contract with contractors who use a particular machine that the President has deemed less reliable than others that are available. Contractors that use the less reliable machines are less likely to deliver quality goods or produce their goods in a timely manner.
>
> We see no distinction between this hypothetical order in which the President prohibits procuring from contractors that use machines that he deems unreliable and one that the President actually issued which would bar procurement from contractors that use labor relations techniques that the President deemed to be generally unreliable, especially when the Secretary of Labor or the contracting agency's head each confirm the validity of generalization in each specific case.

Mr. President, this issue is related as well to the debate that we have had in the past, and I am sure will have again in the course of this Congress, about the Davis-Bacon law which was initiated by Republicans and has been the law of the land for more than 60 years. Attempts will be made to repeal it.

The Republicans say, ''Look, instead of requiring federal contractors to pay prevailing wages, we can actually save the Federal Government some money by letting those wages slide down, slide down, slide down, so that the contracting can be done at less cost to the taxpayer.''

Well, that argument has a sort of superficial logic to it, but as former Secretary of Labor John Dunlop has commented—and Professor Dunlop is not a Democrat but a Republican, and one of the foremost labor economists in the country—as former Secretary Dunlop has argued, it is a very shortsighted way of viewing what is really going to be in the public's interest, in the taxpayers' interest, over the long run.

You cannot assume, Professor Dunlop points out, that overall project costs are going to be lower just because the dollars you are paying in wages to the workers are lower. What you have to look at is the overall issue of productivity and quality and the ability to deliver a good product on time. That ought to be obvious to all of us. And John Dunlop's basic posture and position is that it is delusional to believe that just by finding people that are going to work for a lesser cost than the prevailing wage, that somehow you are going to be able to save millions or hundreds of millions of dollars, some even estimate it as high as billions of dollars, in terms of taxpayers' funds. What is going to happen is you are going to get inferior products not delivered on time and of poor quality. And someone is going to have to make that up, and it is going to be the taxpayer who is going to pay a good deal more.

We are talking about the same concept, Mr. President, here in terms of the President's Executive order on the use of permanent replacements by Federal contractors. All we are saying is that, with regard to the President's Executive order, he does not want to use the contracting authority of the Federal Government to enter into contracts with contractors that are going to have permanent striker replacements.

Why? Because those permanent replacements are unlikely to have the skills, the background, the experience, the techniques, the knowledge and the know-how to deliver good products on time which they would be charged to do. And rather than taking that chance, in terms of protecting the taxpayers' interest in it, he is not going to participate in that.

I think that is sound common sense and is a sound action in terms of protecting the financial interests of the United States. And it is a sound social policy in terms of trying to give some respect to those individuals who are working hard, playing by the rules, who believe that under the National Labor Relations Act it is still the law that you cannot fire someone who strikes and that therefore it makes no sense to say that a striker can be permanently replaced.

It makes absolutely no common sense to say that you cannot fire strikers but you can permanently replace them. And the workers of this country are fortunate to have a President who understands that the use of permanent replacments is at odds with what the basic principles of the National Labor Relations Act and with the system of collective bargaining that has served this country well over many decades.

So, Mr. President, I hope we will not hear any more manufactured outrage about the President's Executive order. The President has followed precedents established by President Bush. He is fully within the authority granted him by Congress to control the Federal procurement process. The real issue for his critics is his support for working Americans and labor organizations, and not the process he has used to accomplish it.

Now, Mr. President, over the course of the debate in these past days, we have heard various arguments that preventing employers from permanently replacing strikers would encourage strikes and upset the balance in labor-management relations by somehow ensuring that unions would always win a strike situation, the President's Executive order. I thought it would be worthwhile just to take a few moments to review these arguments and also to respond to them so that the Senate record would reflect my view of the answers to these questions.

One of the first questions is, would a ban on permanent replacements inevitably lead to more strikes? No, Mr. President, I do not believe that it would. Even without the threat of permanent replacement, a strike has always been a serious matter for workers and their families. Workers do not lightly choose to forgo their wages, walk the picket lines for days, weeks, or months; deplete or exhaust their life savings and become dependent upon

the charity of others. Workers are especially reluctant to take on these sacrifices because it is never certain that a strike will accomplish their goal.

Apart from the economic disincentives, a strike imposes a great emotional strain on families, friendships, and on the fabric of local community life. A strike is a last resort that no one undertakes lightly. It is wrong to suggest that workers will walk out on their jobs simply because they cannot be permanently replaced.

Workers do not enter into strikes out of any desire or expectation that they will cause permanent hardship to the employer. Workers expect to return after the strike. They have every interest in the long-term prosperity of their employer.

If anything, the use of permanent replacements is what produces longer, more bitter strikes, by transforming the dispute from a dispute about wages and benefits into a battle over the future of every striker's job. These are the hardest disputes to settle, and last the longest time.

Many strikes today occur precisely because the employer has the possibility of permanently replacing the work force. The employer has little incentive to engage in meaningful bargaining with the union when the alternative is either that the union surrenders to the employer's demands, or there is a strike that enables the employer to replace the work force, break the union, and escape the necessity of bargaining altogether.

Maybe strikes would be avoided if the employers did not have the temptation of permanently replacing their work force. That, Mr. President, really says it. If the employer understands that he has the option to replace all the workers, he has very little interest in trying to resolve the dispute. But if the employer has an interest in trying to resolve the dispute then it is logical to assume that the disruption would be held to a minimal amount of time.

You cannot read or hear the real-life stories of individuals that have been permanently replaced without being struck by the fact that invariably those workers talk about how they wanted to continue working for their employer—how they had every hope and intention of remaining with that employer as long as they were able to work. That is a common expression, a common view, a common opinion that runs through the stories of the vast majority of those workers.

Next, would prohibiting the permanent replacement of strikers guarantee that unions will win every strike? This is a concern raised by those who argue that somehow we are changing the rules in such a way as to upset the whole balance between the workers and the employers and guarantee that one side rather than the other would always win.

The fact is that employers win many strikes in which no permanent replacements are hired or threatened to be hired. A prohibition on permanent replacements would certainly not ensure that the union always prevailed in an economic strike.

Employers have many ways to maintain production and revenues during a strike. They can hire temporary replacements. They can use nonstriking employees, managers, and supervisors to do the work; they can hire subcontractors to do the work; and they can rely on stockpiled inventory. All of those techniques have been used in the past with considerable success by employers. Through these and other means, employers avoid the hiring of permanent replacements in the majority of strikes today. Prohibition on the use of permanent replacements leaves in place many significant limitations of what workers may do during a strike. Unions would remain unable to engage in secondary boycotts and would continue to be subject to stringent picket line restrictions.

Will a ban on permanent replacements unfairly deprive employers of a legitimate self-help option? No, because the hiring of permanent replacements should not be viewed as a legitimate form of employer self-help.

The National Labor Relations Act calls for controlled conflict between labor and management. There are principles of fairness that limit each side's right to engaging in self-help activity. Thus, unions are not permitted to engage in secondary boycotts or picket line violence during a strike, even though each of these activities makes it easier for unions to win a strike. Similarly, the hiring of permanent replacements must be viewed as so fundamentally unjust it undermines the basic concept of controlled labor-management conflict.

The fact of the matter is that it is not the law of the jungle out there. There are effective restraints in the law already on the tactics which can be used by parties to a labor dispute, and those restraints are respected. But the use of permanent replacements alters and changes this in a very significant way.

Cardinal O'Connor, the Archbishop of the Diocese of New York, testified eloquently on this moral dimension of the permanent replacement issue. He said:

> It is useless to speak glowingly in either legal or moral terms about the right to bargain and to strike as a last resort, or even the right to unionize, if either party—management or labor —bargains in bad faith, or in the case of management, with the foreknowledge of being able to permanently replace workers who strike on the primary basis of the strike itself. In my judgment, this can make a charade of collective bargaining and a mockery of the right to strike.

It could not be said any clearer than Cardinal O'Connor said it in that comment. So compelling, so sensible, so simple in its logic and rationale.

What is the practice of our foreign competitors with respect to the lawfulness of hiring permanent replacements? Often we hear the argument that if we prohibit employers from permanently replacing strikers we are going to be disadvantaged in our ability to compete effectively in trade around the world.

It is interesting to me to hear this argument invoked so frequently, when the fact is that every other industrial country provides much more generous benefits to its workers than we do. Our opponents say we cannot have comprehensive health insurance for all Americans because it is going to make it difficult for us to compete internationally, but all of the other industrial countries of the world have it. They said we could not have family and medical leave because we would not be able to compete effectively. But workers in other countries have family and medical leave. In fact, virtually all of them have paid family and medical family leave, except for the United States.

Our opponents says we cannot have an effective day care program because we will not be able to compete, when every other industrial country of the world has a comprehensive child care system as a matter of national policy. Whatever political parties are in power in the democratic industrial nations, none of the political leaders, none of the political parties is for emasculating programs that reach out to the most vulnerable in society. Contrast that to what is happening now in the Contract With America where the Republicans are cutting out school lunch programs, cutting back on day care programs, cutting back on the WIC Program, cutting back on student aid programs and teacher support programs, cutting back on housing programs for the homeless.

I do not know how many saw that enormously moving story by one of the networks over the weekend called ''The Feminization of Homelessness,'' about the growing number of women and children in our society affected by homelessness and the explosion of in those numbers that is taking place all across this country.

Maybe we do not have the existing programs right, and certainly we do not in all circumstances. But we ought to try to find ways of improving, strengthening, and making them more effective—making them work rather than effectively abandoning them.

No, we cannot say the benefits we provide to working families are disadvantaging us internationally in our ability to compete. The fact of the matter is, the United States lags behind the rest of the world, including our major competitors, when it comes to the basic democratic rights of workers. Our No. 1 trading partner, Canada, does not even authorize permanent replacements for strikers, even though Canada adopted the NLRA as a model for its labor laws. Canadian law has regularly rejected the Mackay rule as inconsistent with free collective bargaining. United States firms operating in Canada are as profitable without the Mackay rule—which is the rule that

permits the permanent replacement of strikers—as American firms operating under the Mackay rule in the United States.

Other major economic competitors—Japan, France, Germany—categorically prohibit the dismissal of striking workers. Employers in these nations recognize the importance of investing in human resources and have no desire to rid themselves of the skilled and loyal work forces that they have assembled. The employers here who use permanent replacements are harming themselves and their country.

Most of the industrial democracies with which we compete—just about every one of them—has a very extensive, continuing training program to upgrade the skills of all of their workers. That is true in France, Germany, and all of the Western European countries.

Ask them how they do it? Are they not concerned that if they train, invest and use some of their profits to train and upgrade their work force that those workers may leave and go to another place? They say, ''Well, the other companies are doing the same thing.'' And that is why we have seen in the United States, with the exception of some of the top companies, really less than 10 percent of companies who have real training programs. And most of that training does not go to the workers on the front line, but to the supervisors and the managers. We do not have a consistent ongoing upgrading and training system for American workers.

Other major economic competitors, as I mentioned, categorically prohibit the dismissal of striking workers. Even in the nations of Eastern Europe, which we applaud for their emerging democratic unionism, workers who strike do not lose their jobs.

What happened to the machinists at Eastern Air Lines did not happen to the shipyard workers at Gdansk and what happened to the coal miners at Massie Coal Co. did not happen to the coal miners in Eastern Europe. If we are prepared to extol the virtues of the trade union abroad, we should be willing to restore a level playing field for collective bargaining at home.

Mr. President, I see some of our other colleagues on the floor who want to speak. At this time, I yield the floor.

Mrs. KASSEBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, I would like to express my appreciation to the Senator from Massachusetts for being understanding of the necessary absence of the Senator from Utah. He very much wanted to be a part of the debate and the vote and his absence is one of the reasons that the cloture vote has been postponed until Wednesday. I also appreciate the understanding of the Democratic leader.

There has been a desire from all of you to move ahead. The defense supplemental legislation is an important measure, but it seems to me that we are having a good debate.

Mr. President, I would like to explain what this debate is about. This debate is not about the Contract With America. It is not about all of the other issues that have been raised, including school lunches and child care. Those are important issues to be debated at another time. The issue before us at this particular moment is an Executive order that President Clinton has issued that says large contractors doing business with the Federal Government should be prohibited from hiring permanent replacement workers.

There are people with strong views on both sides of the striker replacement issue. I feel that we have debated this issue thoroughly during the past Congress and again in this Congress, and we will be debating it further, I am sure, in years ahead.

What troubles me is that the President, through this Executive order, is able to change major labor law. The Senator from Massachusetts mentioned in his opening comments today that Presidents in the past—President Bush and President Reagan—issued Executive orders and nothing was said. Let me just, once again, go through those three Executive orders and why I believe they are very different from the Executive order that we are debating today, and the amendment which would say that no moneys could be used to implement that Executive order.

President Reagan issued an Executive order that replaced striking air traffic controllers with permanent replacement workers because the air traffic controllers had been striking illegally. There was never any question about hiring permanent replacement workers at that time. During the years following that Executive order there were several measures debated on the Senate floor about rehiring those striking air traffic controllers which did not pass.

President Bush issued one Executive order which required the posting in the workplace of all of the rights of employees. This was, by law, something that should have been done and was not in any way changing the law of the land.

The second Executive order issued by President Bush concerned prehire contracts, and that I think is a bit unclear. One of the major differences between that Executive order and this one is the fact that the prehire contract had never been debated in this Chamber. On the other hand the use of permanent striker replacement workers has been an issue debated in both the House and Senate at great length.

While one may question whether President Bush by Executive order could put into place the rule that prehire contracts could not be entered into, it had never been debated by Congress. If we were to have changed it, then Congress, logically, should have been the place to make a change. But the prehire contracts Executive order was never challenged by either the Congress or the Supreme Court.

So I think the difference is very clear. This Executive order is being challenged in Congress and is going to be challenged in the courts. It is by its very nature a troubling effort by the executive branch to, by executive fiat, change what has been the law of the land, and a major part of labor law, for some 60 years. This Executive order is troubling because, on the one hand, labor's right to strike has been upheld, but on the other hand management's right to hire permanent replacement workers, just as much a part of existing labor law, is being attacked.

I would like to quote a paragraph from the lead Washington Post editorial this morning. It says:

> The law is contradictory. The National Labor Relations Act says strikers can't be fired; the Supreme Court has nonetheless ruled that they can be permanently replaced. The contradiction may be healthy. By leaving labor and management both at risk, the law gives each an incentive to agree. For most of modern labor history, management in fact has made little use of the replacement power and labor hasn't much protested it.

Perhaps this is where we are today, trying to ponder this contradiction. We can ask ourselves if, in revisiting the National Labor Relations Act we need to address it in some different ways to meet the changing labor markets. The current balance has worked well. On the other hand, I am sympathetic to those who say management should not immediately hire permanent replacement workers because, if that is the case, the employees have lost some leverage which they would have with the right to strike.

On the other hand, if the employees take advantage of a company such as Diamond Walnut, which has been debated here before, and strike right at the beginning of the season in which all of the crop must be harvested, is it not a calculated strike to force management to its knees? Is there not some means to balance these competing interests without causing a problem?

I am absolutely certain, Mr. President, that the President has made a serious mistake by issuing the Executive order and changing so fundamentally labor law that has on the whole worked well. Initiating an Executive order that will countermand legislative language is a slippery slope that can then work to any President's advantage. I think it calls into question the separation of powers between the executive and legislative branches.

While it is the right of the President to issue an Executive order, when it overturns the law of the land, I think we have to approach it carefully. The Senator from Massachusetts said that there are those who argue it would lead to more strikes. I am not sure that it necessarily would. But I think what it would do would certainly lead to far

greater uncertainty in the marketplace. I think it would lead to far greater uncertainty in relations between management and labor. I think prohibiting permanent replacements would pose enormous difficulties on both sides and certainly increase the potential for longer strikes, because what would be the incentive for those on strike to go back to work?

It seems to me that we simply must uphold a balanced approach, and neither side should be able to unbalance the relationship. Yes, we have to be just as cautious of management in taking that opportunity as we would with labor. But the mechanism is already in place for collective bargaining to work—which is the heart of the matter—and for both sides to be able to bargain in good faith. I believe this is what we in the legislative branch owe both labor and management when they go to the bargaining table. It is up to them, both labor and management, to accomplish that.

I really believe that regardless of the merits of this issue and where people stand on either side, we should think carefully about the issue before us and the implication that by Executive order a major principle of labor law can be turned on its head. This, it seems to me, is what each and every one of my colleagues should consider as we approach a cloture vote on Wednesday.

I think that the merits of permanently replacing striking workers could be debated at another time. We debated it last year. We will be debating it again. But it is the Executive order that we have to deal with at this particular time.

Mr. President, I yield the floor.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I appreciate the explanation of the Senator from Kansas about the issuing of the Executive order and the authority for issuing the Executive order of President Bush on the prehire issue. But I do take issue with it.

The Senator states that the difference between that Executive order and the Executive order on striker replacements issued by President Clinton is that the issue of striker replacements has been debated by the Congress but the issue of prehire agreements has not. The fact is that Congress did specifically consider and debate the issue of whether prehire agreements should be lawful at the time that section 8(f) and section 8(e) were added to the National Labor Relations Act in 1959. This issue was debated at some length in the Senate as well as in the House of Representatives, and Congress affirmatively determined that prehire agreements and project labor agreements should be legal in the construction industry. President Bush acted contrary to that decision by Congress when he issued the Executive order in 1992 prohibiting any contracting with employers who entered into prehire agreements and project labor agreements.

So the Members of Congress understood in 1959 what they were approving, what the public policy implications were, and they accepted the particular provisions permitting prehire agreements and project labor agreements—sections 8(e) and 8(f), which I put into the RECORD last year. And then, in spite of that, without any debate and any kind of discussion, we have an Executive order by President Bush to effectively undermine that. And this was after the Supreme Court had unanimously affirmed, in a 9-to-0 decision in the Boston Harbor case, that such agreements were perfectly lawful and authorized by Congress in the public sector as well as in the private sector.

That is very different from what we are talking about in terms of striker replacement. We have in the National Labor Relations Act recognition that you cannot be fired for striking, and yet we have dictum—a footnote, effectively—in the Mackay case, which was never really made use of, picked up really in the period of the 1980's after the PATCO strike and used to inaugurate the widespread replacement of striking workers with permanent replacements.

We are talking about the history of the development of this whole program. That is really what has happened. Then we had a debate on this. There is no question we had the debate on it. It passed with the support of Republicans and Democrats alike over in the House of Representatives. It was a majority of the Members of the U.S. Senate who voted to eliminate the permanent replacements. But we had a filibuster and we were prohibited from acting.

I understand that is the way the rules go. So the Senator is quite correct in saying we had a debate but we did not get final action on it. That is true. But the overwhelming majority of the House of Representatives, and in a bipartisan way, wanted to repeal permanent striker replacements. The majority of Republicans and Democrats wanted to repeal striker replacements.

The Executive order is not banning the use of permanent striker replacements. All it is saying is we as the Federal Government are not going to do additional business with you to make you more profitable if you are going to go ahead and hire permanent striker replacements, as far as Federal contracting goes.

The reasons for that are, as I mentioned earlier, when you circumvent the quality, the training, the skills of workers who, for example, might be the GE workers up in Lynn, MA, who make the F–15 engines, the F–16 engines, the F–18 engines, the attack fighter engines—really among the best-skilled workers in the world, and who constantly are improving and strengthening their skills—those are men and women who have worked there 10, 15, 20, 25, 30, 35 years in that plant. They are top of the line. To say, look, if they have a dispute up there and you are going to replace one of those workers working on those engines with some permanent striker replacement who does not have that kind of experience that the Federal Government expects—in terms of our defense expenditures and contracting I think the President is well advised to assure that every dollar that is going to be expended is going to be expended wisely, that the item will be of good quality.

The President's Executive order does not change or alter the right to hire permanent striker replacements. Those companies can still go out and still have the authority and the power to have them. All we are saying is we are not going to give them an additional benefit, like we gave to the Diamond Walnut Co., which was getting increased productivity and profitability and refused to bargain with its workers who were making barely above the minimum wage. That is what we are talking about.

Who are we talking about making a dollar? We are talking about $6-an-hour or $7-an-hour Americans, who were prepared to work for $6 or $7 an hour. I wish we could get as worked up about the people we are really affecting as we are about this Executive order. These are people working for $6 or $7 an hour and we are somehow trying to diminish them to favor companies who want to pay them $5 an hour or throw them out, and give those companies the Federal contracts, like the agricultural contract which Diamond Walnut got which helped them to sell the products overseas. They made millions, tens of millions of dollars on that contract.

You have both sound public policy reasons for this, in terms of making sure we are going to have good quality and a good product for our Federal investment, and I think you have a sound social policy with regard to preventing exploitation of the workers.

The people we are talking about are barely above the minimum wage. We have been on this now Thursday, Friday, and today. We have not been talking about consultants making $25, $30, $35 an hour who are really ripping off the system. All the examples we have been using are people making $6, $7, $7.50 an hour. They are striking for another nickel, another dime, and bango—they are replaced. Those are the people we are talking about.

Why are we spending the time here trying to shortchange this kind of worker in our society? Why are we spending all day Thursday, all day Friday, today, and the time of the Senate, to do so? I think we have better things to do with our time.

I might take just a few moments of the Senate's time to include a more detailed history of the President's authority for issuing this Executive order.

Mr. President, the Justice Department's Office of Legal Counsel has served both Republican Presidents and

Democratic Presidents as the chief guardian of the constitutional separation of powers. It is recognized by Members on both sides of the aisle as the authoritative voice on the scope of a President's powers.

On Friday, the Office of Legal Counsel made public a memorandum expressing its opinion that President Clinton was acting well within his executive authority when he issued this Executive order. I have entered the Office of Legal Counsel's memorandum into the RECORD. And I understand that the Justice Department has provided copies of the memorandum to each Senator's office.

This memorandum is important not simply because it offers the thoroughly researched and persuasive opinion of the leading institutional expert on the scope of the President's powers that this Executive order is an appropriate exercise of Presidential authority. It is important because several Members of this body have stated—without citing a single case or statute, without making a single legal argument, and without explaining their views—that they think this Executive order is unconstitutional.

The Constitution deserves more than that. The President deserves more than that. And the working families whose lives will be improved by this Executive order deserve more than that.

I have reviewed the Office of Legal Counsel's memorandum supporting this Executive order. I find it persuasive. For those who have not yet had the opportunity to review this important document, permit me to briefly lay out the analysis set forth in the memorandum that must lead any reasoned observer to conclude that this Executive order is both constitutional and appropriate to the President's authority.

The leading case on the comparative powers of the executive branch and the legislative branch is Youngstown Sheet & Tube Co. versus Sawyer, also known as the steel seizure case.

This case is something that everyone in this body who is a lawyer remembers studying from law school. It still stands as an enormously important, defining case in terms of executive authority.

In late 1951, the Nation's steel production was threatened by a labor dispute. President Truman sought to resolve the dispute by seizing most of the Nation's steel mills. He justified his action by claiming that steel was an indispensable component of the materials necessary to prosecute the Korean war. In his view, any steel strike threatened the national defense.

The Supreme Court's decision in the steel seizure case began with the premise that—

> The President's power, if any, to issue an order must stem either from an act of Congress or from the Constitution itself.

Justice Jackson's concurrence explained further that there are three zones of Presidential authority:

First, the President's authority is strongest when he acts with an express or implied authorization from Congress.

Second, the President's authority is less clear when he acts in the absence of a congressional grant or denial of authority.

Finally, the President's authority is at its lowest ebb when he takes measures incompatible with the express or implied will of Congress.

In the steel seizure case, the Supreme Court concluded that the President did not have the inherent authority under the Constitution to seize steel mills to resolve labor disputes, even in his role as Commander in Chief. Further, Congress, when it enacted the Taft-Hartley Act, expressly rejected seizure of corporate facilities as a remedy for labor disputes. Accordingly, without constitutional authorization and acting directly contrary to Congress' will, President Truman's authority was at its lowest ebb. The seizure of the steel mills, the Supreme Court concluded, was unconstitutional.

Unlike President Truman, President Clinton did not have to rely on inherent constitutional authority to issue this Executive order which prohibits Federal contractors from permanently replacing lawful strikers. As the Office of Legal Counsel's memorandum makes clear, President Clinton has the authority to issue this Executive order because Congress gave him the authority.

That is point 2 under the steel strike case.

What was the second paragraph in Justice Jackson's opinion? Did the Congress give authority which was utilized by the President to issue an Executive order? Clearly, that is so in this case.

The Federal Property and Administrative Services Act was enacted ''to provide for the Government an economical and efficient system for procurement and supply.'' This act specifically and expressly grants the President the authority to manage the Federal procurement system to guarantee efficiency and economy. Permit me to quote directly from section 486(a) of the procurement law:

> The President may prescribe such policies and directives, not inconsistent with the provisions of this act, as he shall deem necessary to effectuate the provisions of said act.

In sum, it is not simply the President's right—it is his responsibility—to do whatever is necessary to promote economical and efficient procurement.

Every court to consider the question has concluded that section 486(a)—the section I have just read—grants the President a broad scope of authority. The U.S. Court of Appeals for the District of Columbia, interpreting section 486(a), emphasized that:

> ''Economy'' and ''efficiency'' are not narrow terms: They encompass those factors like price, quality, suitability, and availability of goods or services that are involved in all acquisition decisions.

President Clinton understood these boundaries when he issued this Executive order. The preamble to the Executive order makes abundantly clear that the state of a Federal contractor's labor-management relations directly affects the cost, quality, and timely availability of the goods and services paid for by the taxpayers. Specifically, the Executive order finds that ''Strikes involving permanent replacement workers are longer in duration than other strikes.''

That is in the Executive order, and last Friday I took a short period of time on the Senate floor to review what has been happening with regard to strikes since 1935, what happened in the MacKay case, and how the annual number of strikes has increased, and increased dramatically in terms of both the numbers and also the length of those strikes.

The Executive order continues:

> In addition, the use of permanent replacements can change a limited dispute into a broader, more contentious struggle, thereby exacerbating the problems that initially led to the strike.
>
> By permanently replacing its workers, an employer loses the accumulated knowledge, experience, skill, and expertise of its incumbent employees. These circumstances then adversely affect the businesses and entities, such as the Federal Government, which rely on that employer to provide high quality and reliable goods or services.

That is the end of the quote of the Executive order.

The Office of Legal Counsel is plainly correct when it stated in its memorandum:

> We believe that these findings state the necessary reasonable relation between the procedures instituted by the order and achievement of the goal of economy and efficiency.

Mr. President, compare the detailed findings in this Executive order with Executive Order No. 12800, issued by President Bush to require Federal contractors to post a notice that workers are not required to join unions. The only finding in that Executive order is a conclusory statement that President Bush's order would ''promote harmonious relations in the workplace for purposes of ensuring the economical and efficient administration and completion of Government contracts.''

That is all there is, Mr. President. And I cannot recall any Republican Senator taking to the floor after the Executive order was issued to complain that President Bush had usurped Congress' authority, had attempted an end run around Congress.

Some of the corporate lobbyists and lawyers that have complained about President Clinton's Executive order might attempt to argue that Congress has spoken on the question of permanent replacements. In the words of the steel seizure case, they are attempting to show that President Clinton's Executive order is an act directly contrary to Congress' express or implied will.

The fact is that the House of Representatives overwhelmingly passed legislation that would have prohibited all employers—not just Federal contractors—from using permanent replacement workers. This body never got the chance to vote on the striker replacement legislation. A majority of Senators were ready to enact a bill that prohibited all employers from using permanent replacements. But a handful of Senators from the other side of the aisle filibustered that legislation. They never permitted it to come to a vote. Mr. President, that happened not once, but twice. If Congress has expressed any view on this subject, it has expressed overwhelming support for the President's ban on the use of permanent replacements.

Mr. President, this Executive order is a lawful and necessary exercise of the authority delegated to the President by Congress to effectuate the purposes of our Government's procurement laws. It is consistent with past Presidential practice and legal precedent. This Executive order is an appropriate exercise of the President's Executive authority.

Mr. President, we have over these last few days spelled out in careful detail the legal justification and rationale for the issuing of the Executive order. We have analyzed the impact of the Executive order and reviewed what has been happening in terms of labor-management relations over the period of the last 10 or 15 years. We have drawn conclusions based upon those strikes and what is happening in the real world in terms of labor-management relations, about how the public's interest would be served by this action.

I believe it is sound and wise public policy. I hope that the Senate will uphold it.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. KEMPTHORNE). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. CONRAD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CONRAD. Mr. President, I ask to be able to proceed as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from North Dakota [Mr. CONRAD] is recognized.

(The remarks of Mr. CONRAD pertaining to the introduction of S. 542 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. CONRAD. I thank the Chair.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will please call the roll.

The bill clerk proceeded to call the roll.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT

The Senate continued with the consideration of the bill.

Mr. DASCHLE. Mr. President, I want to commend the distinguished Senator from Massachusetts for his eloquent and passionate leadership on this issue. Let me also commend many of my other colleagues: the Senator from Iowa, the Senator from Minnesota, the Senator from Illinois, and a number of others who have participated over the last several days in this debate.

No one should misunderstand what this debate is all about. Obviously, if Senators have heard any of the speeches made by the colleagues whom I have just mentioned, there can be no misunderstanding. Quite simply, it is about fairness. That is the issue.

It is fairness for American working families, in a very important set of circumstances: the workplace. It is fairness in reaffirming their right to strike, fairness in restoring a fundamental balance between workers and management, and fairness in halting the practice of requiring striking workers to pay taxes for salaries of workers who replace them.

That is really what this issue is all about. The President understands that. He understands he is on solid ground in issuing the Executive order as he did a couple of weeks ago. The order is quite simple. It says to do business for more than $100,000 with the Federal Government, you cannot hire replacement workers in the case of a strike. That is all it says. A person simply cannot do what the law of the last 60 years has said could not be done.

This President is doing exactly what President Bush did in 1992. President Bush required unionized contractors to notify employees of their right to refuse to pay union dues. He was not challenged by Republicans when he issued that particular Executive order. President Clinton is doing also what President Carter did in 1978, when he issued an Executive order that directly affected the lives and livelihood of thousands of working families by limiting what Federal contractors could agree to in collective bargaining.

In fact, this President is doing exactly what President Roosevelt, President Truman, Presidents Nixon, Johnson, Carter, and Bush have all done in the past. In this case, he has shown Presidential leadership in protecting the rights and the spirit of the law for all working families.

The President is well within his rights, in my view, for at least three good reasons. First, as I indicated, there is ample precedent in virtually every past administration for the past 60 years. Second, he is supported by the American people. More than 60 percent of the American people, according to recent polls, have shown that they oppose the use of permanent replacement workers in the event of a lawful strike.

The American people understand the question of fairness. They appreciate the need for worker-management balance. The American people support actions and laws to guarantee that balance, which is really what the Executive order was designed to do.

And third, this action taken by the President is consistent with the National Labor Relations Act itself, signed into law, as I said, by President Roosevelt about 60 years ago. In fact, this year, we will celebrate the 60th anniversary of the National Labor Relations Act, an act that fundamentally appreciates the balance in the workplace, that understands the need for the right to strike, that underscores the importance of providing opportunities for workers and management to work out their differences.

That was the law that recognized the need for American workers to form organizations to bring the balance back into the workplace. It has been a balance that, frankly, has worked well for 45 years, a balance that has brought about better wages, a balance that has brought about better working conditions, better retirement security, better productivity.

But it is a balance that was destroyed by the actions taken by President Reagan during the PATCO strike of 1981, when the President of the United States hired permanent replacement workers. His action sent a green light to every business in the country. Virtually all of the work of 45 years under the National Labor Relations Act was lost with that action, and for 15 years now, Democrats in Congress, and others, have attempted to pass the Workplace Fairness Act to restore the balance that we had for those 45 years, an act which very simply puts into law what we believe was there all along: a prohibition of the hiring of permanent replacement workers during a strike; a restoration of the balance that we had in labor-management relations up until 1981.

It is important to note that a majority of Congress has supported the Workplace Fairness Act. There have been more than 50 votes for it on those occasions when the legislation was brought before this body, and were it not for a minority that kept it from being passed, it would, in fact, be law.

So whether it is law or whether it is an Executive order, this clarification is long overdue and extremely important to all working families. The right to organize, the right to bargain collectively is essential to American workers. As history has shown, the right to strike is the right to be taken seriously. The right to strike is the only leverage workers have when bargaining with management.