# SUMMARIES OF BILLS INTRODUCED IN THE 92D CONGRESS THROUGH AUGUST 1971 FOR SETTLING EMERGENCY LABOR DISPUTES





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## Foreword

This report consists of summaries of legislative proposals introduced in the 92d Congress through August 1971 for settling emergency labor disputes. The report covers 31 bills, 7 introduced in the Senate and 24 in the House. All the Senate bills were referred to the Senate Committee on Labor and Public Welfare and the House bills to the House Committee on Interstate and Foreign Commerce except for five identical bills, one Senate and four House, to establish a U.S. Court of Labor-Management Relations. The Senate court bill was referred to the Senate Judiciary Committee, the House court bills to the Judiciary Committee of that body.

The Senate Labor Subcommittee has held one day of hearings, on June 15, 1971, on the proposals referred to it. The House Commerce Committee, Subcommittee on Transportation and Aeronautics, has held five days of hearings on the bills referred to it, on July 27, 28, 29, and August 3 and 4, 1971. Both committees plan to continue hearings during the 1971 session. As of August 31, 1971, no hearings have been held by either Senate or House Judiciary Committee on the proposal for a U. S. Court of Labor-Management Relations.

The 31 bills among them provide ten different proposals for settling emergency labor disputes. As far as we can determine, this report includes all such proposals introduced in the 92d Congress through August 1971. However, it does not cover the following: (1) bills to limit the

size and impact of potential strikes by banning collective bargaining on an industrywide, multi-employer, or coalition-of-unions basis; (2) bills to substitute a labor court for the National Labor Relations Board; the Board has only minor and peripheral functions in connection with emergency labor disputes; and (3) a proposal--S.J. Res. 43 and its counterpart, H.J. Res. 364--to settle a specific rail dispute, that between the rail carriers and the United Transportation Union. The two joint resolutions were introduced on February 18, 1971, with no further action by either house; since then the dispute has been settled without Congressional intervention.

A chart comparing major provisions of the ten proposals is included in this report as an Appendix. The chart permits a ready comparison of the proposals, to supplement the detail in the individual summaries.

Concerning coverage of the various proposals, the chart shows that three of the ten cover emergency-creating disputes in any industry subject to the Federal commerce power. One proposal covers emergency disputes solely in the transportation industries. The six other proposals relate only to the rail and airline industries, or the rail industry alone.

Five of the ten proposals attempt to settle emergency disputes by making new options available to the President and Executive Branch to supplement or supplant those now prescribed under the Labor Management Relations (Taft-Hartley) and/or Railway Labor laws. All of these five

recommendations include as one of the new options some form of mandatory settlement, such as compulsory arbitration, final offer selection, and mediation to finality. Another two of the ten proposals also provide for mandatory settlement; these two would establish a permanent court to settle emergency disputes, through compulsory arbitration if need be. Thus, mandatory settlement--a feature opposed by organized labor--is part of seven proposals altogether. Two of the remaining three proposals aim to prevent national emergencies by permitting selective strikes. The final proposal, covering railroads only, would prohibit strike or lockout as a result of unilateral work-rule changes made by the carrier under conditions prescribed in the bill.

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S. 560, sponsored by Messrs. Griffin, Dole, Jordan of Idaho, Taft, and Tower, referred Feb. 3, 1971 to Senate Committee on Labor and Public Welfare

H.R. 3596, sponsored by Messrs. Staggers and Springer, referred Feb. 4, 1971 to House Committee on Interstate and Foreign Commerce

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

Identical bills (all referred to House Committee on Interstate and Foreign Commerce):

H.R. 901, Mr. Mayne, Jan. 22, 1971

H.R. 3639, Messrs. Lloyd, Mayne, Dennis, McCloskey, and Steiger of Arizona, Feb. 4, 1971

H.R. 4116, Messrs. Gerald R. Ford, Mayne, Lloyd, Nelsen, and Harvey, Feb. 10, 1971

H.R. 5377, Mr. Broomfield, Mar. 2, 1971

Coverage: Labor disputes in the following transportation industries: railroads, airlines, maritime, longshore, and trucking. At present, labor disputes on the railroads and airlines are covered by the Railway Labor Act, in the maritime, longshoring, and trucking industries by the Labor Management Relations (Taft-Hartley) Act.

Provisions: Title I. Repeals the emergency disputes procedures of the Railway Labor Act and brings disputes involving railroads and airlines under the emergency provisions of the Labor Management Relations (Taft-Hartley) Act. Amends the existing national emergency disputes provisions

of the Taft-Hartley Act by bringing rail and air carriers under the 80-day cooling-off procedure and adding three new options applicable to them and the other transportation industries--maritime, longshore, and trucking. These optional procedures could be used if a national emergency dispute in transportation were still unresolved after the 80-day cooling-off period. Petition for an 80-day injunction must be before a three-judge district court in the case of national emergency disputes in the transportation industries.

Empowers the President to choose any one, but only one, of the new optional procedures. Within a 10-day period, either House of Congress may reject the President's choice. If either House should reject his choice, or if he makes no choice, the President shall submit to the Congress a supplemental report including such recommendations as he may see fit to make.

One of the new options available to the President is to extend the no-strike, no-lockout period for not more than 30 days beyond the 80-day cooling-off period.

A second option is to appoint a special board of three impartial members to review the feasibility of requiring partial operation of the industry (the essential or critical part) after the 80-day cooling-off period, and permitting strike or lockout in the rest of the industry. The special board's decision must be made within 30 days; during that

period no change, except by agreement, shall be made in the terms and conditions of employment. Partial operation pursuant to the board's decision would be limited to a maximum of 180 days.

Under the third option, the parties are required to submit their final proposals for full resolution of the controversy following the 80-day cooling-off period. Provides that the parties would be given three days in which to submit two final offers and that if any party fails to submit a final offer or offers, the last offer made during previous bargaining would be deemed its final offer. Directs that following this submission to the Secretary of Labor, the parties would be required to meet and bargain for 5 days, with or without mediation by the Secretary of Labor. Provides that as a second step, the parties would be given an opportunity to select a three-member panel to act as "Final Offer Selector" and that if the parties were unable to select the panel, it would be appointed by the President. Asserts that the panel would hold hearings and determine which of the final offers constituted the final and binding resolution of the issues. Provides that in reaching its determination the panel could not choose any settlement other than one of the final offers. Specifies the criteria to be used by the panel in reaching its decision. Provides that the panel's choice would become the contract between the parties. The determination of the panel shall be conclusive unless found arbitrary and capricious by the district court which granted the 80-day injunction in the dispute.

Title II: Amends the Railway Labor Act by (1) transferring mediation duties of the National Mediation Board to the Federal Mediation and Conciliation Service (which now mediates disputes under the Taft-Hartley Act); (2) leaving as the sole functions of the National Mediation Board (re-named the Railroad and Airline Representation Board) determination of appropriate bargaining units and holding representation elections for those units; and (3) phasing out over a two-year period the present National Railroad Adjustment Board, leaving labor and management to provide grievance machinery in their collective bargaining agreements.

Title III: Establishes a seven-member National Special Industries Commission, for a term not to exceed two years, to study labor relations in those industries which are particularly vulnerable to national emergency disputes and to make recommendations concerning such industries as to the best ways, including new legislation, for remedying the weaknesses of collective bargaining.

Title IV: Amends the Railroad Unemployment Insurance Act so as to deny unemployment benefits to strikers.

Additional comment: S. 560 and H.R. 3596 represent the administration's proposal, as detailed in President Nixon's message on dealing with national emergency labor disputes sent to the Congress Feb. 3, 1971 (H. Doc. 92-43). The two bills are the same as the following bills introduced in the 91st Congress in 1970: S. 3526, introduced by Senator Griffin on Feb. 28, 1970; H.R. 16226, introduced by Representatives Gerald R. Ford, Lloyd, Steiger

of Arizona, Winn, Eshleman, and Mayne on Mar. 2, 1970; H.R. 16272, introduced by Representatives Staggers and Springer on Mar. 3, 1970; and H.R. 16273, introduced by Representative Steiger of Wisconsin on Mar. 3, 1970. The bills sponsored in 1970, cited, as are S. 560 and H.R. 3596 of the 92nd Congress, as the Emergency Public Interest Protection Act, contained the administration's recommendations as outlined in a Presidential message on national emergency disputes, transmitted to the Congress Mar. 2, 1970 (H. Doc. 91-266).

S. 594, sponsored by Mr. Javits, referred Feb. 4, 1971 to Senate Committee on Labor and Public Welfare

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

Coverage: Labor disputes in any industry affecting commerce which imperil or threaten to imperil the health or safety of the Nation, or a substantial part of the population or territory thereof.

Provisions: Brings the railroads and airlines under emergency procedures of the Labor Management Relations (Taft-Hartley) Act, Sections 206-210, and abolishes the emergency provisions in Section 10 of the Railway Labor Act. Applies to regional as well as national disputes threatening health or safety, in any industry affecting commerce.

Requires the emergency board appointed under Section 206 to make recommendations for settlement, if the President so directs. Authorizes the President, upon receipt of the emergency board's report, to freeze

the status quo for not more than 30 days for further bargaining and for consideration of board recommendations if there are any.

Modifies present Taft-Hartley injunction procedures in that the 80-day injunction could be granted only by a three-judge district court instead of the current single judge, and appeal would be directly to the U.S. Supreme Court rather than, as at present, to a U.S. Court of Appeals. The NLRB-conducted election on the employer's final offer, upon expiration of 60 days of the 80-day injunction period, would no longer be mandatory but would be optional with the President.

Authorizes the President, if the dispute remains unsettled after expiration of 60 days of the 80-day injunction period, to issue an executive order prescribing the procedures to be followed by the parties. Guidelines for such executive order are included in the bill. Among the available procedures, according to the bill's sponsor, Senator Javits, are such options as "fact-finding, extension of the status quo, seizure and partial operation, mediation to finality, arbitration, and the 'final offer selection' procedure of the administration's bill." (Congressional Record, Feb. 4, 1971 [daily ed.], p. S870). Either House of Congress may veto the President's remedy within 15 days after he proposes it.

Authorizes the Attorney General to enforce the executive order, and to seek court modification of the 80-day injunction in order to conform the injunction to the executive order.

Establishes procedures and regulations for seizure of an industry or part thereof, in the event that the Presidential executive order calls for this option.

Additional comment: In his statement introducing S. 594 (Congressional Record, Feb. 4, 1971 [daily ed.], p. S870), Senator Javits emphasized that his proposal is broader than that of the administration (S. 560 and H.R. 3596) in three major ways: "...the bill I introduce today is designed to cover the whole field. The administration's proposal...deals only with transportation. In addition, my bill applies to regional as well as national disputes, and, again, in that way it is broader than the administration's. The third way in which it is broader is that the remedies it authorizes are not limited to three remedies specified in the administration's bill...."

S. 832, sponsored by Messrs. Williams and Kennedy, referred Feb. 17, 1971 to Senate Committee on Labor and Public Welfare

H.R. 3595, sponsored by Messrs. Staggers, Eckhardt, and MacDonald of Massachusetts, referred Feb. 4, 1971 to House Committee on Interstate and Foreign Commerce

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

Identical bills (all referred to House Committee on Interstate and Foreign Commerce):

H.R. 3985, Mr. Murphy of New York, Feb. 9, 1971

H.R. 4620, Mr. Roncalio, Feb. 18, 1971

H.R. 4996, Messrs. Moss and Adams, Feb. 25, 1971

H.R. 5870, Mr. Tiernan, Mar. 10, 1971

Coverage: Labor disputes in the railroad industry; coverage of labor disputes in the airline industry is open to question. The bills amend Section 10 of the Railway Labor Act, which applies to the airlines as well as to the railroads. But the preamble and other provisions of S. 832 and H.R. 3595 imply that the bills relate only to rail carriers.

Provisions: After employees have exhausted all dispute-settlement procedures under the Railway Labor Act without an agreement, they may, subject to the limitations and obligations of partial operation as indicated below, strike all the carriers involved in the bargaining or selectively strike only some of these carriers. A strike is a "selective" strike if not more than three carriers operating in any one of the eastern, western, or southeastern regions are struck at the same time and the total revenue ton-miles transported during the preceding year by the struck carriers in any region represented not more than 40 percent of total revenue rail ton-miles in that region.

Provides for partial operation of struck carriers, as may be directed by the Secretary of Transportation. That official, after consultation with the Secretaries of Defense and Labor, shall determine the extent to which operations of any struck carrier or carriers are essential to the national health or safety, including but not necessarily limited to transport of defense materials and of coal to generate electricity, and continued operation of passenger trains including commuter service. Determination of the Secretary of Transportation shall be

conclusive unless shown to be arbitrary or capricious. Partial service and transportation shall be provided pursuant to the rates of pay, rules, and working conditions of existing agreements.

Prohibits carriers which are not struck from locking out its employees. Where a carrier proposed changes to agreements affecting pay, rules, or working conditions and all procedures of the Railway Labor Act have been exhausted with respect to such changes without agreement, the carrier may effect the changes except where (1) the proposal was made in response to or in anticipation of employee proposals, or (2) the employees had not struck.

Additional comment: The approach represented by S. 832 and H.R. 3595 has the support of the AFL-CIO and its member unions, including the railroad unions.

S. 832 and H.R. 3595 are basically the same bills as H.R. 19922, introduced on Dec. 8, 1970 in the 91st Congress by Representative Eckhardt.

S. 1088, sponsored by Mr. Fannin, referred Mar. 2, 1971 to Senate Committee on the Judiciary

H.R. 2373, sponsored by Messrs. Rhodes, Andrews of North Dakota, Arends, Baker, Chamberlain, Cleveland, Davis of Wisconsin, Forsythe, Hastings, Henderson, Jarman, Lujan, McClory, McMillan, Michel, Powell, Robinson, Scott, Sikes, Smith of California, Steiger of Arizona, Thompson of Georgia, Thone, and Williams, referred Jan. 26, 1971 to House Committee on the Judiciary

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To provide for the establishment of a United States Court of Labor-Management Relations which shall have jurisdiction over certain labor disputes in industries substantially affecting commerce.

Identical bills (all referred to House Committee on the Judiciary):

H.R. 2489, Mr. Lennon, Jan. 29, 1971

H.R. 5712, Messrs. Rhodes, Collier, Derwinski, Devine, Goodling, Gubser, Haley, McKinney, Myers, and Whitehurst, Mar. 8, 1971

H.R. 6066, Mr. Wiggins, Mar. 15, 1971

Coverage: Labor disputes threatening or causing work stoppages that, if permitted to occur or continue, will adversely affect the general welfare, health or safety of the nation, in any industry substantially affecting commerce. Repeals the emergency disputes provisions of the Labor Management Relations (Taft-Hartley) Act, Sections 206-210.

Provisions: Directs the President to appoint for 12-year staggered terms, with advice and consent of the Senate, a chief judge and four associate judges trained and experienced in the fields of law, economics, and industrial relations, to constitute the United States Court of Labor-Management Relations. The jurisdiction of the Court is restricted to labor disputes in industries substantially affecting commerce, with adverse effect on the nation's general welfare, health or safety. Such jurisdiction may be invoked (1) upon application of the Attorney General, on behalf of the President, only after all other dispute-settlement procedures under the Taft-Hartley Act or Railway Labor Act have been exhausted without settlement, or (2) upon application of any party to the dispute, regardless of the availability of alternative procedures for settling such dispute.

Provides that once the jurisdiction of the Court has been invoked, it would be empowered to enjoin any actual or threatened work stoppage for a period of 80 days. States that during this time collective bargaining between the parties would continue under supervision of the Court, which would be authorized to issue orders, including the appointment of standing or special masters, to induce the parties to come to agreement.

If, after the 80-day period, the parties still cannot effect a settlement, provides that the Court will continue the injunction and set the case down for immediate hearing and final determination. Affords the parties opportunity to present arguments in support of their position.

Empowers the Court to hand down a binding judgment covering all matters in dispute including rates of pay, hours and conditions of work, and any other issues in the impasse.

Decisions of the Court shall be final unless they are arbitrary or capricious or are violative of a right conferred by the Constitution, in which case the Supreme Court is given exclusive appellate jurisdiction.

Additional comment: These bills are the same as the following two identical bills introduced in the 91st Congress: H.R. 15956, sponsored by Mr. Rhodes and referred Feb. 17, 1970 to the House Judiciary Committee; and H.R. 16632, sponsored by Messrs. Rhodes, McCulloch, Goodling, Lukens, Mize, Robison, and Steiger of Arizona, and referred Mar. 24, 1970 to the House Judiciary Committee.

All the bills, those introduced in 1971 and those in 1970, are cited as the "United States Court of Labor-Management Relations."

S. 1093, sponsored by Mr. Taft, referred March 3, 1971 to Senate Committee on Labor and Public Welfare

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

Coverage: Industrial relations in the railroad industry.

Provisions: Amends Section 10 of the Railway Labor Act to permit an individual rail carrier to revise or abolish a work rule affecting operating employees (engineers, firemen, hostelers, outside hosteler helpers, conductors, trainmen and yard service employees) without resort to collective bargaining, upon the following conditions: (1) Any cost savings realized as a result of such change would be shared equally by the carrier on the one hand and the operating employees of that carrier; and (2) any reduction in the number of operating employees contemplated by such change would be accomplished by attrition. In the event of dispute as to the amount of the cost savings, provides for mutual designation of a certified public accountant to make a final and binding determination.

Makes unlawful lockout, strike, or work slowdown in consequence of any dispute subject to provisions of the bill.

Nothing in the bill shall be construed to prevent carriers and representatives of employees from entering into an agreement affecting work rules.

S. 1934, sponsored by Mr. Brock, referred May 24, 1971 to Senate Committee on Labor and Public Welfare

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

Coverage: Labor disputes affecting the national health and safety, in any industry affecting commerce. The bill repeals the emergency disputes provisions of the Labor Management Relations (Taft-Hartley) Act, Sections 206-210, and the Railway Labor Act, Section 10.

Provisions: Establishes a Management-Labor Commission of seven members appointed by the President for staggered terms of 14 years, with advice and consent of the Senate. In making appointments, the President would insure that the interests of management, labor, and the general public are adequately represented.

Directs the Commission to make conciliation, mediation, and arbitration services available to the parties in a dispute, if all such parties agree, when there is a likelihood that a national emergency strike or lockout will occur.

Requires the President, if he thinks a national emergency strike or lockout is threatened or is in effect, to direct the Attorney General to petition the Management-Labor Commission to assume jurisdiction of the dispute. Authorizes the Commission to prohibit the strike or lockout for 110 days, absent prior agreement. Directs the Chairman of the Commission

to designate two or more members of the Commission as a board of inquiry. Requires the board to report within 80 days, with recommendations for settlement. Disputant parties are given 30 days after the board report to come to agreement. Failing such settlement, the Management-Labor Commission is authorized to issue an order prescribing what the terms and conditions of employment will be.

Parties to disputes which do not meet the bill's national emergency criteria for jurisdiction may voluntarily seek the Commission's facilities. The bill anticipates, according to its Sec. 2(b), "that many intrastate activities which affect the public interest to a substantial degree will voluntarily partake of this facility. In addition to manufacturing and other businesses, such activities include the public service oriented professions of education, transportation, trash removal, and police and fire protection."

Establishes a Management-Labor Court composed of a chief judge and four assistant judges appointed by the President for staggered terms of 10 years, upon advice and consent of the Senate. In making appointments, the President would insure that the interests of management, labor, and the general public are adequately represented.

Authorizes the Management-Labor Court to hear, determine, and render judgment with respect to all questions of law or fact arising under any order of the Management-Labor Commission. Decisions of the Court shall be final unless they are arbitrary or capricious or are violative of a

right conferred by the Constitution, in which case the Supreme Court is given exclusive appellate jurisdiction.

Suspends the proceedings of the National Labor Relations Board in disputes over which the Commission is vested with jurisdiction.

Additional comment: S. 1934 is the same bill introduced by its sponsor (then Representative Brock) in the 91st Congress on March 19, 1969 as H.R. 9245 (referred to the House Committee on Education and Labor).

S. 1934 and its predecessor bill H.R. 9245 are entitled "Management-Labor Commission and Court Act." According to its sponsor, the bills are modeled after the Australian industrial relations system.

S. 2060, sponsored by Mr. Dominick, referred June 14, 1971 to Senate Committee on Labor and Public Welfare

H.R. 9989, sponsored by Mr. Jarman, referred July 21, 1971 to House Committee on Interstate and Foreign Commerce

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

Coverage: Labor relations in the railroad and airline transportation industries.

Provisions: Revises not only dispute-settlement procedures but also other provisions of the Railway Labor Act. Dispute-settlement recommendations of the bill are the following:

(1) Upon the failure of the National Mediation Board to successfully resolve any dispute by mediation, it must notify the Secretaries of Labor, Commerce, and Transportation who are directed to appoint an ad hoc Transportation Labor Panel which shall recommend one of the procedures outlined immediately below in (2) to be used in the further handling of the dispute.

(2) The Secretaries may either accept or reject the recommendation but, if the latter, they must recommend one of the procedures themselves:

(a) take no further action;

(b) appoint a neutral board to make non-binding settlement recommendations;

(c) refer to final and binding arbitration; or

(d) submit to a "final offer selection" procedure.

Procedure 2(d) is a modified version of the final offer provision found in the administration's proposal contained in S. 560 and H.R. 3596. The offers that a party submits may be staggered in time so that a party can be aware of what its adversary has offered. In addition, the final offers may be subsequently revised by eliminating those matters on which the parties may reach an unconditional agreement, to encourage continuing efforts on the part of the parties to negotiate an agreement themselves. Strikes or lockouts are prohibited throughout the handling of the dispute and for 30 days after the exhaustion of the last procedure possible under Section 10. The provisions of Section 10 automatically apply to any unresolved dispute.

Amends the Railroad Unemployment Insurance Act to eliminate the payment of unemployment benefits to striking employees as well as those employees who refuse to cross picket lines.

Other revisions of the Railway Labor Act proposed in the bill are the following:

(1) Amend Section 1 Fifth to eliminate supervisors from coverage of the Act. A new section, Section 1 Eighth, is added defining the term "supervisor."

(2) Amend the definition of "representative" in Section 1 Sixth to prohibit any use of a ratification procedure as a condition precedent to a valid collective bargaining agreement. In addition, Section 2 Second is amended to require representatives to be vested with full authority to enter into agreements without membership ratification.

(3) Amend Section 2 Third to permit an involved carrier to be a party to any representational proceeding.

(4) Amend Section 2 Fourth to permit employees in a representation proceeding to elect not to be represented.

(5) Amend Section 2 Ninth to provide that (a) an involved carrier may raise the question of representation of its employees and (b) the National Mediation Board must resolve jurisdictional representation disputes even where an election is not required, insulating the NMB by giving it authority to appoint ad hoc neutrals to determine this type of dispute.

(6) Amend Section 3 to abolish the National Railroad Adjustment Board, while retaining the Public Boards and special boards of adjustment. Existing criteria for judicial review of board awards are retained, as well as the Chicago River doctrine prohibiting strikes over minor disputes. Compensation for neutrals is shifted from the government to the parties.

(7) Amend Section 5 First (b) to eliminate the explicit requirement that the NMB proffer arbitration as a last resort in major disputes and to revise the section in order to reflect the changes recommended in Section 10.

(8) Amend Section 7 Third (e) to provide that all expenses of arbitration boards involving compensation of neutral arbitrators shall be borne by the parties.

(9) Add a new section, Section 15, to prohibit secondary boycotts.

(10) Change the term of office for members of the National Mediation Board from 3 to 5 years.

Additional comment: S. 2060 and H.R. 9989 represent the position of the Air Transportation Association of America, the Association of American Railroads, and the National Railway Labor Conference. The above summary is based for the most part on materials prepared by those organizations.

H.R. 2357, sponsored by Mr. Pickle, referred Jan. 26, 1971 to House Committee on Interstate and Foreign Commerce

To amend Section 10 of the Railway Labor Act to settle emergency transportation labor disputes.

Coverage: Labor disputes in railroad and airline industries. The bill consists of an amended Section 10 for the Railway Labor Act.

Provisions: As is the case now under the Railway Labor Act, directs the National Mediation Board to notify the President if an unsettled rail or airline labor dispute should, in the Board's judgment, threaten substantially to interrupt interstate or foreign commerce to a degree such as to deprive any section of the country of essential transportation service.

When the President is so notified, he may proceed under either of two broad alternatives: (1) If he determines that the dispute is not

one of immediate urgency, he may proceed through another mediation board, termed an Emergency Board. On the other hand, (2) if he determines that the national defense, health, or safety is imperiled, he may immediately proceed under remedies involving a Special Board (arbitration); limited seizure of the concerned carriers; or a Congressional remedy in which the President specifically recommends a settlement, or any combination of these three items.

If the Emergency Board route is completed without settlement, then the dispute may proceed through the remedies of arbitration, seizure, or Congressional relief, simply on the standard that the dispute threatens to interrupt essential transportation service in a given area. It is not necessary that a national emergency be found in order to reach the final three alternatives.

Authorizes the President to take any of several alternatives at each step along the way, or to select a procedure incorporating several aspects of the choices involved. Permits him to take no action, if he so desires, leaving the dispute open to normal bargaining and strike remedies.

The "arsenal of weapons" approach in this bill is intended to create uncertainty as to the Presidential course of action, and also to provide options which are burdensome and disagreeable to one or both sides; the purpose is to motivate good-faith bargaining.

The following is a schematic outline of the procedures proposed in H.R. 2357, supplied by Representative Pickle:

National Mediation Board

Reports if a dispute exists which threatens "substantially to interrupt interstate or foreign commerce to a degree such as to deprive any section of the country of essential transportation service."

President

"In his discretion," may thereupon create an Emergency Board; or, if he determines that the "dispute immediately imperils the national defense, health or safety, he may proceed under the provisions of subsection 10 (b), (c), or (d)."

Emergency Board (Mediation)

1) Size & membership is choice of President;
2) Board must report within 60-120 days of appointment;
3) If instructed by President, Board report will contain findings of fact and/or recommendations for settlement.

President

1) Holds Emgy Bd report for 30 days cooling-off;
2) After cooling-off, President may return dispute to Emgy Bd for 30 days consideration and for their recommendation on whether to proceed under (b), (c) or (d);
3) President may proceed under (b), (c) or (d) or any combination thereof; he is not bound to follow the recommendations of the Emgy Bd as to which procedures to follow;
4) If President elects to proceed under (b), (c) or (d), he may impose the recommended settlement of the Emgy Bd as interim working conditions, pending the time required to exhaust procedures of (b), (c) and (d);
5) Whenever President determines to pursue (b), (c) or (d) (whether or not an Emgy Bd was used) he shall notify the parties 10 days before entering such procedures--such notice need not specify to the parties which of the steps or combination thereof will be taken.

(b). Special Board (Arbitration)

1) Parties have 10 days to select members and procedures; if they fail to do so, President performs this function;
2) Board is composed of 5 members: 3 public, one labor and one management;
3) Board has from 60-120 days from appointment to report;
4) Board has power to make a settlement binding on the parties for a period of the Board's choice, but less than 2 years.

(c). Seizure of concerned carriers

1) Management of carriers is continued by Secretary of Commerce;
2) All corporate activities continue as in the normal course of business;
3) Working conditions remain the same unless the President imposed the Emgy Bd recommendations.

(d). Congressional remedy.

1) If the President elects to proceed under the provisions of this subsection, "he shall transmit to Congress such recommendations for legislation as he may determine are required."

Additional comment: H.R. 2357 is identical with H.R. 8446, introduced by Representative Pickle in the 91st Congress, Mar. 6, 1969. It is similar to H.R. 5638, sponsored by Mr. Pickle in the 90th Congress, except that H.R. 5638 included no seizure provision.

H.R. 5347, sponsored by Mr. Dingell, referred Mar. 2, 1971 to House Committee on Interstate and Foreign Commerce

To amend the Railway Labor Act to establish a method for settling labor disputes in transportation industries subject to that Act.

Coverage: Labor disputes in railroad and airline industries. The bill consists of a Section 10A (a) through (g), to be inserted after the present Section 10 of the Railway Labor Act.

Provisions: If no settlement to the dispute has been reached by the final day of the 30-day period after the Emergency Board has made its report, provides that the President shall establish a special 5-member board to assist the parties in resolving the dispute. Permits each party to appoint one board member and the President to appoint three, including chairman.

Requires the carriers involved in the dispute to submit to the special board, not later than 15 days after establishment of the board, a last offer of settlement of the issues in dispute. Provides that within 20 days thereafter the National Mediation Board shall take a secret ballot of the employees of each carrier involved in the dispute on the question of whether they wish to accept the offer.

Makes such offer the binding settlement to the dispute if a majority of employees vote to accept the proposal. If the carriers' offer is rejected, requires the employee representatives to submit a counter-offer to the carriers within 5 days, and requires the carriers to accept or reject the counter-offer within another 5 days.

At the expiration of 60 days, unless the dispute is settled, the special board shall report to the President the status of the dispute, such report to be made public. The report shall include an evaluation of the issues in dispute, the positions of the parties and of those proposals for settlement which appear most reasonable and appropriate for the protection of the public interest.

Authorizes the President to direct any carrier or carriers subject to the provisions of Section 10A, if the parties have not reached agreement within 10 days after issuance of the report, to transport any goods, material, equipment, or personnel as he may deem necessary to protect the health, welfare, safety, or public interest of the nation. Provides that the wages, hours, and working conditions in effect when the dispute began shall be fully applicable without change, except by agreement between the parties, or as modified by Presidential order.

Grants the United States district courts power to prevent or restrain violations of this section (10A).

H.R. 9088, sponsored by Messrs. Harvey, Anderson of Illinois, Broyhill of North Carolina, Cederberg, Chamberlain, Conable, Dellenback, Derwinski, Devine, Erlenborn, Frelinghuysen, Frenzel, Frey, Gettys, Halpern, Harrington, Hosmer, Hutchinson, Keating, Keith, Lloyd, McClory, McCloskey, McDonald of Michigan, and Morse, referred June 14, 1971 to House Committee on Interstate and Foreign Commerce

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

Identical bills (all referred to House Committee on Interstate and Foreign Commerce):

H.R. 9089, Messrs. Harvey, Mosher, Rees, Robison of New York, Roybal, Schwengel, Shriver, Stafford, J. William Stanton, Vander Jagt, Whitehurst, Bob Wilson, and Zablocki, June 14, 1971

H.R. 9571, Messrs. Harvey, Brown of Michigan, Coughlin, Price of Tennessee, Grover, Gude, Latta, Lent, McCollister, Robinson of Virginia, Schneebeli, Sebelius, Steiger of Wisconsin, Thone, Veysey, and Williams, July 1, 1971

H.R. 9820, Messrs. Harvey, Burke of Florida, Collier, and McKevitt, July 15, 1971

H.R. 10433, Messrs. Harvey, Broomfield, Burleson of Texas, Byrnes of Wisconsin, Duncan, Scott, and Edwards of Alabama, Aug. 5, 1971

H.R. 10491, Mr. Hastings, Aug. 6, 1971

Coverage: Labor disputes in the railroad and airline transportation industries.

Provisions: Provides for a 60-day cooling-off period if, in the judgment of the National Mediation Board, a dispute should "threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service." Requires National Mediation Board to recommend actions privately to the President, within the first 30 days of the 60-day cooling-off period. During the

60-day period, authorizes President to create an emergency board of impartial members, the number to be determined by the President, to investigate the dispute and report on it, such report to include substantive recommendations for settlement. If a board is created, its report shall be made within the 60-day cooling-off period.

If no agreement is reached by the end of the 60-day period and the dispute remains as a substantial threat to the flow of interstate commerce, requires the President to proceed under the provisions of sections 305, 306, and 307 of Title III until final agreement is reached. The sequence with which he proceeds is optional with the President except that he must proceed first under the provisions of section 306 ("selective strike") unless he finds that the national health and safety would thereby be immediately imperiled.

The section 305 option prescribes an additional 30-day cooling-off period, with continued bargaining mediated by the National Mediation Board and no changes, except by agreement, in terms and conditions of employment.

The section 306 provision permits a selective strike after at least 10 days' notice to the carriers concerned. A selective strike is defined for the railroad industry but not for the airline industry. In the railroad industry, a selective strike is one against not more than two carriers operating in any one of the eastern, western, or southeastern regions, provided that the total revenue ton-miles transported during the

preceding year by the struck carriers in any region represented not more than 20 percent of total revenue ton-miles in that region. The revenue ton-mile limitation does not apply in a region where only one carrier is struck. Requires the maintenance of essential transportation services during a selective strike. Provides that agreements reached with struck carriers be offered intact to other carriers; allows selective strikes against carriers not accepting such agreement.

The section 307 option is a "final offer selection" provision similar to the administration's proposal contained in S. 560 and H.R. 3596, with some procedural differences. Requires each party to the dispute to submit within 5 days one sealed final offer to the Secretary of Labor, or two if the party wishes. If any party fails to submit a final offer, the last offer made during previous bargaining would be considered its final offer. Offers shall be restricted to matters arising from the Section 6 notices which began the bargaining. Provides that the parties may select a three-member panel to act as "final offer selector" and that if the parties are unable to select the panel, it would be appointed by the President. Provides that for not more than 30 days the panel hold hearings and the parties continue bargaining; if no agreement is reached during that time, the panel then opens the final offers and makes a selection. Specifies criteria for making selection. The panel does not identify the source of the selected offer, and returns all other offers

without disclosure of contents. Prohibits panel from compromising or altering the final offer that it selects. Panel's choice shall represent the contract between the parties, and shall be conclusive unless found arbitrary and capricious.

Additional comment: This proposal (H.R. 9088 and identical bills H.R. 9089, H.R. 9571, H.R. 9820, H.R. 10433, and H.R. 10491) has a total of 62 sponsors from both sides of the aisle. Making the selective strike the first option to be chosen, in the usual case, appears intended to appeal to organized labor, to get labor's acquiescence with the "final offer selection" procedure.

The proposal is a modification of an earlier one, introduced May 13, 1971 by Representative Harvey as H.R. 8385. For differences between the two, see the section immediately below on H.R. 8385.

H.R. 8385, sponsored by Mr. Harvey, referred May 13, 1971 to House Committee on Interstate and Foreign Commerce

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

Coverage: Labor disputes in the railroad and airline transportation industries.

Provisions: H.R. 8385 is an earlier version of H.R. 9088, introduced by Mr. Harvey on June 14, 1971. The following are the differences between the two bills:

1. If the President should switch from the selective strike provision (section 306) to either the section 305 or 307 option, under H.R. 9088 the selective strike would end immediately, under H.R. 8385 within two days.

2. The definition of "selective strike" contained in both bills applies to the railroad industry, but H.R. 8385 does not state this whereas H.R. 9088 adds the phrase "in the railroad industry."

3. Partial operation requirements during a selective strike are directed by the President in H.R. 9088, by the Secretary of Transportation in H.R. 8385.

4. H.R. 9088 specifies that final offers under section 307 "shall be restricted to matters arising from the notices filed under section 6 of the Act concerning the particular dispute." H.R. 8385 has no such limitation.

5. H.R. 9088 requires the "final offer selection" panel in making its choice to consider the report of any emergency board which may have been created in connection with the dispute. H.R. 8385 makes no such requirement, and in fact may be construed to prohibit review by the panel of the emergency board's report.

6. H.R. 9088 states explicitly what seems to be only implicit in H.R. 8385, that "the final offer selected by the panel shall be deemed to represent the contract between the parties." H.R. 9088 also adds that the final offer selected "shall be conclusive unless found arbitrary and capricious."

## APPENDIX

### DIGEST OF MAJOR PROVISIONS OF DISPUTE-SETTLEMENT PROPOSALS INTRODUCED IN 92d CONGRESS THROUGH AUGUST 1971

| | S. 560 and H.R. 3596 (Id.H.R. bills 901, 3639, 4116, and 5377) | S. 594 | S. 832 and H.R. 3595 (Id. H.R. bills 3985, 4620, 4996, and 5870) | S. 1088 and H.R. 2373 (Id.H.R. bills 2489, 5712, and 6066 |
|---|---|---|---|---|
| Coverage | Transportation industries. | Any industry affecting commerce. | Rails. Coverage of airlines not clear. | Any industry substantially affecting commerce. |
| Provisions | Permits 1 of 3 new options: (1) 30-day cooling off; (2) strike, with partial operation; (3) final offer selection.<br>Also includes revisions of Railway Labor Act other than Section 10. | Permits new options to President, such as fact-finding, extension of status quo, seizure and partial operation, mediation to finality, arbitration, and final offer selection.<br>Brings rails and airlines under Taft-Hartley. Applies to regional as well as national disputes. Permits emergency boards to make recommendations. | Permits strikes, including selective strikes, with partial operation. | Provides for compulsory arbitration of national emergency labor disputes through establishment of a U.S. Court of Labor-Management Relations. |
| Other | Administration proposal, first introduced in 1970. | | Supported by AFL-CIO, and rail unions. | Similar bills were introduced in 91st Congress. |

APPENDIX (continued)

| | S. 1093 | S. 1934 | S. 2060 and H.R. 9989 | H.R. 2357 |
|---|---|---|---|---|
| Coverage | Railroads. | Any industry affecting commerce. | Rails and airlines. | Rails and airlines. |
| Provisions | Permits an individual railroad to revise or abolish work rules affecting operating employees, without collective bargaining, if half of cost savings goes to those employees, and any work-force reduction is accomplished by attrition. Prohibits lockout, strike, or work slowdown because of such work rule change. | Provides for compulsory arbitration of national emergency labor disputes through establishment of a Management-Labor Commission and Management-Labor Court. | Permits 1 of these: (1) non-binding settlement recommendations; (2) final, binding arbitration; (3) final offer selection. Also includes revisions of RLA not directly related to dispute settlement. | Arsenal-of-weapons approach, incl. binding arbitration, seizure, and ad hoc Congressional remedy. |
| Other | | Similar bill introduced in 91st Congress. Modeled after Australian industrial relations system. | Proposal of Air Transportation Assn; Assn. of American Railroads; & Natl. Railway Labor Conference. | Similar to Mr. Pickle's proposals in 91st & 90th Congresses. |

APPENDIX (concluded)

| | H.R. 5347 | H.R. 9088 (Id. H.R. bills 9089, 9571, 9820, 10433, and 10491). Earlier version: H.R. 8345 |
|---|---|---|
| Coverage | Rails and airlines. | Rails and airlines. |
| Provisions | Secret ballot of employees on carriers' last offer; strikes permitted, with partial operation. | Permits 3 new options: (1) selective strike, with partial operation; (2) 30-day cooling-off; (3) final offer selection. The selective strike option is to be chosen first, in the usual case. |
| Other | | Has 62 Congressional sponsors, from both parties. Precedence given to selective strike apparently intended to appeal to organized labor, to get labor's consent to final offer selection. |