The Railway Labor Act

and the

National Mediation Board

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August 1940

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NATIONAL MEDIATION BOARD

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NATIONAL MEDIATION BOARD

Fiscal Year ended June 30, 1935

WILLIAM M. LEISERSON, *Chairman*
JAMES W. CARMALT
JOHN M. CARMODY
GEORGE A. COOK, *Secretary*

Fiscal Year ended June 30, 1936

WILLIAM M. LEISERSON, *Chairman*
OTTO S. BEYER [1]
JAMES W. CARMALT
GEORGE A. COOK, *Secretary*

Fiscal Year ended June 30, 1937

JAMES W. CARMALT, *Chairman*
OTTO S. BEYER
WILLIAM M. LEISERSON
GEORGE A. COOK, *Secretary*

Fiscal Year ended June 30, 1938

OTTO S. BEYER, *Chairman*
WILLIAM M. LEISERSON
GEORGE A. COOK [2]
ROBERT F. COLE, *Secretary*

Fiscal Year ended June 30, 1939

OTTO S. BEYER, *Chairman*
GEORGE A. COOK
DAVID J. LEWIS [3]
ROBERT F. COLE, *Secretary*

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[1] Appointed February 11, 1936, to succeed John M. Carmody resigned September 30, 1935.
[2] Appointed January 7, 1938, to succeed James W. Carmalt, deceased December 2, 1937.
[3] Appointed June 3, 1939, to succeed William M. Leiserson who served as chairman until he resigned May 31, 1939.

PREFACE

Primarily this report is published to meet a demand for general information respecting the Railway Labor Act and the National Mediation Board. This need finds expression in requests upon the Board by other Government agencies, labor and business groups, schools and colleges, libraries and students. The secondary reason for this report is to present a recapitulation of the operations of the National Mediation Board from July 21, 1934, the date it began to function, to June 30, 1939, which marked the end of its fifth year of existence.

Not since its first annual report for the fiscal year ended June 30, 1935, has the Board published general information respecting the Railway Labor Act and the types of disputes subject to its provisions. In recent years the Board has limited its annual reports to a record of the year's operating experience and discussion of current problems and trends. Satisfying the reasons cited above has necessitated generous use of the material already published in previous reports. This is especially true of the first report from which was taken most of the discussion of provisions of the act, previous railway labor legislation and the various types of labor disputes. Most of the statistical data presented herein was taken from the fifth report. In all cases the material has been edited and brought up to date.

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A. The Railway Labor Act

1. INTRODUCTORY

The Railway Labor Act as it applies to the railroads and airlines and their employees today is the culmination of 50 years of experience with Federal legislation to govern the labor relations of employers and employees on the railroads. Its purpose is to promote and maintain peace and order in those relations as a means of avoiding interruptions to interstate commerce. In this 50-year period Congress has developed, step by step, a comprehensive policy for dealing with transportation labor problems, so that the present law is the most advanced form of Government regulation of labor relations we have in this country. The Railway Labor Act imposes positive duties on carriers and employees alike, defines rights and makes provision for their protection, prescribes methods of settling various types of disputes, and sets up agencies for adjusting differences.

Whereas labor legislation as originally applied to the railroads, like most of the recent efforts to deal with labor disputes in other industries, made no attempt to differentiate between the various types of labor controversies but treated them as if they were all of a kind, the amended Railway Labor Act clearly distinguishes different kinds of disputes, recognizes the differences in the principles which underlie them, and provides different methods and establishes separate agencies for handling the various kinds. These principles, methods, and agencies, evolved through years of experimentation, provide a model labor-relations policy, based on equal rights and mutual responsibilities. A complete text of the Railway Labor Act is given in appendix A of this report.

2. UNDERLYING PRINCIPLES OF THE ACT

Three basic principles are laid down in the act as a foundation for sound labor relations on the railroads and airlines:

(*a*) *Written agreements.*—The relations are to be governed, not by the arbitrary will or whim of the management or the men, but by written rules and regulations mutually agreed upon and equally binding on both. A positive duty is imposed on all carriers subject to the act and their employees "to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions." And every carrier is required to file with the National Mediation Board a copy of every such contract with its employees, as well as any change that is made in an existing contract.

(*b*) *Conference and mutual adjustment* is to be the primary method of arriving at terms and conditions of employment, and both manage-

ment and workers are required to negotiate and by negotiation compose their differences. "All disputes (says the act) shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated so to confer, respectively by the carrier or carriers and by the employees thereof interested in the dispute" * * *. "Carriers and representatives of employees shall give at least 30 days written notice of an intended change (in existing agreements), and the time and place for the beginning of conference between representatives of the parties shall be agreed upon within 10 days * * *." And, in case of a dispute arising out of grievances or out of the interpretation or application of agreements duly negotiated, it shall be the duty of the designated representatives (of the carriers and of the employees), to confer for the purpose of adjusting the dispute amicably.

(c) *Collective bargaining.*—The agreements referred to above are collective-bargaining agreements covering the whole of a craft or class of employees. They are made through the instrumentality of a labor organization which must have the support of at least a majority of the employees covered and become part of the contract of employment between the carrier and each employee. "Employees shall have the right to organize and to bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the class or craft for the purposes of this act." The term "representative" is defined to mean a labor union, organization, or corporation, as well as a person. The law further provides that "representatives of employees * * * need not be persons in the employ of the carrier * * *." One of the purposes of the act is stated to be "to provide for the complete independence of carriers and of employees in the matter of self-organization * * *."

3. RIGHTS AND PROHIBITIONS

These principles would be mere verbiage and incapable of effective, practical operation if the act did not endow the parties with definite legal rights and impose corresponding duties on them. Thus for about a hundred years wage earners in this country have had what has been called a "right" to organize. But because no corresponding duty was imposed on employers to refrain from influencing or discouraging the exercise of that right, and they were free to refuse to deal with organized employees, the so-called right of the employees was meaningless except as the employees could enforce it by strikes and other means of industrial warfare.

Therefore, to make the right real and to avoid the necessity of strikes to enforce it, the act provides that "representatives, for the purposes of this act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives * * *." "And no carrier shall * * * seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier."

Management must necessarily have authority to hire, discharge, and discipline employees, but because this authority has been abused to

interfere with the rights of employees, Congress enjoins that "no carrier, its officers, or agents shall deny or in any way question the right of its employees to join, organize, or assist in organizing a labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees." Contracts or agreements promising to join or not to join a labor organization are made illegal, carriers may not use their funds to maintain any organization of employees, or to pay representatives of employees; and deduction of dues from wages for the use of any employees' organization is prohibited.

It took many years of trial and error with various railway labor laws to learn the lesson that just as there can be no property rights in any real sense if people must depend on their own strength to enforce them, so there can be no effective right to organize if it is to be enforced only by economic power. The amended Railway Labor Act makes such violations of the right to organize a misdemeanor, punishable by fine or imprisonment or both; and interference, influence, or coercion by one party with the choice of representatives by the other is similarly punishable. It is made the duty of district attorneys of the United States to institute proper proceedings and to prosecute, under the direction of the Attorney General, on application of duly designated representatives of employees, but without cost to the employees.

4. DUTIES AND RESPONSIBILITIES

In addition to these rights and prohibitions, the act imposes certain duties and responsibilities on the carriers and their employees, and on the representatives of both. The duty to exert every effort to make and maintain agreements, and to hold conferences for the purpose of settling all disputes, has already been mentioned; also the duty of both to give at least 30 days' notice of any desired change in rates of pay, rules, or working conditions embodied in agreements. When the National Mediation Board certifies that a majority of a craft or class of railroad or air line employees has designated a labor organization to represent them, the carrier becomes obligated "to treat with the representatives so certified as the representative of the craft or class for the purposes of this act."

While obligatory conferences are being held, or while a dispute is in the hands of the National Mediation Board, "rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon" by the Board in accordance with the act. Further responsibilities and obligations are placed on both parties in connection with disputes involving grievances and the interpretation or application of agreements. On the railroads, all such disputes which cannot be settled by the parties in direct conference, are referable either to local or system adjustment boards set up by agreement or, to the National Railroad Adjustment Board provided by the Railway Labor Act if no local or system boards have been agreed to for this purpose. All such adjustment boards are in effect industrial courts. The decisions of the national board are binding by law upon both parties. The act likewise imposes duties and responsibilities upon the air lines and their employees to settle by means of adjustment boards disputes growing out of the interpretation or application of duly negotiated agreements. Similar obli-

gations are assumed if arbitration of disputes undertaken in accordance with the provisions of the act is agreed upon by the parties.

No penalties are provided in the act for failure to carry out these last named duties and obligations, but carriers by rail who fail to comply with awards of the National Railroad Adjustment Board, or arbitration boards set up in accordance with the act, are made subject to civil suits in Federal district courts. Presumably any duties or responsibilities imposed by the act may be enforced by appropriate court writs. The Railway Labor Act of 1926 prohibited interference with the designation of representatives, but failed to provide any penalties. Nevertheless the United States Supreme Court held that such interference could be enjoined in equity proceedings.[1] In 1935 the Federal District Court for the Eastern District of Virginia ruled in a case under the amended act, that "the right of self-organization and representation in the matter of rates of pay, hours of labor, and working conditions is a property right, the loss of which would result in irreparable damage to complainants." [2]

5. TYPES OF DISPUTES AND METHODS OF ADJUSTMENT

With the rights and responsibilities of the parties well defined, the vast majority of disputes on the railroads and air lines are settled in a peaceful and orderly manner by conference and mutual agreement. There are bound to be some controversies, however, which cannot be so settled, and for the adjustment of these the amended Railway Labor Act provides mediating and adjusting agencies designed to deal with different types of disputes.

(*a*) *Representation disputes—Elections.*—In selecting representatives to deal with the management, disputes often arise among the employees themselves as to what organization they desire to represent them; and, because in some instances employers have participated in such disputes favoring one organization or another, bitter conflicts have been precipitated. Section 2, ninth, of the amended Railway Labor Act provides an effective method of settling such disputes peacefully. If such a dispute arises among employees, it is the duty of the National Mediation Board, on request of either party, to investigate and to certify in writing to the parties and to the carrier the names of the individuals or organizations that have been designated and authorized to represent the employees. In such an investigation the Board may take a secret ballot, "or utilize any other appropriate method * * * as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier." Thus the management is eliminated, as a party, from any such controversy. The Board is given authority to designate who may participate in an election, or it may appoint a committee of three neutral persons to do this. Rules to govern the elections are made by the Board, and the majority of any craft or class of employees selects the representatives for the whole craft or class.

(*b*) *Mediation.*—The National Mediation Board, on request of either party to a dispute involving changes in rates of pay, rules, or working conditions, or on its own motion in cases of emergency, is required to "promptly put itself in communication with the parties to such con-

[1] *Texas & New Orleans Railroad Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 584 (1930).
[2] *Ry. Employes' Dept., A. F. of L.* v. *Virginian Railway*, Judge Way, decision No. 329, July 24, 1935.

troversy, and * * * use its best efforts, by mediation, to bring them to agreement." Each of the three members and any of its staff may act for the Board in the mediating capacity. When a dispute is settled through a mediation agreement, should any question arise subsequently regarding the meaning or application of such an agreement, the Board is required, upon request of either party, "and after a hearing of both sides (to) give its interpretation within 30 days."

(*c*) *Voluntary arbitration.*—If its mediation efforts prove unsuccessful, the Board must "at once endeavor as its final required action * * * to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this act." But the failure or refusal of either party to submit a controversy to arbitration is not to be construed as a violation of any legal obligation imposed by the act. Arbitration boards, when agreed upon, may consist of three or six members, one or two arbitrators to be appointed by each party. These in turn are required to choose the third, or the fifth and sixth arbitrators in the case of a board of six, if the arbitrators appointed by the parties fail to name them. The expenses of arbitration proceedings are paid by the Board.

(*d*) *Investigation by emergency boards.*—Should arbitration be refused by either or both parties, and the dispute remain unsettled and "*threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation services,*" then the Board is required to notify the President, and he in turn may, at his discretion, appoint an emergency board to investigate the facts as to the dispute and report thereon within 30 days. After the creation of an emergency board, and for 30 days after it has made its report to the President, "no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose."

(*e*) *Disputes under agreements.*—For the adjudication of disputes involving existing contracts between carriers by rail and their employees, that is, disputes "growing out of grievances or out of the interpretation or application of agreements," which cannot be settled in the required conferences, the amended act creates the National Railroad Adjustment Board to make final and binding decisions. This Board is composed of 36 members, 18 selected by the carriers and 18 by national organizations of employees. Its headquarters are placed in Chicago, and it is divided into 4 divisions, each with jurisdiction over disputes involving different classes of railroad employment. The membership of the divisions is also equally representative of carriers and employees. Salaries of the members are paid by the parties whom they represent, but the staff and all other expenses are paid by the Government. If any division cannot agree on an award, or if it is deadlocked, it is required to select a neutral referee to sit with the Board until a decision is rendered. If it fails to select a referee, the National Mediation Board is required to appoint one upon request. A majority vote of the members of a division is competent to make an award with respect to any dispute submitted to it, and the decisions are final and binding on the parties.

The Adjustment Board does not participate in any way in the process of establishing the labor standards on the railroads. This is left entirely to direct negotiations, mediation, and arbitration. The

Adjustment Board, as its name implies, confines its activities strictly to the adjustment of differences that may arise from time to time as to how such labor standards should be applied under the provisions of existing agreements.

B. Air Transportation and the Railway Labor Act

By an amendment to the Railway Labor Act, approved April 10, 1936, Congress extended the provisions of the act to cover "every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers * * *." A Title II was added to the act containing the provisions applicable to air carriers and their employees, the original act as amended in 1934 applying to the railroads was made Title I.

All of the provisions of title I except those of section 3, were extended to cover the air carriers and their employees, and "the duties, requirements, penalties, benefits, and privileges prescribed and established by the provisions of title I" were made to apply "to said carriers by air and their employees in the same manner and to the same extent as though such carriers and their employees were specifically included within the definition of 'carrier' and 'employee,' respectively, in section 1 thereof."

Section 3 of title I, which was not made applicable to air carriers and their employees, provides for a National Railroad Adjustment Board to decide all disputes growing out of grievances or out of the interpretation or application of agreements between the railroads and their employees. In place of this, title II provides for the establishment of boards of adjustment by agreement between employees and air carriers, and makes provisions for the creation of a permanent National Air Transportation Adjustment Board when, in the judgment of the National Mediation Board, it shall be necessary to have such a permanent national board in order to provide for the prompt and orderly settlement of disputes concerning rates of pay, rules and working conditions between carriers by air, and their employees.

Section 2, eighth, of title I of the Railway Labor Act stipulates that the provisions of the third, fourth, and fifth paragraphs of the section are made a part of the contract of employment between the carrier and each employee, and shall be binding upon the parties, regardless of any other express or implied agreements between them. Then every carrier by rail is required to notify its employees by printed notices, in a form specified by the National Mediation Board, that all disputes will be handled in accordance with the requirements of the act, such notices to contain also a verbatim reproduction of the paragraphs referred to. The notice posted on the air lines in accordance with this requirement is similar in form to the notice posted by the rail carriers, a copy of which is reproduced on page 36.

By section 401 (L) of the Civil Aeronautics Act [3] which became law in June 1938, air carriers are required to comply with title II of the Railway Labor Act as a condition of holding certificates of public convenience and necessity. The Civil Aeronautics Act also specifically requires that none of its provisions shall be interpreted so as to restrict

[3] Civil Aeronautics Act of 1938, Public No. 706.

the rights of employees of air carriers to obtain by collective bargaining more favorable wages or working conditions. The portions of the Civil Aeronautics Act which deal with the collective bargaining rights of air-carrier employees and which refer to the Railway Labor Act are quoted as follows:

(3) Nothing herein contained shall be construed as restricting the right of any such pilots or copilots, or other employees, of any such air carrier to obtain by collective bargaining higher rates of compensation or more favorable working conditions or relations.

(4) It shall be a condition upon the holding of a certificate by any air carrier that such carrier shall comply with title II of the Railway Labor Act, as amended.

C. The Preceding Railway Labor Legislation

A brief review of the railway labor legislation that preceded the Railway Labor Act in its present form will make plain the development of the provisions as now embodied in the act, the circumstances that brought about the distinctions among the various types of disputes, and the manner in which the policies and methods applicable to the different types were fashioned.

The Board's review of the development of railway-labor legislation is attached to this report as appendix B. Here it is sufficient to list the acts of Congress as they have succeeded one another, and to indicate briefly the significant features of each.

1. The first law dealing with railway labor relations was enacted by Congress in 1888, provided (1) for voluntary arbitration and (2) investigation of labor disputes that threatened to interrupt interstate commerce. During the 10 years of its existence, the arbitration provisions were never used, and the investigation provisions were used only once, and then without effect on a strike which had already resulted.

2. The Erdman Act of 1898 was the first law to place reliance upon the policy of mediation and conciliation by the Government for the prevention of railroad labor disputes with a temporary board for each case. The investigation features of the previous act were repealed, but voluntary arbitration was retained as a second line of defense if mediation failed.

3. The Newlands Act of 1913 established a full-time Board of Mediation and Conciliation, and definitely placed main reliance for settlement of disputes upon mediation. The Board was also required, if a dispute arose as to the meaning or application of any agreement reached through mediation, to render an opinion, when requested by either party. Arbitration procedures when mediation failed were improved.

4. The Adamson Act of 1916 was an attempt to settle a dispute with respect to the basic 8-hour day by direct congressional action when mediation failed and arbitration was refused.

5. Federal Control of the Railroads, 1917–20, established the right of labor to organize without interference by the management. It negotiated national agreements with labor organizations representing certain classes of employees. It also established railway boards of adjustment, equally representative of management and employees, with authority to make decisions in all disputes involving interpretation or application of existing agreements.

6. The transportation Act of 1920 created the United States Railroad Labor Board of nine members (three to represent, respectively, management, labor, and the public), with authority to hear and decide all disputes that could not be disposed of in conferences between representatives of the carrier and the employees. Compliance with decisions of the Board was not made obligatory, however. The act was in part a reversion to the principles of the first law of 1888. Mediation was discarded; in its place were substituted hearings and investigations of disputes by the Board with recommendations in the form of decisions which the pressure of public opinion was expected to enforce.

7. The Railway Labor Act of 1926 reestablished mediation as the basic method of Government intervention in railway labor disputes, with voluntary arbitration to be urged upon the parties if this failed. It strengthened mediation by making it obligatory upon carriers and employees to exert every reasonable effort to make and maintain agreements through representatives chosen by each party without interference by the other. And it made provision for the establishment of adjustment boards by voluntary agreement of carriers and employees for the purpose of interpreting and applying the agreements. This act was an attempt to embody the best features of the previous legislation in a labor-relations law for the railroads.

8. The Bankruptcy and Emergency Transportation Acts of 1933 extended the provisions of the Railway Labor Act to cover all roads in receivership, prohibited "yellow dog" contracts, provided protection against interference and coercion on the part of the management in the matter of self-organization of employees. All of these provisions were, in the following year, included in the amendments to the Railway Labor Act.

II. THE NATIONAL MEDIATION BOARD AND ITS DUTIES

1. INTRODUCTORY

The National Mediation Board was created by amendments to the Railway Labor Act, approved June 21, 1934. It succeeded the United States Board of Mediation as established by the original act of 1926.

The members of the National Mediation Board, three in number, are appointed by the President with the advice and consent of the Senate. The terms of office (except in case of a vacancy) are for 3 years, one Board member being appointed each year. The Board annually designates one of its members to act as chairman.

Administration of the affairs of the Board, and subject to its direction, is in charge of a secretary. The regular staff of mediators consists of 12 men who, together with the members of the Board, mediate disputes, investigate representation disputes, and conduct elections. One of the twelve is assigned to the headquarters of the Board and confines his efforts largely to fact finding and research. He also does field work. All are selected through the Civil Service. In addition, the members of the Board, either in concert or singly, conduct hearings, prepare findings, and make rulings either in connection with requests for interpretation of mediation agreements or in connection with disputes among employees over representation. Hearings of the latter type are usually necessary because of failure on the part of the parties to such disputes to agree on the rules of elections or the makeup of eligible lists necessary to adjust such disputes.

Cases subject to the jurisdiction of the National Mediation Board are of three general kinds:

(1) Differences between carriers and employees, regarding changes in rates of pay, rules or working conditions.[1]
(2) Disputes among employees as to who shall be their duly designated and authorized representatives.[2]
(3) Interpretation of mediation agreements where controversy has arisen over the meaning or the application of such agreements.[3]

Cases in the first category are designated as "mediation" cases, those in the second as "representation" cases, and those in the third category as "interpretation" cases.

2. MEDIATION CASES

The most important task of the National Mediation Board is the mediation of differences between carriers and their employees which arise out of the making or revising of agreements respecting rates of pay, rules, or working conditions.

[1] Sec. 5 of the amended Railway Labor Act.
[2] Sec. 2, ninth.
[3] Sec. 5, second.

The primary duty of carriers and their employees under the terms of the act, as has already been emphasized, is to exert every reasonable effort to make and maintain labor agreements and to settle all disputes involving such agreements with all expedition in conference between representatives duly designated and authorized to speak for their principals. The law, therefore, places prime emphasis on direct conferences between the parties as the first and most important step leading to the accomplishment of the purposes of the act. The mediatory services of the Board are only in order and forthcoming where direct negotiations between the parties, diligently and conscientiously conducted, have exhausted all possibility of effecting agreement between them. Mediation by the Board of the matters specifically at issue thus operates to continue the negotiations already started by the parties themselves. From the time, however, that the Board steps into the picture, the negotiations proceed under its auspices and with the help of its representatives. It may be said, therefore, that mediation by the Board under the terms of the Railway Labor Act and in keeping with the methods and practices it has developed on the whole operates to promote and extend the voluntary and democratic process of adjusting differences over labor standards by conference between and with the parties directly concerned.

3. PROBLEMS OF MEDIATION

Whereas the provisions in the Railway Labor Act for handling representation disputes originally gave rise to many new problems, few procedural questions arose in the mediation of labor disputes because the methods of handling these cases have been worked out over a long period of years and are generally well-known and accepted by the carriers and employees alike. With rare exceptions both managements and men cooperate to the fullest extent with the Board in its efforts to settle disputes by mutual adjustment and agreement. As a general rule the Board and its mediators are confronted only with the problems involved in the merits of the disputes, which are difficult enough without the complication of technical procedural problems.

Among the rare exceptions in the matter of cooperation with the Board to settle disputes by mediation is the contention occasionally raised by small carriers, that the Railway Labor Act does not require them to enter into written agreements with their employees. The notion of such carriers seems to be that, since they employ relatively few individuals, oral understandings defining labor standards are sufficient to satisfy the intent and spirit of the law. The act specifically makes it the duty, however, of every carrier and its employees "to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions," and, furthermore, provides that all such agreements shall be filed with the Board. Obviously, therefore, the law intended written contracts to be made not only because it provides that contracts shall be filed with the Board, but also that notices of changes shall be given in writing. In addition, the law sets up an agency to interpret them, namely, the National Railroad Adjustment Board. In the circumstances it is difficult to see how the purposes of the Railway Labor Act can be realized on any carrier whose management, after reaching an under-

standing with its employees, is not willing to reduce this understanding to writing. Such a situation can only lead to difficulties of the kind the act is intended to avoid.

Another technical problem that has arisen to delay or to prevent the Board from settling questions on their merits by mediation is the procedure required when working conditions are changed that have not previously been covered specifically by an agreement. For example, the number of men to be used on a train is not generally specified in agreements between carriers and employees, but is left to the management to determine from time to time in accordance with needs. If the employees feel that the number assigned is not proper, however, their representatives are privileged to confer and to negotiate with the management as to the appropriate size of the crew. Such differences arise occasionally but are usually settled amicably in conferences between managers and men without resort to mediation.

But in one case a carrier has insisted that before it will confer with employees' representatives regarding the number of men to be used on a train, the employees must serve the 30 days' notice as required by law of a desire to make a change in the existing agreement or to add a new rule. The contention is that since the number of men is not specified in the agreement, the management is free to use any number it deems best; and if the employees object to this, they must serve notice that they desire to change the agreement or to add an additional rule if they want another number. If such notice were served, the carrier insists upon its right of proposing a revision of other provisions of the existing agreement. On this account, and also because they contend that in the absence of a rule fixing the number of men, this becomes a matter for negotiation whenever the question arises, employees have objected to giving the formal notice that would open the entire agreement for revision.

On the employees' side similar technical objections have sometimes been raised to referring cases involving interpretation or application of agreements to the National Railroad Adjustment Board as required by the act. Their representatives have at times insisted that such cases should be mediated by the National Mediation Board. The contention is that when employees charge that a change in rate of pay contrary to an agreement is made, or when an employee makes a claim that his seniority rights have been violated, the cases involve changes in the agreement, and are therefore subject to mediation by the Board under section 5 of the act. In the opinion of the Board, however, such charges of violation of agreements are clearly disputes involving the application or interpretation of agreements, and therefore referable to the National Railroad Adjustment Board's under section 3 of the act. If the charges are found to be true, that Board would have authority to order restitution and proper application of the provisions of the agreements.

Aside from these exceptional problems, the only serious question that has arisen in connection with the Board's mediation work grew out of the refusal of several carriers to comply with awards of the National Railroad Adjustment Board. The act provides that if an award is not complied with the party in whose favor it is made may apply to a United States district court for enforcement, and employees are freed of the costs of such action.

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In several cases, however, where carriers have refused to apply awards of the Adjustment Board, employees have threatened to strike to enforce compliance rather than appeal to the courts for enforcement on the grounds that they should not be compelled to move for retrial of cases already decided in their favor. Informally the Board has intervened in such situations for the purpose of effecting, if possible, an amicable adjustment of the difficulties involved with the definite understanding, however, that it would not mediate the question as to whether the intent of the law as regards the application of awards duly rendered by the Adjustment Board was to be respected.

Here again, as in representation problems arising under section 2, ninth, the issue over the application of the Adjustment Board awards arose because the provisions of the act establishing a National Railroad Adjustment Board were new. In general, problems of this kind were most numerous during the first year of the Board's operation. With time, experience, and judicial interpretation much has been accomplished in the settlement of controversies of this type.

4. REPRESENTATION DISPUTES

In order to carry out the primary duty which the Railway Labor Act imposes on carriers and employees alike, namely: "To exert every reasonable effort to make and maintain agreements," the act requires that the employees by crafts or classes shall be in a position to act as a unit in designating representatives authorized to negotiate and enter into such agreements with carriers. Therefore, the act provides that "the majority of any craft or class of employees shall have the right to determine who shall be the representative of the class or craft for the purpose of the Railway Labor Act." Thus, in essence, the employees are authorized to act after the manner of a corporate body in choosing its representatives.

The carriers are prohibited from influencing or in any way interfering with the choice of employees' representatives, but among the employees themselves disputes often arise as to who shall be their representatives. Congress has therefore charged the Board with the duty of investigating such disputes, upon request of one of the parties, and to determine the representation desired by a majority of the employees of the craft or class involved. In such an investigation the Board either takes a secret ballot or verifies signatures on written authorizations by checking them against the pay-roll records of the carrier. The choice of the employees, as thus ascertained, is then certified by the Board to the parties and to the carrier as the duly designated and authorized representative of the employees for the purposes of the Railway Labor Act.

According to the act, such representatives may either be a person or persons, or a labor union or organization, designated either by the employees of a single carrier or the employees of a group of carriers, to act for them. The thing of importance in this connection is that the interests of the employees, like the interests of the carriers, shall be looked after by representatives of their own choosing. In other words, the act does not contemplate that its purposes shall be achieved, nor is it clear that they can be achieved, without employee representatives—that is to say, by carriers treating separately with each employee.

On the whole, the employees of virtually all of the railroads, and for almost all of the crafts or classes found among them, have availed themselves of their right to select representatives for the purposes of the law. This is notably true of railroad employees constituting the train and engine, the maintenance, and the clerical crafts or classes. Where progress in the way of representation among such employees was still possible as for example among groups of minor supervisory employees, train dispatchers, dining-car stewards, cooks and waiters, power-house employees and shop laborers, and station ushers or red caps, such progress has been continuous since the Board began to function in 1934.

The designation of representatives by employees of air lines, while not yet as extensive as on the railroads, has also made substantial progress since the airlines became subject to the act. Where airline employees have associated themselves for purposes of collective bargaining and designated representatives, the carriers concerned have recognized these representatives and have conferred with them in keeping with the provisions of the law.

5. INTERORGANIZATION AND JURISDICTIONAL DISPUTES

In the discharge of its duty to resolve disputes among employees over representation, the Board is often confronted with serious differences between labor organizations competing for the right to represent various crafts or classes of employees. Such differences usually center around what particular employees comprise such crafts or classes, as well as the wording of rules to govern elections among these employees to determine their choice. Differences of this kind have frequently made it necessary for the Board to make special investigations, hold formal hearings, prepare findings of fact, and make definite rulings, all of which has proved time consuming and diverted the efforts of the Board from the mediation of labor disputes—its most important duty.

For a time during the 5-year period covered by this report the number of such interunion disputes showed a reduction compared with previous years. Unfortunately, this trend did not continue for long and recently interorganization disputes have again shown a tendency to increase. The time consumed by the Board in disposing of these disputes, coupled with the ill-will engendered by them, as well as their bad effect on the morale of the service, has prompted the Board upon several occasions to urge that the parties involved in such disputes exert every effort to adjust them at home and among themselves instead of bringing them to the Board. Frankly, the Board does not consider that the purposes of the Railway Labor Act are best served by permitting these disputes to acquire sufficient magnitude to make it necessary to refer them to the Board for adjudication.

Most of the disputes falling in this category were among the employees in the engine, train, and yard service of the railroads. Despite the relatively large number of such particular disputes, the number of employees concerned therein was relatively small and the net change in representation resulting from them was negligible.

6. PROBLEMS OF REPRESENTATION

The Board's investigations of disputes among employees as to who shall represent them under the provisions of section 2, ninth, of the

Railway Labor Act, for the purpose of certifying representatives, have developed a series of perplexing problems some of which have been finally resolved by rulings of the courts. These problems in the main involve the extent and nature of the authority of the Board to designate what employees shall participate in elections and to make rules governing the elections.

(*a*) *Majority rule.*—The first of these problems is whether a majority of all those eligible to vote is necessary to choose a representative or whether a majority of the votes actually cast is sufficient. Section 2, fourth, of the act provides that "the majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this act." Early in its administration, the Board interpreted this as requiring a majority of all those eligible rather than a majority of the votes only. The interpretation was made, however, not on the basis of legal opinion and precedents, but on what seemed to the Board best from an administrative point of view. Where, however, the parties to a dispute agreed among themselves that they would be bound by a majority of the votes cast, the Board took the position that it would certify on this basis, for the reason that the Board's duty in these cases is to settle disputes among employees, and when an agreement is reached the dispute as to that matter should be accepted as settled.

Although the Board's interpretation was protested in a number of cases, in only one case was it challenged in a court proceeding. This was in the case of *System Federation No. 40* v. *The Virginian Railway Company*, in the United States District Court for the Eastern District of Virginia.[4] The ruling of Judge Way on this point was as follows:

> It is also contended by the railway that the election is void because one of the rules under which it was held was in violation of the act which provides, among other things, that the "majority of any craft or class of employees shall have the right to determine who shall be representatives of the craft or class," etc. It seems to me that this defense also is without merit. A reasonable interpretation of the act is that the election must be open to each craft or class with full untrammelled opportunity to each eligible employee in such craft, to vote although he is not compellable to exercise that right. The statute is similar, it would appear, to statutes or bylaws providing that a majority of the stockholders of a corporation shall constitute a quorum at a stockholders' meeting. Where such quorum is actually present at a duly called meeting, a majority of those may transact all business of the corporation that may properly come before the stockholders unless the statute or bylaws expressly require a greater number of affirmative votes than a mere majority of the quorum. In this case, in every instance except one, more than a majority of those eligible to vote, actually participated in the election; that is, exercised the right to determine who should represent that craft or class in negotiating with the railway in respect to certain matters. That, it seems to me, meets all the requirements of majority rule in the five crafts where a majority of all eligible actually voted, although in one of those instances less than a majority voted for the Federation. But in the craft (carmen and coach cleaners) where less than a majority of those eligible to vote, actually voted, it would seem to follow that there was no election by that craft, and as to that craft the certification of the Board is without force or effect.

The above ruling was subsequently upheld by the United States Court of Appeals for the Fourth Circuit.[5] The case was appealed to the Supreme Court of the United States which sustained the ruling of the lower court.[6] During the second year of its operation, guided by the foregoing court decisions, the Board changed its ruling with respect to the majority required to determine the election of representatives.

[4] *Ry. Employees Dept. A. F. of L.* v. *Virginian Railway*, Judge Way Decision No. 329, July 24, 1935.
[5] *The Virginian Railway Co.* v. *System Federation No. 40, Railway Employee's Department, American Federation of Labor, et al.* No. 4005, June 18, 1936.
[6] 300 U. S. 515.

The Board had occasion to consider this question again in a representation dispute involving the shop employees of the Nasvhille, Chattanooga & St. Louis Railway Co.[7] in which the Board stated its ruling with respect to the required majority, as follows:

> In some elections heretofore held the Board has ruled, for administrative reasons, that it would not certify as the choice of representative by employees any individual or organization which failed to receive a majority of the eligible votes. By judicial decision and opinion of competent counsel, the Board is constrained now to hold that where a majority of the eligible voters participate in the election and all are given opportunity so to vote, a majority of the legal votes cast will determine the right to certification by the Board of the representation chosen by the class or craft.

This ruling is now generally accepted.

(*b*) *What is a craft or class?*—The Railway Labor Act does not define the terms "craft or class" in which the majority is given the right to determine the representation. Whether the terms are used synonymously or whether a class comprises several crafts or vice versa is not explained. In making rules to govern elections and in designating the employees who may participate in such elections, the Board in most cases has been confronted with disputes as to whether the employees involved constitute one class or craft, or whether they are several distinct crafts for each of which separate representatives are to be chosen by separate majorities. So far as possible the Board has followed the past practice of the employees in grouping themselves for representation purposes and of the carriers in making agreements with such representatives. But these practices have not always been uniform and claims are often made that the Railway Labor Act requires changes in existing practices.

For example, switchmen, i. e., yard conductors or foremen, and yard helpers or brakemen, have generally been considered as constituting one class or craft of employees, and the carriers have usually made agreements with one organization representing all these employees. Many disputes have been presented to the Board, however, in which the yard foremen or conductors of switching crews have requested separate representation as a craft distinct from the yard helpers or brakemen. It is contended that the conductors and brakemen in the yards constitute separate and distinct crafts as is the case generally on the road.

Acting on this basis in the first years of its existence the Board authorized the taking of separate ballots of yard conductors in a number of cases and certified representatives accordingly. But since these rulings were made, cases have come up in which the yard conductors and brakemen work interchangeably in both occupations during the same pay-roll periods. Separate eligible lists had to be made up, therefore, either on the basis of the preponderant amount of time worked in each occupation during a given period or on basis of assignment as of a given date. Subsequently, requests also were made to the Board that other yard service employees, such as car retarder operators and switchtenders be voted as separate crafts, each entitled to its own representatives.

This pressure on the Board to split classes of employees hitherto considered as a unit into more and more and smaller and smaller

[7] Case R-170.

groups, each of which is claimed to be a distinct craft, has come from all branches of employment. Hostlers and their helpers, who have generally been grouped with firemen for representation purposes have in some cases requested separate representation as a distinct craft; and sometimes the contention is that hostlers are engineers and should be voted together with road engineers. Among the maintenance-of-way employees it has been argued that section foremen, laborers, bridge tenders, watchmen, and various kinds of mechanics are separate and distinct crafts; and in some cases, it was even contended that the last of these should be voted together with various crafts of shop employees. A similar separation of powerhouse employees into a number of crafts has been requested, and among the clerical, office, and station employees numerous subdivisions have been asked on the basis of variations in the work done by the employees as well as on the basis of jurisdiction of different employees' associations.

When first confronted with these problems, the Board attempted to avoid any general ruling, but to decide each case on the basis of the facts developed by the investigation of that case. After some decisions had been made, however, separating certain groups of employees, insistent demands were made that the Board follow the same rulings in subsequent cases, and other groups of employees within a class or craft insisted that they too were entitled to separation as distinct crafts.

On the basis of its experience in dealing with these problems, the Board is impressed that the tendency to divide and further subdivide established and recognized crafts or classes of employees has already gone too far, and threatens to defeat the main purposes of the Railway Labor Act, namely, the making and maintaining of agreements covering rates of pay, rules, and working conditions and the avoidance of labor disputes. Moreover, the Board has been informed by carrier managements in some cases that such subdivisions tend to interfere with the efficiency of operations.

The Board is inclined, therefore, to avoid unnecessary multiplication of subcrafts or subclasses, and to maintain, so far as possible, the customary groupings of employees into crafts or classes as they have been established by accepted practice over a period of years in the making of wage and rule agreements.

Another side of this problem has appeared in a few cases where part of a recognized craft is working in one department of a carrier and others of the same craft are employed in another department. Thus shop laborers and powerhouse employees have been treated as one class of employees in certifying representatives, on the ground that the customary practice is to group them together for representation purposes. Most carriers have recognized the combined grouping in making agreements with the International Brotherhood of Firemen, Oilers, Helpers, Roundhouse, and Railway Shop Laborers.

A similar question arose when the Switchmen's Union of North America petitioned for a vote for representation of yard-service employees of the Nickle Plate Railroad at Buffalo and Cleveland, but not in the rest of the yards of the carrier. The Board rejected the petition on the ground that all the yards of a carrier must vote together to choose representatives.[8]

[8] N. M. B. Case No. R-74.

It also has been claimed occasionally, that employees who have seniority rights in several crafts or who work interchangeably in more than one craft should have a vote in each craft in which they may thus have an interest. The Board has ruled that men may not vote in two occupations, and only those who are regularly employed in the craft in which there is a dispute may vote in that craft. Those who merely hold seniority rights in such craft, but are employed in another, would be entitled to vote in this other craft to which they are regularly assigned. This ruling has been quite generally accepted, but one organization challenged it in the Supreme Court of the District of Columbia. The court dismissed the complaint on the ground that the Board had properly exercised the discretionary authority vested in it by the Railway Labor Act.[9]

The Board has definitely ruled that a craft or class of employees may not be divided into two or more on the basis of race or color for the purpose of choosing representatives. All those employed in the craft, or class regardless of race, creed, or color must be given the opportunity to vote for the representatives of the whole craft or class.[10]

(*c*) *What is a carrier?*—Although the term "carrier" is clearly defined in the act, questions have arisen in connection with representation disputes which made it necessary for the Board to interpret its meaning. Where a railroad system is composed of a number of subsidiary corporations, employees have been in dispute as to whether one vote should be taken of a craft on the whole system or whether the subsidiary corporations are carriers within the meaning of the act whose employees are entitled to separate representation. The Board has ruled generally that where a subsidiary corporation reports separately to the Interstate Commerce Commission, and keeps its own pay roll and seniority rosters, it is a carrier as defined in the act, and its employees are entitled to representation separate from other carriers who may be connected with the same transportation system. If the operations of a subsidiary are jointly managed with operations of other carriers and the employees have also been merged and are subject to the direction of a single management, then the larger unit of management is taken to be the carrier rather than the individual subsidiary companies.

The Board's jurisdiction has been questioned in a number of cases on the ground that the employers were not carriers within the meaning of the Railway Labor Act. Some of these were electric interurban railroads and the question was referred to the Interstate Commerce Commission for hearing and decision as provided by section 1, first of the act. One case involved a freight-forwarding company, and the Board dismissed it, ruling that it was not a carrier as defined in the law. In two cases, fruit-express companies (car owners that are owned by the railroads) challenged the authority of the Board to act after it had accepted jurisdiction.

(*d*) *What is an employee?*—Many questions have arisen in applying the term "employee," as defined in section 1, fifth, of the act, to the particular problem of deciding who may participate in choosing representatives. Is a man who has been furloughed or temporarily laid off with seniority rights of reemployment such an employee? The Board has ruled that such a person is an employee if under rules of

[9] *Brotherhood of Railroad Trainmen* v. *National Mediation Board*, Equity No. 59906, January 1936.
[10] R-75-X—Atlanta Terminal Co.; R-62—Nashville, Chattanooga & St. Louis; R-234-Central of Georgia

an agreement he remains on a seniority roster and is likely to be called for work within a short period, or if normally he was laid off and reinstated with recurring seasonal fluctuations in business, and especially, if from time to time, he has been called back for temporary assignments within a short period prior to the date of a representation election. On the other hand, if he has been on furlough without being recalled for a time long enough to have his name removed from the seniority roster, he has not been considered an employee within the law. In any case he must have been definitely on a pay roll within a reasonable period prior to the election.

The Board's policy on this question was challenged in the Ohio courts in a case involving yard-service employees. The Circuit Court of Appeals of the Ninth Judicial District of Ohio upheld the Board in the following language:

> In substance, the first contention of appellant, aside from the constitutional questions, is addressed to the proposition that the Railway Labor Board (National Mediation Board) abused its discretion in its determination of who was eligible to vote at said election.
>
> After carefully reading the record herein, we are constrained to the conclusion that the Railway Labor Board not only did not abuse its discretion, but that it exercised that discretion very wisely in its determination of who should be eligible to vote in said election.
>
> Its conclusion to permit only yard employees to vote in a yard employees' election, whether those employees were furloughed or not, providing they had performed yard work within the year preceding said election, seems to us to have been entirely consonant with propriety, and not violative of the provisions of the Railway Labor Act definitive of who are employees within the meaning of the act.
>
> Under the act, a wide measure of discretion is vested in the Board, and we are at a loss to know how a fairer solution of the question presented could have been conceived. Certainly, none has occurred to the members of this Court.[11]

Again certain employees, although clearly members of a craft or class which is choosing representatives, are often "excepted" from agreements between carriers and employees because they hold a confidential relationship to the management or have some supervisory or disciplinary authority over other employees in the same craft. The Board, when in the past it has been required to rule on the matter, has excluded such "confidential" employees from participating in elections among the class or craft of employees from which they were excepted, although the claim is sometimes made that they should be permitted to vote with their crafts.

Both the inclusion of furloughed or extra employees and the exclusion of "excepted" and confidential employees have been sustained by Judge Letts in the Supreme Court of the District of Columbia as a reasonable exercise of the discretionary authority vested in the Board by the Railway Labor Act.[12]

During the first year of its functioning the Board's authority to investigate and determine representation disputes among "red caps" or station ushers was challenged by a number of carriers on the ground that these were not employees of the railroads but rendered personal services to passengers and were paid by them. On investigation the Board found that while these employees were not ordinarily paid by the carriers (in some cases small wage payments had been made) the men were hired, disciplined, discharged, and given free transportation by officers of the carrier, and at times they were

[11] *Brotherhood of Railroad Trainmen, etc., et al.* v. *The Akron, Canton & Youngstown Ry. Co., et al.* Nos. 2766 and 2769, Court of Appeals, Ninth Judicial District of Ohio.

[12] Decision of Judge Letts, Sept. 7, 1934, C & O Clerks v. National Mediation Board.

assigned temporarily to duties for which scheduled hourly rates were paid. For such reasons the Board has considered that the red caps are covered by the definition of an employee as given in the act, and has accordingly assumed jurisdiction to investigate representation disputes among them. This question was not definitely settled, however, until the Interstate Commerce Commission's decision of March 29, 1939, which held "red caps" to be covered by the term "employee" as defined in the Railway Labor Act.[13]

Two cases handled by the Board presented the question whether employees working for a contractor to whom a carrier lets out some of its work, are employees subject to the provisions of the Railway Labor Act. In one of these the employees of an ore dock contractor were voted separately from the other employees of the carrier, and later an agreement was signed between the contractor and the certified representatives of these employees. In the second case the Board's investigation revealed that the shop and roundhouse laborers working for a contractor were doing the same kind of work as other laborers of the same class employed directly by the railroad, and that the contract laborers' work was subject to approval by officers of the railroad. The Board ruled, therefore, that all these laborers are of one class, and should be voted together for the purpose of selecting representatives.

(*e*) *Change of representatives under existing agreements.*—When there is an agreement in effect between a carrier and its employees signed by one set of representatives and the employees choose new representatives who are certified by the Board, the Board has taken the position that a change in representation does not alter or cancel any existing agreement made in behalf of the employees by their previous representatives. The only effect of a certification by the Board is that the employees have chosen other agents to represent them in dealing with the management under the existing agreement. If a change in the agreement is desired, the new representatives are required to give due notice of such desired change as provided by the agreement or by the Railway Labor Act. Conferences must then be held to agree on the changes exactly as if the original representatives had been continued.

7. INTERPRETATION AND APPLICATION OF AGREEMENTS

Agreements consummated under the provisions of the Railway Labor Act are of two kinds; first, straight out-and-out labor agreements negotiated between carriers and representatives of their employees establishing rates of pay, rules, and working conditions of employment; and second, mediation agreements which may be said to be labor agreements negotiated with the assistance and under the auspices of the National Mediation Board. The meaning or application of the terms of both of these kinds of agreements occasionally leads to differences between the parties to the agreement.

The Railway Labor Act, by section 3, established the National Railroad Adjustment Board for the purpose of interpreting the terms of agreements duly negotiated in keeping with the other provisions of the act, in the event question should arise as to their meaning or application.

[13] Interstate Commerce Commission, *Ex parte No. 72* (Sub-No. 1), decided March 29, 1939.

On the other hand, section 5, second, of the Railway Labor Act, provides that the National Mediation Board shall, when requested so to do, render interpretation under certain limited conditions of agreements arrived at through mediation. Section 5, second, reads as follows:

> In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this act, either party to the said agreement, or both, may apply to the Mediation Board for an interpretation of the meaning or application of such areement. The said Board shall upon receipt of such request notify the parties to the controversy, and after a hearing of both sides, give its interpretation within 30 days.

In keeping with this section the Board, therefore, when called upon, may consider only the specific terms of an agreement actually signed in mediation, not matters incidental or corollary thereto. This restriction upon the Mediation Board's interpretative duties is necessary in order that there may be no confusion between its responsibilities and those of the National Railroad Adjustment Board, or any other adjustment board upon which the Railway Labor Act imposed the duty of determining the proper meaning or application of individual rules and regulations composing such labor agreements.

8. THE NATIONAL RAILROAD ADJUSTMENT BOARD

The amendments of 1934, added a new section to the Railway Labor Act (sec. 3) which created what is in effect an industrial court for the adjudication of disputes involving interpretation or application of wage and rule agreements of carriers by rail. It is known as the National Railroad Adjustment Board and its headquarters are located by the act in Chicago, Ill. The Adjustment Board consists of 36 members, 18 selected by the carriers and 18 selected by organizations of railway employees which are national in scope. The salaries of these members are paid by the parties that select them; but the salaries of the staff, as well as rent and all other administrative expenses of the Board are paid by the Government.

The National Railroad Adjustment Board is divided into four divisions, each of which functions and makes its decisions separately, similar to the divisions of a court. Each division consists of an equal number of management members and labor members and has jurisdiction over the cases involving different classes of employees:

> First Division has jurisdiction over the cases of the train, engine, and yard-service employees.
>
> Second Division has jurisdiction over the cases of the shop-craft employees.
>
> Third Division has jurisdiction over the cases of the station, tower, and telegraph employees, signalmen, clerks, freight handlers, express, station and store employees, maintenance-of-way workers, and sleeping-car conductors, porters, maids, and dining-car employees.
>
> Fourth Division has jurisdiction over the cases of the marine-service employees and all others not included under the first three divisions.

Each of these divisions consists of 10 members, except the Fourth Division, which has 6 members.

When disputes arise "growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions," the act provides they "shall be handled in the usual manner up to and including the chief operating officers of the carrier designated to handle such disputes; but failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes." Parties may be heard in person, by counsel, or by other representatives, and the Board must give due notice of all hearings to carriers and employees involved in the disputes. If any division deadlocks and is unable to agree on an award, a referee must be selected by the division, or appointed by the National Mediation Board upon request, to sit with the division and render an award. During the 5-year period, 30 referees were appointed by the National Mediation Board and 10 were selected by the various divisions of the Adjustment Board.

A detailed report of the organization and operations of the Adjustment Board as submitted by that Board and each of its divisions, is given in the annual reports of the National Mediation Board.

III. THE WORK OF THE NATIONAL MEDIATION BOARD

The relatively peaceful record which has been maintained in the railroad and commercial air transport industries especially since 1934 attests to the soundness and effectiveness of the labor policies for these industries formulated by Congress in the Railway Labor Act. There has, however, been no lack of labor problems on the railroads and airlines. These enterprises differ from others only in that their labor difficulties are amicably adjusted with the aid of the agencies set up by the act.

1. RECORD OF CASES

As already pointed out, the Railway Labor Act distinguishes disputes involving individual grievances and interpretation or application of agreements from disputes where changes in agreements are involved. The latter are subject to mediation by this Board, the former being referable to adjustment boards for adjudication. Where agreements cover the questions in dispute, there is no need for mediation because the issues were intended to be settled by the agreements. To mediate or to compromise such questions may have the effect of modifying or setting aside what was agreed upon. Therefore, such disputes require adjudication just as business contracts often have to be adjudicated in the courts. The National Railroad Adjustment Board was created to act in this capacity for the railroads and their employees and a National Air Transport Adjustment Board may be set up by the Mediation Board when circumstances may require this to be done.

Prior to the adoption of the amendments of 1934 such disputes were also subject to mediation under certain conditions. There were 226 cases of this character on hand at the beginning of the fiscal year which ended June 30, 1934. Many of these cases were in process of mediation and much work had been done on them by the former United States Board of Mediation. Five of them were settled by mediation in July 1934 before the National Railroad Adjustment Board got its work under way. The other 221 cases were referred back to the complainants with the suggestion that they again be considered in conference and if necessary submitted to the National Railroad Adjustment Board for hearing and decision as provided in section 3 of the amended act. The suggestion was accepted and the cases were withdrawn from mediation and settled or submitted to the National Railroad Adjustment Board.

Table 1 is a summary of all the cases both rail and airline, received (1,190) and the cases disposed of by the National Mediation Board (1,101) during the first 5 years of its operation under the amended Railway Labor Act.

During this period, the number of mediation cases docketed (550) exceeded the number of representation cases docketed by 12, and the number of mediation cases disposed of (558) was larger by 20 than the number of representation cases settled.

TABLE 1.—*Number of cases received and disposed of, fiscal years 1935–39*

Status of cases	All types of cases						Representation cases					
	5-year period	Fiscal year					5-year period	Fiscal year				
		1939	1938	1937	1936	1935		1939	1938	1937	1936	1935
Cases pending and unsettled at beginning of period	96	145	148	185	182	96	24	27	53	47	65	24
New cases docketed	1,094	179	238	222	203	252	538	83	112	107	99	137
Total number of cases on hand and received	1,190	324	386	407	385	348	562	110	165	154	164	161
Cases disposed of	1,101	235	241	259	200	166	538	86	138	101	117	96
Cases pending and unsettled at end of period	89	89	145	148	185	182	24	24	27	53	47	65

Status of cases	Mediation cases						Interpretation cases					
	5-year period	Fiscal year					5-year period	Fiscal year				
		1939	1938	1937	1936	1935		1939	1938	1937	1936	1935
Cases pending and unsettled at beginning of period	72	117	95	138	117	72	0	1	0	0	0	0
New cases docketed	550	95	123	115	102	115	6	1	3	0	2	0
Total number of cases on hand and received	622	212	218	253	219	187	6	2	3	0	2	0
Cases disposed of	558	148	101	158	81	70	5	1	2	0	2	0
Cases pending and unsettled at end of period	64	64	117	95	138	117	1	1	1	0	0	0

Table 2 is a summary by fiscal years of all cases disposed of by the Board since its inception in 1934. Compared with the fiscal year 1938, the representation cases handled to a conclusion during the fiscal year 1939 decreased from 138 to 86. This decrease is in almost direct ratio to the decrease in representation cases on hand and received during the fiscal years 1938 and 1939, which was from 165 to 110, as shown in table 1.

The total number of mediation cases disposed of increased from 101 in the previous year to 148 in the fiscal year ended June 30, 1939, being the second largest total number disposed of in 1 year since the Board was created in 1934. The number of mediation agreements, 76, was the largest in the Board's experience, being an increase of 13 over the fiscal year 1938. The percentage of cases disposed of by mediation agreements during the fiscal year 1939 was 51. The percentage of cases settled in the year 1939 through the Board's efforts, including mediation agreements, arbitration agreements, and cases withdrawn during mediation, was 75 percent of the total number disposed of. In the fiscal year 1939 the refusals to arbitrate showed a slight increase over the year 1938, but were less than in 1937 and 1936. From the standpoint of the effective mediation work of the Board, the record shows continuous progress over the 5-year period.

Table 2 shows that 1,101 cases have been disposed of by the Board since its inception in 1934, of which 538 were representation cases, 558 were mediation cases, and 5 interpretation cases. Of the 538 repre-

sentation cases, 441, or 82 percent, resulted in the issuance of certifications by the Board determining the right of representation by one or more labor organizations. Of the 558 mediation cases handled during the 5-year period, 261, or 47 percent, resulted in mediation agreements, while 127, or 23 percent, were withdrawn as a result of mediation.

During the 5-year period, 23 representation cases were disposed of by the carriers extending recognition to the labor organizations without formal certification by the Board. This brings the total number of representation cases resulting in the definite establishment of the right of representation to 464, or 86 percent of all representation cases disposed of by the Board.

TABLE 2.—*Number of cases disposed of by type of case and method of disposition, fiscal years 1935–39*

Type of case and method of disposition	5-year period	Fiscal year ending June 30				
		1939	1938	1937	1936	1935
Grand total	1,101	235	241	259	200	166
Representation cases, total	538	86	138	101	117	96
Elections	338	51	94	55	82	56
Check of authorizations	103	12	18	20	20	33
Representatives recognized without formal certification	23	2	7	8	2	4
Withdrawn—investigation	38	11	8	9	9	1
Withdrawn prior to investigation	13	2	4	4	2	1
Dismissed	23	8	7	5	2	1
Mediation cases, total	558	148	101	158	81	70
Mediation agreements	261	76	63	62	36	24
Arbitration agreements	8	[1] 3	1	[1] 3	1	--
Emergency board report	9	2	1	6	--	--
Withdrawn—mediation	127	33	21	36	17	20
Withdrawn prior to mediation	88	15	9	34	10	20
Closed by Board after refusal to arbitrate by—						
Carriers	41	8	4	14	13	2
Employees	2	1	--	--	1	--
Both parties	9	7	1	1	--	--
Dismissed	13	3	1	2	3	4
Interpretations of mediation agreements	5	1	2	--	2	--

[1] Includes 1 mediation and arbitration agreement.

2. CARRIERS INVOLVED IN DISPUTES

Table 3 reflects the extent to which the Board's services were used during the fiscal year ended June 30, 1939, on the various classes of carriers subject to the Railway Labor Act. To represent the situation as accurately as possible, the cases involving more than one carrier have been excluded from this tabulation. The excluded cases include two mediation cases, each involving practically all class 1 carriers, which arose in connection with the carriers' proposal for a national wage decrease.

The largest portion of the Board's work naturally involved class 1 carriers by rail, which employ approximately 95 percent of all railroad employees. Of the total of 140 class 1 rail carriers, 87, or 62 percent, were served by the Board in cases involving only 1 carrier. The next most important category was switching and terminal companies, 20 in this classification being separately involved in cases handled by the Board. During the year the Board handled 4 cases on different air carriers.

TABLE 3.—*Number of different carriers involved in cases,[1] by classes of carriers, with percentages, fiscal year 1939*

Classes of carriers	Total carriers [2]		Different carriers involved in—							
			All cases		Representation cases		Mediation cases		Interpretation cases	
	Number	*Percent*	*Number*	*Percent*	*Number*	*Percent*	*Number*	*Percent*	*Number*	*Percent*
Class I railroads	140	100	87	62	52	37	61	44	1	1
Class II railroads	193	100	15	8	4	2	14	7	0	----
Class III railroads	239	100	3	1	1	[3]	2	1	0	----
Switching and terminal companies	245	100	20	8	12	5	10	4	0	----
Electric railways	111	100	9	8	3	3	7	6	0	----
Miscellaneous carriers	[4]	[4]	6	[4]	1	[4]	5	[4]	0	----
Air carriers	27	100	4	15	1	4	3	11	0	----

[1] 2 mediation cases concerning national wage negotiations, involving practically all class I carriers, were omitted in preparing this table.
[2] From Interstate Commerce Commission Statistics of Railways in the United States, 1937, except for air carriers, the latter being the number of operating companies as of June 30, 1939.
[3] Less than ½ of 1 percent.
[4] Not available.

3. MAJOR GROUPS OF EMPLOYEES INVOLVED IN DISPUTES

Table 4 shows the total number of cases disposed of during the fiscal year ended June 30, 1939, separated by types, and subdivided among the major groups of employees involved.

Practically every craft or class of employees was involved in one or more of the 235 cases handled. Engine, train, and yard service employees figured most heavily in both representation and mediation cases, while the number of representation cases involving maintenance of equipment employees was also large. These two groups combined accounted for 66 percent of all of the representation disputes.

TABLE 4.—*Number of cases disposed of, by major groups of employees, fiscal year 1939*

Major groups of employees	Number of—			
	All types of cases	Representation cases	Mediation cases	Interpretation cases
All groups	235	86	148	1
Combined groups	11	----	11	----
Engine, train and yard service	75	29	46	----
Maintenance of equipment	42	28	14	----
Clerical, office, station, and storehouse	29	10	18	1
Maintenance of way and signal	25	2	23	----
Dispatchers and telegraphers	16	----	16	----
Pullman and dining car	25	13	12	----
Marine service	7	3	4	----
Air-line employees	5	1	4	----

4. MEDIATION AGREEMENTS

Cases handled by the Board in mediation are finally closed out by mediation agreements, by agreements to arbitrate, by withdrawals secured through mediation, by voluntary withdrawals prior to mediation, by dismissals by the Board, or by refusal to arbitrate after the Board has concluded its efforts at mediation.

During the first 5 years the National Mediation Board has been in existence its efforts to resolve differences by mediation agreements

have been progressively more effective. The following table shows the mediation cases disposed of by agreements for each of the 5 fiscal years 1935–39, divided among the principal categories of subjects covered.

TABLE 5.—*Issues involved in cases disposed of by mediation agreements, fiscal years 1935–39*

Issues involved	5 year Total	Fiscal year				
		1939	1938	1937	1936	1935
Total—all cases	[1] 268	76	63	62	[1] 43	24
Negotiation of new agreements covering rates of pay, rules, and working conditions	59	12	13	15	14	5
Changes in rates of pay	69	23	27	5	10	4
Changes and revisions in rules of existing agreements	125	36	22	42	17	8
Miscellaneous cases	15	5	1		2	7

[1] Includes 6 cases disposed of by agreements negotiated directly by the parties after mediation, but not witnessed as mediation agreements, and 1 case disposed of by an arbitration agreement.

Most important of the mediation agreements were two settlements negotiated during the fiscal year 1936–37. These two cases each affected more employees and more carriers and involved a larger sum of total adjustments in pay-roll expenses than in any other case mediated since the enactment of the Railway Labor Act in 1926. This was due to the fact that the labor organizations concerned, speaking for virtually all of the railroad employees on the one hand, and the railroad managements, speaking for virtually all of the class I carriers on the other hand, had arranged to handle their negotiations and subsequent proceedings on a national basis through comparatively small conference committees.

If the questions involved in these two proceedings had been handled carrier by carrier and organization by organization, the process of effecting understandings on the issues involved would have been interminable and would have placed an impossible burden upon the Board. The national handling of questions such as were involved in these two cases has much to commend it. Great credit is due both the railroads and the labor organizations for their ability and willingness to negotiate and mediate under the provisions of the Railway Labor Act on a national scale. This practice is in keeping with the practice that has been found so satisfactory, everything considered, notably in the Scandinavian countries and in England.

The best index of the effectiveness of the Railway Labor Act and its agencies is the extent to which they operate to further the settlement of differences over the terms of labor agreements in conferences between the parties directly concerned. Such direct conferences constitute the first and most important step leading to the realization of the objectives of the act, and the more that is settled by this first step, the better for the rail and air carriers, their employees and labor representatives, and the public. Mediation under the auspices of the Board comes into play where direct conferences are not productive of complete agreement and in a way is an extension of these conferences with the help of the Board and its representatives. As such, mediation under the auspices of the Railway Labor Act may be said to be a safeguard to keep alive and further the conference method for the purpose of adjusting labor differences.

Mediation of labor-agreement issues by the Board is only then in order after both parties to the controversy, in the words of the law, have themselves "considered and if possible decided (the issues involved) with all expedition in conference."

The experience of the Board indicates that the relative place and the nature of mediation under Federal auspices as a factor in making and maintaining railroad and air line labor agreements is clearly understood and appreciated by the managements of the carriers as well as by their employees and the representatives of these employees.

5. ARBITRATION AWARDS

When the Board finds it impossible to bring about a settlement of any case by mediation, it endeavors, as required by the Railway Labor Act, section 5, first, "to induce the parties to submit their controversy to arbitration," and provisions for such arbitration proceedings are given in section 7 of the act. There is no compulsion on either party to agree to arbitrate.

During the 5-year period covered by this report, 8 cases were settled by securing agreements to arbitrate the issues in dispute. Arbitration boards were duly appointed and by June 30, 1939, had rendered awards disposing of the disputed questions in all but 1 case. Since that date an award has also been made in that case. In addition, during the first 2 years of the Board's operation, arbitration awards were made in 4 cases wherein the agreements to arbitrate had been made previous to July 21, 1934, when the Board began to function. Thus, in all, 11 arbitration awards were rendered during the period July 21, 1934, to June 30, 1939.

6. EMERGENCY BOARDS

In the event a dispute is not amicably disposed of by the orderly methods prescribed in the Railway Labor Act and a situation arises which, in the judgment of the Mediation Board, threatens to interrupt interstate commerce to a degree such as to deprive a section of the country of essential transportation service, the Board notifies the President who may, in his discretion, create a special board to make an investigation and report to him within 30 days on the circumstances attendant upon the threatened interruption of service. For 30 days after such a special board has made its report no change, except by agreement, may be made by either party to the dispute in the conditions out of which the dispute arose. Boards of this kind are usually referred to as emergency boards.

In the 5-year period it has been necessary for the President to appoint only six emergency boards. All of these boards carefully investigated and reviewed the issues and facts involved and recommended solutions which were adopted by the parties concerned and resulted finally in an amicable settlement of the questions in dispute.

Aside from the helpfulness of these emergency boards in composing particular difficulties, their reports constitute valuable contributions to the literature on the solution of labor problems as they may arise from time to time on our railroads. Interestingly enough, two of the disputes investigated had their origin primarily in sharp differences among well-established and recognized national labor organizations

over matters of representation in which the carriers had, through action on their part, also become involved.

When disputes of this kind develop sufficient heat to threaten strikes, it is because issues are involved in respect of which compromises appear exceedingly difficult to the labor organizations concerned. In the light of this fact it is gratifying to note that the processes of the Railway Labor Act which were primarily provided to facilitate the amicable adjustment of disputes between carriers and their employees over rates of pay, rules, and working conditions also proved helpful in finding solutions to labor disputes having their origin primarily in differences between labor organizations.

7. THREATENED EMERGENCIES AND STRIKES UNDER THE RAILWAY LABOR ACT

Since the enactment of the Railway Labor Act in 1926 there has been an almost unbroken record of peaceful settlement of labor disputes on the railroads. There was a strike of express drivers in New York City in 1928 which was not authorized by the organization representing the employees and which was settled within 48 hours by mediation; and another in 1929 on the Toledo, Peoria & Western Railroad, but this did not seriously interrupt commerce so as to require the appointment of an emergency board under section 10 of the act.

During the fiscal year ended June 30, 1935, the employees on two roads, the Mobile & Ohio and the Pacific Electric a subsidiary of the Southern Pacific Company, voted to strike, but at the request of the Board the strike action was postponed pending mediation. Subsequently, through the efforts of the Board all matters in dispute were amicably settled and written agreements consummated. During the following year on a small industrial railroad with less than 40 employees there was a cessation of work before mediation was requested in keeping with the intent of the law.

No further strikes occurred until during the fiscal year ended June 30, 1937, when there were two. In addition there were two minor stoppages which were called off upon the request of the Board. In another case a few employees on a small electric railway left the service, and the railroad was abandoned. One of the strikes was due to the inability of the Board to send a mediator to Alaska where it occurred. It involved the employees of the Copper River & Northwestern Railroad, operated by the Kennecott Copper Co. in connection with its ore mines. The employees postponed their strike action for several weeks pending the arrival of a mediator, but when it appeared that the Board would not have a mediator available for another month the employees left the service. The Board is confident that if it had had sufficient staff to send a man immediately to handle the dispute in Alaska this strike would not have occurred.

This same railroad was also involved in one of the short stoppages. About 9 months after the strike referred to above had been settled by agreement of the parties another dispute occurred. The employees fearing again that the Board would be unable to send a mediator to Alaska left the service. When they were advised, however, that a mediator would be sent within a week but that he could not mediate if they were on strike, they promptly went back to work. The other short stoppage was precipitated by hasty action of the unlicensed deck, engine room, and kitchen personnel on the car ferries of the

Wabash, Ann Arbor, Pere Marquette, and Grand Trunk Western railroads operating on Lake Michigan. When these employees were advised that they could not secure the benefits of the Railway Labor Act while engaged in premature stoppages, they returned to work and relied upon mediation under the Railway Labor Act to help compose their difficulties. In this case the employees involved were not identified with any of the typical national railway labor organizations which represent the great majority of the employees on the railroads.

The most serious strike occurred among the train and engine service employees, both white and colored, on the Louisiana & Arkansas Railway System as represented by such national railroad unions. It grew out of the failure of the management of this system to give sympathetic consideration to the recommendations of emergency boards set up by the President in prior crises; to apply awards of the National Railroad Adjustment Board; and to confer jointly with the duly accredited representatives of the employees as contemplated by the Railway Labor Act. All the peaceful processes provided by the act for the adjustment of labor disputes had been exhausted before the employees finally decided to withdraw from the service. The strike, which continued for 9 weeks, was eventually composed through the good offices of the Governor of Louisiana, who intervened on his own initiative and was assisted by a representative of the Mediation Board. The employees all returned to work after the company agreed to abide by the recommendations of the emergency boards, the awards of the National Railroad Adjustment Board, and otherwise manifest proper regard for the intent and spirit of the Railway Labor Act.

The only other strike which has involved employees of carriers subject to the Railway Labor Act occurred during the fiscal year ended June 30, 1939. It involved employees of the Eastern Airlines who after a threat to strike finally left the service. No emergency was proclaimed. The strike, however, was of limited duration and could have been avoided if the carrier had agreed with its employees to arbitrate certain differences over rate of pay and rules which had not been adjusted in mediation.

The few strikes which have occurred on the railroads and air lines under the Railway Labor Act are excellent reminders that there is no absolute guarantee against strikes. There must be a desire to maintain peace, if industrial warfare is to be avoided. Unless all concerned are willing to accommodate their differences disputes cannot be settled by mutual agreement. Without a desire on the part of both employers and employees to make use of the facilities provided by law, and without forbearance while the processes of mediation are going on, peaceful settlements cannot be reached. The Railway Labor Act imposes no compulsions to enter into agreements. It asks only that every reasonable effort shall be exerted to this end and it depends on the fairness and good will of both the management and the employees and their own desire to maintain amicable relations.

8. ELECTION AND CERTIFICATION OF REPRESENTATIVES

The primary duty which the Railway Labor Act imposes on carriers and employees alike "to exert every reasonable effort to make and maintain agreements covering rates of pay, rules, and working conditions," requires that each craft or class of employees shall be in a position to act as a unit in designating representatives authorized to

negotiate and enter into agreements with the carriers. The act therefore provides that "the majority of any craft or class of employees shall have the right to determine who shall be the representative of the class or craft for the purposes of the Railway Labor Act." Thus are the employees authorized to act after the manner of a corporate body in choosing its representatives.

The carriers are prohibited from influencing or in any way interfering with the choice of employees' representatives, but among the employees themselves disputes often arise as to who shall be their representatives, and Congress has therefore charged the Board with the duty of investigating such disputes, upon request of one of the parties, and to determine the representation desired by a majority of the craft or class involved. In such an investigation the Board either takes a secret ballot or verifies signatures on written authorizations by checking them against the pay-roll records of the carrier. The choice of the employees, as thus ascertained, is then certified by the Board to the parties and to the carrier as the duly designated and authorized representative of the employees for the purposes of the Railway Labor Act.

Table 6 shows, for the 5 fiscal years 1934–39, the number of cases, the number of crafts or classes, and the number of employees involved in all representation disputes disposed of by the Board, subdivided as to the method of their disposition.

TABLE 6.—*Number of cases, crafts or classes, and employees involved in representation disputes, by method of disposition, fiscal years 1935–39*

Method of disposition	Number of cases						Number of crafts or classes involved					
	5-year period	Fiscal year					5-year period	Fiscal year				
		1939	1938	1937	1936	1935		1939	1938	1937	1936	1935
Total, all cases	538	86	138	101	117	96	1,077	152	244	168	209	304
Elections	338	51	94	55	82	56	709	94	173	80	153	209
Checks of authorizations	103	12	18	20	20	33	209	15	30	43	39	82
Representatives recognized without formal certification	23	2	7	8	2	4	35	2	9	17	3	4
Withdrawn—investigation	38	11	8	9	9	1	69	21	15	17	9	7
Withdrawn prior to investigation	13	2	4	4	2	1	19	8	4	4	2	1
Dismissed	23	8	7	5	2	1	36	12	13	7	3	1

Method of disposition	Number of employees involved						Number of employees participating					
	5-year period	Fiscal year					5-year period	Fiscal year				
		1939	1938	1937	1936	1935		1939	1938	1937	1936	1935
Total, all cases	325,266	65,909	52,167	57,923	65,059	84,208	238,294	47,438	43,036	23,678	55,760	68,382
Elections	254,074	52,793	46,569	25,255	60,905	68,552	223,202	46,828	40,965	22,240	53,613	59,556
Checks of authorizations	23,398	863	3,450	2,225	3,279	13,572	15,092	610	2,071	1,438	2,147	8,826
Representatives recognized without formal certification	23,474	69	426	22,633	45	301	------	------	------	------	------	------
Withdrawn—investigation	12,677	4,672	691	4,970	644	1,700	------	------	------	------	------	------
Withdrawn prior to investigation	859	168	337	297	50	7	------	------	------	------	------	------
Dismissed	10,784	7,344	685	2,543	136	76	------	------	------	------	------	------

It will be noted that there is a marked variation in the number of representation disputes disposed of during the various years covered in the above table. For instance during the fiscal year 1939 there were 86 representation cases compared with 138 for the previous year. There were, however, many more than 86 specific disputes involved in the 86 cases disposed of during 1939. This is due to the fact that the Railway Labor Act requires the Board to determine the choice of representation among the employees separately for each class or craft involved in a representation dispute.

During the fiscal year ended June 30, 1939, over 88 percent of the employees eligible to participate in the secret elections cast ballots. The same percentage is reflected in the totals for the 5-year period. These results indicate quite clearly the importance attached by wage earners to the right to select representatives for collective bargaining through the means of a secret ballot.

Table 7 shows the number of crafts or classes and the number of employees by major groups involved in all representation disputes, adjusted by the Board during 1939.

TABLE 7.—*Number of crafts or classes and number of employees involved in representation cases, by major groups of employees, fiscal year 1939*

Major groups of employees	Number of cases	Number of crafts or classes	Employees involved	
			Number	Percent
All groups	86	152	65,909	100
Engine, train and yard service	29	36	5,266	8
Maintenance of equipment	28	86	55,604	84
Clerical, office, station, and storehouse	10	10	3,137	5
Maintenance of way and signal	2	2	69	(1)
Pullman and dining car	13	14	1,318	2
Marine service	3	3	450	1
Air-line employees	1	1	65	(1)

[1] Less than ½ of 1 percent.

9. TYPES OF REPRESENTATION DISPUTES

Representation cases handled by the Board fall generally within two major groups; first, those involving disputes between national organizations or local unions and so-called system associations or unorganized employees, and second, interorganization disputes involving two national organizations, a national organization and a local union, or two local unions.

During the 5-year period July 21, 1934, to June 30, 1939, approximately 88 percent of the employees involved in all representation disputes were included in cases coming within the first group; in this group, 97 percent of the total number of employees were involved in 30 cases covering disputes between national organizations and system associations. This figure is abnormally high by reason of one large dispute among maintenance of equipment employees in which the total number involved was over 56 percent of the total in this one classification. Seventeen other cases, involving only 2 percent of the total number of employees in this major group, were disputes between national organizations and unorganized employees.

The total number of interorganization disputes between national organizations, and the number of employees involved therein, decreased slightly during the fiscal year 1939. Disputes between na-

tional organizations and local unions decreased sharply both in number of cases and employees involved during 1939 as compared with the fiscal year 1938. Local unions continued to play a decreasingly important part in the total number of disputes handled by the Board.

Table 8 shows the distribution of representation cases handled, according to the types of organizations, with the number of crafts or classes and employees involved, for the fiscal years 1934–39.

TABLE 8.—*Number of crafts or classes and number of employees involved in representation cases, by types of disputes, fiscal years 1935–39*

Types of disputes	Number of cases						Number of crafts or classes involved					
	5-year period	Fiscal year					5-year period	Fiscal year				
		1939	1938	1937	1936	1935		1939	1938	1937	1936	1935
Grand total, all types	538	86	138	101	117	96	1,077	152	244	168	209	304
Total, national organizations or local unions versus system associations or unorganized employees	352	50	85	70	73	74	825	111	161	134	150	269
National organizations versus system associations	187	30	45	26	39	47	554	78	98	52	86	240
National organizations versus unorganized employees	147	17	39	40	26	25	251	29	62	78	55	27
Local unions versus system associations	6	1	1	2	2	------	8	2	1	2	3	-----
Local unions versus unorganized employees	12	2	------	2	6	2	12	2	-----	2	6	2
Total, interunion disputes	185	36	52	31	44	22	251	41	82	34	59	35
National organizations versus national organizations	155	31	34	27	42	21	214	35	58	30	57	34
National organizations versus local unions	29	5	18	4	2	------	36	6	24	4	2	-----
Local unions versus local unions	1	------	------	------	------	1	1	-----	-----	-----	-----	1
System associations versus system associations	1	------	1	------	------	------	1	-----	1	-----	-----	-----

Types of disputes	Number of employees involved						Percent of employees involved					
	5-year period	Fiscal year					5-year period	Fiscal year				
		1939	1938	1937	1936	1935		1939	1938	1937	1936	1935
Grand total, all types	325,266	65,909	52,167	57,923	65,059	84,208	100	100	100	100	100	100
Total, national organizations or local unions versus system associations or unorganized employees	284,974	58,533	38,947	52,066	54,972	80,456	88	89	75	90	84	96
National organizations versus system associations	262,677	56,977	34,456	44,581	49,020	77,643	81	87	66	77	75	92
National organizations versus unorganized employees	17,457	1,303	4,204	6,034	3,524	2,392	5	2	8	10	5	3
Local unions versus system associations	3,270	107	287	1,117	1,759	------	1	(1)	1	2	3	-----
Local unions versus unorganized employees	1,570	146	------	334	669	421	1	(1)	-----	1	1	(1)
Total, interunion disputes	40,233	7,376	13,161	5,857	10,087	3,752	12	11	25	10	16	4
National organizations versus national organizations	29,892	6,024	6,874	4,928	8,425	3,641	9	9	13	8	13	4
National organizations versus local unions	10,230	1,352	6,287	929	1,662	------	3	2	12	2	3	-----
Local unions versus local unions	111	------	------	------	------	111	(1)	-----	-----	-----	-----	(1)
System associations versus system associations	59	------	59	------	------	------	(1)	-----	(1)	-----	-----	-----

[1] Less than ½ of 1 percent.

10. EXTENT AND NATURE OF LABOR REPRESENTATION

During the 5-year period there has been a continuous trend toward more complete representation by labor organizations of the employees of the principal carriers.

Table 9 shows by organizations and crafts or classes, the number and mileage of the principal carriers by rail whose employees were represented by those organizations as of June 30, 1939.

National organizations continued to increase the proportions of the total mileage on which they represent employees. At the same time, there has been a further decrease in the portions of the mileage on which the employees are represented by system associations. In general, the losses of the system associations during the past year have been proportionate to the gains made by the national organizations. The loss of representation by local unions to the national organizations also continued during the fiscal year 1939.

TABLE 9.—*Number and mileage of principal [1] carriers by railroad where employees are represented by various labor organizations, by crafts or classes, June 30, 1939*

[All employees, except those in marine service, and miscellaneous groups]

Organization and craft	Extent of representation on June 30, 1939		Percent of total mileage covered on June 30—			
	Number of carriers	Mileage covered	1939	1938	1937	1936
Total	148	234,624	------	------	------	------
Brotherhood of Locomotive Engineers:						
Locomotive engineers	134	229,275	98	97	97	96
Locomotive firemen, hostlers, helpers	4	994	(3)	1	1	1
Brotherhood of Locomotive Firemen and Enginemen:						
Locomotive firemen, hostlers, helpers	132	229,166	98	98	98	96
Hostlers	1	685	(3)	------	------	------
Locomotive engineers	4	1,761	1	1	1	------
Order of Railway Conductors:						
Conductors (road)	137	229,782	98	99	99	97
Brakemen, flagmen, baggagemen (road)	5	826	(3)	------	------	------
Yard foremen, helpers, and switch tenders	4	9,372	4	4	4	4
Yardmasters	6	12,515	5	5	4	------
Dining-car stewards	6	22,502	10	------	------	------
Dining-car cooks	2	15,038	6	------	------	------
Brotherhood of Railroad Trainmen:						
Brakemen, flagmen, baggagemen (road)	139	232,998	99	99	99	97
Conductors (road)	8	4,544	2	1	1	1
Yard foremen, helpers, and switch tenders	125	215,888	92	86	87	85
Yardmasters	10	17,286	7	6	6	1
Stewards (dining cars)	28	138,896	59	55	48	15
Motor transport employees	1	4,421	2	2	------	------
Switchmen's Union of North America:						
Yard foremen, helpers, and switch tenders	13	23,284	10	9	9	8
Yardmasters	1	1,796	1	------	------	------
Railroad Yardmasters of America: Yardmasters	21	80,730	34	40	29	24
Railroad Yardmasters of North America:						
Yardmasters	6	9,595	4	4	4	1
Stationmasters	2	7,116	3	2	------	------
Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes: Clerical, office, station, and storehouse employees	116	224,194	96	94	93	87
The Order of Railroad Telegraphers:						
Telegraphers, towermen, agents	128	231,009	98	99	99	90
Train dispatchers	7	4,449	2	2	2	2
Telegraph and telephone linemen	4	10,058	4	2	2	2
Brotherhood of Railroad Signalmen of America: Signal department employees	81	203,120	87	86	86	82
American Train Dispatchers Association: Train dispatchers	81	182,543	78	74	68	66
Brotherhood of Maintenance of Way Employes:						
Maintenance-of-way employees	124	215,027	92	92	89	82
Shop laborers	4	7,685	3	2	2	1
International Association of Machinists: Machinists	120	189,453	81	72	70	63
International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America: Boilermakers	116	179,193	76	72	68	64
International Brotherhood of Blacksmiths, Drop Forgers and Helpers: Blacksmiths	113	179,913	77	68	66	64
Sheet Metal Workers International Association: Sheet-metal workers	111	179,458	76	73	68	62

See footnotes at end of table.

TABLE 9.—*Number and mileage of principal carriers by railroad where employees are represented by various labor organizations, by crafts or classes, June 30, 1939*—Con.

Organization and craft	Extent of representation on June 30, 1939		Percent of total mileage covered on June 30—			
	Number of carriers	Mileage covered	1939	1938	1937	1936
International Brotherhood of Electrical Workers:						
Electrical workers	108	184,734	79	69	64	63
Coal-pier operators	2	3,721	2	------	------	------
Powerhouse employees	1	797	(2)	------	------	------
Signalmen	2	2,459	1	------	------	------
Brotherhood Railway Carmen of America: Carmen	115	182,469	78	68	64	60
International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers: Powerhouse employees and railway shop laborers	90	167,453	71	57	55	42
Hotel and Restaurant Employees' International Alliance:						
Cooks and waiters	30	[3] 136,158	58	38	25	18
Dining-car stewards	1	957	(2)	------	------	9
Brotherhood of Railroad Station Employes: Crossing watchmen, pumpmen and lampmen	1	1,010	(2)	(2)	(2)	(2)
Brotherhood of Railroad Bridge and Building Mechanics and Helpers: Mechanics and helpers (B. & B. department)	1	1,960	1	1	1	------
American Federation of Railroad Workers:						
Maintenance-of-way employees	1	24	(2)	(2)	(2)	(2)
Carmen	1	234	(2)	(2)	(2)	(2)
National Federation of Railroad Workers: Shop laborers	1	1,937	1	1	1	1
American Railway Supervisors Association:						
Yardmasters	2	9,318	4	4	4	------
Supervisors of mechanics	5	14,363	6	4	------	------
International Association of Railroad Supervisors of Mechanics: Supervisors of mechanics	3	8,200	3	2	2	2
International Union of Steam and Operating Engineers: Stationary engineers	3	15,843	7	9	9	9
Independent Brotherhood of Steam and Electrical Engineers and Assistants: Stationary engineers	1	1,960	1	1	1	1
International Molders' Union: Molders	2	14,295	6	3	3	3
Protective Order of Railroad Trainmen of America: Train porters	1	1,937	1	1	1	1
Brotherhood of Dining Car Conductors: Dining-car stewards	1	6,611	3	1	1	7
Brotherhood of Dining Car Employees: Chefs, cooks, waiters, pantrymen	3	13,676	6	6	10	15
Protective Order of Dining Car Waiters: Waiters, pantrymen	1	9,912	4	7	7	------
Brotherhood of Sleeping Car Porters: Sleeping-car and chair-car porters	3	[4] 23,717	10	7	------	------
Brotherhood of Railroad Dining Car Stewards, Chefs and Cooks: Cooks and waiters	1	8,391	4	4	------	------
International Brotherhood of Red Caps: Redcaps (ushers and station attendants)	7	28,323	12	4	------	------
System associations, committees, etc., various:						
Locomotive engineers	6	3,144	1	2	2	2
Locomotive firemen	8	4,020	2	1	1	1
Brakemen, flagmen, baggagemen (road)	2	793	(2)	------	1	1
Yardmasters	8	14,529	6	11	17	21
Yard foremen, helpers, and switchtenders	3	1,052	(2)	1	1	1
Clerical, office, station, and storehouse employees	10	10,612	5	5	6	11
Telegraphers, towermen, agents	5	996	(2)	------	------	------
Signalmen	3	6,987	3	3	3	3
Train dispatchers	9	25,114	11	17	18	14
Maintenance-of-way employees	12	18,749	8	7	9	15
Machinists	17	43,504	19	24	25	28
Boilermakers	18	52,951	23	25	27	27
Blacksmiths	20	52,120	23	27	28	29
Sheet-metal workers	19	51,771	22	21	24	28
Electrical workers	21	53,801	23	28	28	28
Carmen	23	50,904	22	27	26	26
Powerhouse employees and railway shop laborers	15	51,421	22	24	24	20
Dining-car stewards	3	9,426	4	8	8	16
Cooks and waiters	11	35,137	15	27	26	16
Train porters	12	[5] 33,372	14	15	14	9
Supervisors of mechanics	9	39,036	17	17	21	25
Sleeping-car porters	2	1,882	1	(2)	(2)	(2)
Foundry employees	2	17,636	8	3	3	3
Printers	1	6,446	3	3	------	------
Bridge guards	1	225	(2)	(2)	(2)	(2)
Lieutenants and sergeants of police	1	225	(2)	(2)	(2)	(2)
Wire chiefs	1	225	(2)	(2)	(2)	(2)

[1] Total number of carriers includes several class II railroads, formerly in class I.
[2] Less than ½ of 1 percent.
[3] Does not include chefs and cooks on 1 road of 8,391 miles.
[4] Does not include agreement with the Pullman Co.
[5] Does not include waiters and pantrymen on 1 road of 9,912 miles.

TABLE 9–A.—*Representation of marine department and related miscellaneous groups of employees, by organization and craft or class*

Organization and craft	Number of railroads as of June 30—			
	1939	1938	1937	1936
National Organization Masters, Mates and Pilots of America:				
Licensed deck personnel	23	20	27	22
Unlicensed deck personnel	4	3	2	1
National Marine Engineers' Beneficial Association:				
Licensed engine personnel	19	18	18	15
Unlicensed engine personnel	1	1		
United Licensed Officers' Association: Licensed engine personnel	1	1		1
Seafarers' International Union of North America:				
Unlicensed deck personnel	7	8	4	4
Unlicensed engine personnel	4	6	5	5
Marine cooks and stewards	4	4	4	4
International Longshoremen's Association:				
Licensed deck personnel	9	10	9	8
Licensed engine personnel	5	6		
Unlicensed deck personnel	6	8	2	
Unlicensed engine personnel	5	7		
Float watchmen (bridgemen and bridge operators)	1	1	1	1
Longshoremen	2	2	3	3
Wharf freight handlers	1			
Hoisting engineers	1			
Coal-dumper employees	1			
Ore-dock workers	2			
Lighter captains	9	9	9	8
Inland Boatmen's Union:				
Licensed engine personnel	1			
Unlicensed engine personnel	3	2	1	1
Unlicensed deck personnel	3	1		
Dock workers		1		
Grain-elevator employees	1			
Steel Workers' Organizing Committee: Ore dock workers	1	1		
System Associations, etc.:				
Licensed deck personnel		4	4	4
Unlicensed deck personnel		1	2	3
Licensed engine personnel	1	7	7	7
Unlicensed engine personnel		1	4	3
Grain-boat employees		1	1	1
Float watchmen (bridgemen, bridge engineers)	2	2	1	1
Dock workers		1	1	1

11. NOTICE REGARDING CONTRACTS OF EMPLOYMENT

Section 2, eighth, of the amended Railway Labor Act stipulates that the provisions of the third, fourth, and fifth paragraphs of the same section "are hereby made a part of the contract of employment between the carrier and each employee, and shall be binding upon the parties, regardless of any other express or implied agreements between them." And every carrier is required to notify its employees by printed notices, in a form specified by the National Mediation Board, that all disputes will be handled in accordance with the requirements of the act, such notices to contain also a verbatim reproduction of the paragraphs referred to.

In accordance with these provisions, the Board, shortly after it took office, devised the poster reproduced below, and sent a sample to every carrier subject to the act, with the request that copies be printed in exactly the same form and posted on bulletin boards and in other conspicuous places where they will be accessible to all employees.

All carriers printed and posted the notices accordingly, including several who questioned whether the act was applicable to their business.

Form MB-1 (approved 8-4-34).

NOTICE IN RE RAILWAY LABOR ACT

(Approved May 20, 1926; amended June 21, 1934)

_____ _____
(Insert name of posting carrier) (Place)

AUGUST 14, 1934.

To all employees:

1. *Handling of disputes.*—Pursuant to the provisions of section 2, eighth, Railway Labor Act, as amended (approved June 21, 1934), you are hereby advised that all disputes between _____
(Insert name of posting carrier here)
and its employees will be handled in accordance with the requirements of the Railway Labor Act.

2. *Contracts of employment.*—The following provisions of paragraphs third, fourth, and fifth, section 2, Railway Labor Act, are by law made a part of each contract of employment between this carrier and each of its employees, and shall be held binding regardless of any express or implied agreements to the contrary.

FREEDOM OF CHOICE OF REPRESENTATIVES OF EMPLOYEES

Section 2, third. Representatives, for the purposes of this act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

CARRIERS FORBIDDEN TO INTERFERE IN LABOR ORGANIZATION

Section 2, fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this act. No carrier, its officers, or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided*, That nothing in this act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

FREEDOM TO JOIN LABOR ORGANIZATION OF EMPLOYEE'S CHOICE

Section 2, fifth. No carrier, its officers or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this act, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

3. *Instructions to officers.*—All officers of this carrier whose duties are affected by the foregoing are advised to take notice of and to comply with the provisions thereof.

_____, *President.*
(Insert original or facsimile signature of president)

12. COURT PROCEEDINGS

While actions of the National Mediation Board have been subject to consideration by the courts, such consideration, with two exceptions, has been confined to matters of procedure and administrative judgment. The two excepted cases involved issues which were basic to the future effectiveness of the act and the usefulness of the National Mediation Board. The first such case consisted of a challenge of the amendments to the act adopted in 1934—the constitutionality of the act without its amendments having been previously sustained by the Supreme Court of the United States in the case of *Texas & New Orleans Railroad Co. et al.* v. *the Brotherhood of Railway Clerks et al.*[1] After the district court and the circuit court of appeals each in turn sustained the amended law, the issues involved were reviewed by the Supreme Court of the United States, and the opinions of the lower courts unanimously upheld in *The Virginian Railway Co.* v. *System Federation No. 40, Railway Employes Department of the American Federation of Labor.*[2] The case of *The Brotherhood of Railroad Shop Crafts of America, Rock Island System, Grand Lodge No. 3, et al.*, v. *Lowden et al., Trustees,*[3] was the second court case having fundamental significance and centered around the constitutionality of the provision prohibiting carriers subject to the act from deducting dues, fees, assessments, or other contributions from the wages of employees, i. e., the so-called check-off. The validity of this feature of the law was sustained by both the district court and the court of appeals. The Supreme Court of the United States in due time denied certiorari, [4] thus, in effect, sustaining the position of the court of appeals.

No further court cases involving the constitutionality of the act have arisen. There have, however, been several minor court cases affecting the administration of the act, some of which have special significance in that they clarify the discretion vested in the National Mediation Board in respect of the conduct of representation investigations and elections. In addition, some minor court cases have grown out of rulings by the Interstate Commerce Commission that certain types of carriers operated by electricity are part of a general system of steam railroad transportation and are subject to the Railway Labor Act.

There have been two cases involving carriers electrically operated upon which final rulings have been made outlining their positions with respect to the Railway Labor Act. The first case was that of the Hudson & Manhattan Railroad Co., which maintained that it was not subject to the provisions of the act. After the lower courts finally upheld the findings of the Interstate Commerce Commission to the effect that this particular carrier was subject to the act, the carrier appealed to the Supreme Court of the United States, which denied certiorari with the result that the findings of the lower court became effective. The Hudson & Manhattan Railroad Co. has now recognized the applicability of the Railway Labor Act and is complying with its provisions.

The second case involved the Utah & Idaho Central Railroad Co., 305 U. S. 177. Review of this case was accepted by the Supreme

[1] 281 U. S. 548.
[2] 300 U. S. 515.
[3] 86 F. (2d) 458 (C. C. A. 10th).
[4] 300 U. S. 659.

Court of the United States. The Court's decision settled the issue as to whether an electrically operated carrier, not part of a general system of steam transportation but operated in interstate commerce, is properly within the jurisdiction of the Railway Labor Act by sustaining the Interstate Commerce Commission findings to the effect that this carrier was subject to the act. In rendering its decision, the Supreme Court reversed previous contraviews held by the lower courts.

In a number of cases the certificates of representation issued by the Board have been challenged in the courts; and the Board's rules for the conduct of elections have been reviewed by the courts in several cases. Two such cases arose on the Nashville, Chattanooga & St. Louis Railway, and both were decided by the United States Circuit Court of Appeals for the Sixth Circuit. The first case, *Nashville, Chattanooga & St. Louis Railway* v. *Railway Employes Department, American Federation of Labor*,[5] settled the issue concerning the right of furloughed employees retaining an employment status to vote in representation elections. The second decision [6] held that the National Mediation Board, when establishing eligible lists of voters and conducting elections in order to determine the representative of employees of a carrier by craft or class must do so with due regard for all of the facts, historical and otherwise, which have operated to shape the craft or class of employees on the carrier concerned as well as on railroads generally.

In a case involving the clerical employees of the Chesapeake & Ohio Railroad, the Board excluded from participation in the election certain confidential employees of the management and certain others "excepted" from the agreement between the company and the association of clerical employees. The Board also permitted certain furloughed and extra employees to vote who had appeared on the pay roll during the month preceding the election. Both of these rulings were contested by the Chesapeake & Ohio Clerks' Association in the Supreme Court of the District of Columbia. The court, after a hearing, sustained the rulings of the Board as a reasonable exercise of its discretionary authority under section 2, ninth, of the Railway Labor Act.[7]

Certification of representatives for mechanical department employees of the St. Louis Southwestern Railroad System as made by the Board was challenged by an association of employees in the United States District Court, Eastern District of Arkansas. The court, after a hearing, dismissed the complaint on motion of the Railway Employes' Department of the American Federation of Labor which had been designated by the Board as the duly authorized representative of the employees.

On the Virginian Railroad the certification of representatives of shop craft employees was questioned by the carrier on the ground that the representatives did not receive a majority vote of all those eligible to participate in the election; and the carrier also objected to the manner in which the Board conducted the election. The Board had accepted an agreement of the parties to the dispute that a majority

[5] 93 F. 2d 97.
[6] *Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, et al.*, v. *The Nashville, Chattanooga & St. Louis Railway Co.* (94 F. 2d 340).
[7] Decision of Judge F. Dickinson Letts, September 7, 1934.

of the legal votes cast should prevail and certified accordingly. The carrier objected that this was not authorized by the act and further questioned the right of the representative of one of the parties to act for it in entering into the agreement and in acting as observer or watcher at the election. Judge Way in the United States District Court for the Eastern District of Virginia, Norfolk Division, ruled that the election was properly conducted and that the Board's certificates must be recognized, except in the case of one craft where the total number who participated in the election was less than a majority of those eligible to vote. His decision was sustained by the United States Court of Appeals and also the United States Supreme Court.[8]

All of these decisions have been very helpful to the Board in that they serve to settle issues which in the past have arisen to trouble the orderly and prompt adjustment of representation disputes among different factions of employees.

13. LABOR RELATIONS IN THE AIR TRANSPORT INDUSTRY

There has been continuous progress in labor relations in the air transport industry and in the determination of rates of pay, hours of work, and employment conditions, as contemplated by the Railway Labor Act. This holds true, particularly, for those employees of the air lines composing the craft or class of air-line mechanics. The radio operators of several air lines have also designated representatives and negotiated labor agreements while the air-line pilots and copilots, with the help of the mediation services of the Board, made an agreement with one air carrier establishing a temporary joint "board of review" to consider an acute issue which had arisen on that air line. No agreement on any air line, however, was concluded by representatives of the air-line pilots and air carriers establishing rates of pay, rules, and working conditions for this craft or class of employees until during the fiscal year ended June 30, 1939, when 2 labor agreements were consummated for these employees. During that year there were 21 new agreements for air-line employees negotiated and filed with the National Mediation Board and as of June 30, 1939, there was a total of 37 such agreements in effect.

Aside from the one strike of air-line employees already mentioned, all differences which have arisen between the air lines and their employees since they were made subject to the Railway Labor Act have been adjusted amicably either between the principals directly concerned or with the help of the National Mediation Board. On the whole the conclusion cannot be escaped that the relative stability prevailing in the air line labor relations is due in no small measure to the fact that the air lines and their employees are subject to the provisions of the Railway Labor Act and that most of the air-line operators and the representatives of their employees are guided by the provisions of the act in the development and maintenance of their labor relations.

[8] Further reference to this case is made on p. 37.

IV. LABOR AGREEMENTS ON THE RAILWAYS AND AIRLINES

1. INTRODUCTORY

Negotiating an agreement with a carrier by rail or air defining rates of pay, rules, and working conditions is the most important task confronting a labor organization after establishing its right to represent a given class or craft of the carrier's employees. The number of agreements negotiated by the various types of labor organizations found among the employees of the two branches of the transportation industry covered by the Railway Labor Act is therefore an index of the development of labor organizations under the amended law. In making this appraisal of the situation, however, it should be borne in mind that the significance of the number of agreements so negotiated by each one of the three kinds of labor organizations found among rail and airline employees is greatly affected by the number of employees covered by the agreements concerned as well as by the size of the carriers on which these agreements are in effect.

Section 5, third (e) of the Railway Labor Act requires all carriers subject to its provisions to file with the National Mediation Board a copy of all labor agreements with their employees. Thus, this provision enables the Board to obtain a reliable measure of the extent of labor representation of rail and air-line employees. This section of the law reads as follows:

> Within 60 days after the approval of this act every carrier shall file with the Mediation Board a copy of each contract with its employees in effect on the 1st day of April 1934, covering rates of pay, rules, and working conditions. If no contract with any craft or class of its employees has been entered into, the carrier shall file with the Mediation Board a statement of that fact including also a statement of the rates of pay, rules, and working conditions applicable in dealing with such craft or class. When any new contract is executed or change is made in an existing contract with any class or craft of its employees, covering rates of pay, rules, or working conditions, or in those rates of pay, rules, and working conditions of employees not covered by contract, the carrier shall file the same with the Mediation Board within 30 days after such new contract or change in existing contract has been executed or rates of pay, rules, and working conditions have been made effective.

Pursuant to the foregoing, the Board, shortly after its appointment, notified all carriers subject to the provisions of the act to file their contracts with various classes of employees. It also called attention to the requirement that new contracts, and any changes in existing contracts subsequently made, must also be filed with the Board.

The first annual report issued by the Board showed that 3,021 agreements between carriers and employees covering rates of pay, rules, and working conditions had been filed in accordance with section 5, third (e) of the Railway Labor Act. At the end of the following year, the number of agreements filed increased to 3,485, and for the fiscal year 1937 the number totaled 3,852. At the close of the fiscal year 1938, the number of agreements on file was 4,039, and as of June 30, 1939, the total number filed with the Board was 4,061.

2. EXTENT OF LABOR AGREEMENT COVERAGE

Table 10 shows, for the 5 fiscal years 1934–39, the number of agreements in effect on various classes of carriers according to the types of labor organizations negotiating the agreements. In addition to the formal agreements, the Board also has on file a large number of documents relating to agreements, hundreds of which are filed by the carriers each year in the form of supplements or amendments to the working agreements already on file. These documents deal in the main with changes in scope, revisions of rules, adjustments in rates of pay, and the like.

TABLE 10.—*Number of working agreements [1] on file with the Board, according to types of labor organizations,[2] by class of carriers, fiscal years 1935–39*

Class of carrier	Agreements held June 30 by—									
	All organizations					National labor organizations				
	1939	1938	1937	1936	1935	1939	1938	1937	1936	1935
All carriers [5]	4,061	4,039	[3] 3,832	3,485	3,021	3,556	3,364	3,123	2,721	2,222
Class I	2,666	2,730	2,698	2,448	2,335	2,367	2,258	2,184	1,864	1,652
Class II	573	548	471	451	329	492	467	389	370	265
Class III	101	98	98	98	18	86	83	83	83	6
Switching and terminal	578	541	501	464	334	491	451	414	384	294
Electric	98	77	47	19	0	81	66	36	15	0
Express and Pullman	8	8	6	5	5	8	8	6	5	5
Miscellaneous carriers [4]	37	37	11	0	0	31	31	11	0	0
Air-line carriers [5]	34	16	4	0	0	14	8	2	0	0
	Local unions					System associations				
All carriers [5]	54	110	112	113	81	451	565	597	651	718
Class I	37	92	96	97	81	262	380	418	487	602
Class II	2	2	1	0	0	79	79	81	81	64
Class III	1	1	1	1	0	14	14	14	14	2
Switching and terminal	13	14	13	15	0	74	76	74	65	40
Electric	1	1	1	0	0	16	10	10	4	0
Express and Pullman	0	0	0	0	0	0	0	0	0	0
Miscellaneous carriers [4]	0	0	0	0	0	6	6	0	0	0
Air-line carriers [5]	5	2	0	0	0	15	6	0	0	0

[1] An agreement is defined as the written terms of employment concerning rates of pay, rules, and working conditions, negotiated by the representatives of a carrier and of a craft or class of employees. The agreement may be embodied in more than 1 schedule or document or may be a part of a schedule or document.

[2] The scope of the term "national labor organization" is implied by the term itself. Such organizations are those whose membership and activities are not confined to certain carriers or regions but instead extend throughout the Nation. For purposes of classification, organizations which extend their membership and activities beyond the United States are also included in the term "national labor oragnization." A local union, as the term is used in this report, is one which confines its operations to only a regional part of the Nation but is not confined to the employees of a single carrier or system of carriers. The term "local union" is distinguished from the term "system association" which applies to organizations which are confined to the employees of an individual carrier or system of carriers.

[3] Revised.

[4] Includes demurrage bureaus, refrigerator transit companies, etc.

[5] Not included in total for all carriers (air-line carriers).

The trends in representation reflected in the reports for past years were continued in the fiscal year 1939. National organizations again increased the number of agreements they hold on all classifications of carriers, particularly on class I and class II lines,[1] and the

[1] The classifications, class I, II, and III, apply to railroads and were originated and developed for statistical purposes by the Interstate Commerce Commission. The classifications are made on the basis of operating revenues. Class I carriers are those having annual revenues in excess of $1,000,000; class II carriers are those with annual revenues above $100,000 but less than $1,000,000; and class III below $100,000. Even though the revenues of a carrier for a year may exceed or fall below the margin of the class in which it has been carried, no change is made until a permanent change is in prospect.

switching and terminal companies, as well as on the electric railways. Representation by the organizations national in scope also increased considerably on the air carriers.

Of the total of 4,061 agreements of which the Board has record on rail carriers, organizations national in scope hold 3,556, or 87 percent. Local unions hold a total of 54 agreements, or somewhat over 1 percent, while system associations hold 451 agreements, or about 12 percent.

The extent to which the various crafts or classes of employees on certain carriers are covered by agreements is shown in table 11. It

TABLE 11.—*Number of agreements between 148 carriers [1] and their employees by crafts or classes of employees, according to types of labor organizations holding the agreements, June 30, 1939*

Craft or class of employees	Number of carriers on which agreements are held by—			No organizations	Number of carriers employing no personnel in craft or class
	National labor organizations	System associations	Local unions		
Engineers	138	7	-------	2	1
Firemen and hostlers	137	[2] 9	-------	2	1
Conductors	145	-------	-------	2	1
Brakemen, flagmen, and baggagemen	144	[2] 3	-------	2	1
Yard foremen, helpers, and switchtenders	[4] 140	[3] 4	-------	4	6
Yardmasters	39	9	8	71	21
Machinists	120	17	-------	8	3
Boilermakers	116	18	-------	7	7
Blacksmiths	113	21	-------	7	7
Sheet-metal workers	111	20	-------	5	12
Electrical workers	108	[2] 21	-------	6	14
Carmen	115	[2] 23	1	7	3
Powerhouse employees and railway shop laborers	[5] 98	[6] 15	[2] 2	38	5
Clerical, office, station, and storehouse	116	[3] 10	-------	24	-------
Maintenance-of-way employees	124	[2] 12	1	12	-------
Telegraphers	128	5	-------	12	3
Signalmen	83	[2] 3	-------	35	28
Dispatchers	88	10	-------	41	9
Stewards	41	3	-------	20	84
Cooks and waiters	[2] 39	[2] 15	[3] 7	7	84
Marine service:					
Masters, mates, and pilots	[6] 32	-------	-------	12	107
Licensed engineers	26	1	[7] 1	14	107
Other marine employees	[8] 35	[2] 1	-------	20	100
Miscellaneous groups	27	39	19	(9)	(9)

[1] All class I (140 carriers) and 4 class II (formerly class I) and 4 leased lines (NYC) included to show extent of system agreements.
[2] Includes 1 agreement and carrier having another agreement for a part of the same craft or class with a national organization.
[3] Includes 2 agreements on carriers having another agreement for a part of the same craft or class with a national organization.
[4] Includes 4 agreements on carriers having another agreement for a part of the same craft or class with a national organization.
[5] Includes 6 agreements on carriers having another agreement for a part of the same craft or class with a national organization.
[6] Includes 3 agreements on carriers having another agreement for a part of the same craft or class with a national organization.
[7] Includes 1 agreement on carrier having another agreement for a part of the same craft or class with a system association.
[8] Includes 7 agreements on carriers having another agreement for a part of the same craft or class with a national organization.
[9] Not available.

will be noted that employees in the train and engine service occupations are rather completely represented by national organizations. The notable exception to this statement applies to yardmasters. On 71 of the carriers considered the employees in this craft or class are without representation. With respect to shop-craft employees it will be noted that while these workers are also rather completely organized

they are represented by system associations on a larger number of roads than is the case with train and engine-service employees. This same condition is applicable to a lesser extent with respect to clerical, office, station and storehouse employees, maintenance-of-way workers, and telegraphers. The extent of representation for the balance of employee occupations shown on the table is not so complete.

3. THE SIGNIFICANCE OF LABOR AGREEMENTS

The significance of wage and rule agreements is not always fully realized in industry today. The extent to which labor relations are governed by such agreements is the measure of the extent to which law, democratically made through representatives of employees and employers, has been substituted for the rule of economic force and warfare. The rail and air transport industries are far in the vanguard in making and maintaining such law and order. Comparable data on collective bargaining agreements in other industries are lacking, but in only a very few other large industries are the relations between so great a portion of employers and employees governed by such jointly fashioned and mutually agreed-upon contracts. Under the Railway Labor Act it has become the established policy of practically all railroads and air lines to enter into collective labor contracts with their employees.

The absence of strikes on the railroads and air lines is to be explained primarily not so much by the mediation machinery of the Railway Labor Act, as by the existence of these collective labor agreements, for, while they are in existence, these contracts provide orderly, legal processes of settling all labor disputes as a substitute for strikes and industrial warfare. Theoretically all disputes are settled by the collective agreements, but of course many differences of opinion arise as to the meaning and application of the agreements. But the National Railroad Adjustment Board, or adjustment boards created in lieu thereof by agreement of the parties, provides an industrial court for adjudicating these differences, just as the civil courts adjudicate differences with respect to business contracts.

The collective agreements are in effect industrial constitutions and laws adopted by the carriers and their employees for the government of their joint relations, and the adjustment boards are the courts that interpret these laws. The National Mediation Board stands by and facilitates the processes of adopting agreements for the government of labor relations.

APPENDIX A

THE RAILWAY LABOR ACT

Being An Act To provide for the prompt disposition of disputes between carriers and their employees and for other purposes

(U. S. Code, Title 45, Chapter 8)[1]

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

TITLE I[2]

DEFINITIONS

SECTION 1. When used in this Act and for the purposes of this Act—

First. The term "carrier" includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier": *Provided, however*, That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso.

Second. The term "Adjustment Board" means the National Railroad Adjustment Board created by this Act.

Third. The term "Mediation Board" means the National Mediation Board created by this Act.

[1] (Public, No. 257, 69th Cong.) (H. R. 9463); (Approved May 20, 1926), The Railway Labor Act (44 Stat. L. 577).
(Public, No. 442, 73rd Cong.) (H. R. 9861), An Act to amend the Railway Labor Act approved May 20, 1926. (Approved June 21, 1934.)
That Section 1 of the Railway Labor Act is amended to read as follows: (Followed by text governing carriers by railroad and related transportation agencies.) (48 Stat. L. 926.)

[2] Title II, (Public, No. 487, 74th Cong.) (S. 2496), An Act to amend the Railway Labor Act. (Approved Apr. 10, 1936.)
That the Railway Labor Act, approved May 20, 1926, as amended, herein referred to as "Title I" is hereby further amended by inserting after the enacting clause the caption "Title I" and by adding the following Title II. (Followed by Title II governing air carriers.) (48 Stat. L. 1185.)

Fourth. The term "commerce" means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: *Provided, however*, That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

Seventh. The term "district court" includes the Supreme Court of the District of Columbia; and the term "circuit court of appeals" includes the Court of Appeals of the District of Columbia.

This Act may be cited as the "Railway Labor Act."

SEC. 2. Section 2 of the Railway Labor Act is amended to read as follows:

"GENERAL PURPOSES

"(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

"GENERAL DUTIES

"First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to

commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

"Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

"Third. Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

"Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided*, That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

"Fifth. No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this Act, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

"Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on

the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *Provided*, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: *And provided further*, That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

"Seventh. No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act.

"Eighth. Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified and its employees will be handled in accordance with the carrier and its employees will be handled in accordance with the requirements of this Act, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are hereby made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them.

"Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

"Tenth. The willful failure or refusal of any carrier, its officers, or agents to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon

conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than $1,000 nor more than $20,000 or imprisonment for not more than six months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any district attorney of the United States to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States: *Provided*, That nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent."

SEC. 3. Section 3 of the Railway Labor Act is amended to read as follows:

"NATIONAL BOARD OF ADJUSTMENT—GRIEVANCES—INTERPRETATION OF AGREEMENTS

"SEC. 3. First. There is hereby established a Board, to be known as the 'National Railroad Adjustment Board', the members of which shall be selected within thirty days after approval of this Act, and it is hereby provided—

"(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 2 of this Act.

"(b) The carriers, acting each through its board of directors or its receiver or receivers, trustee or trustees, or through an officer or officers designated for that purpose by such board, trustee or trustees, or receiver or receivers, shall prescribe the rules under which its representatives shall be selected and shall select the representatives of the carriers on the Adjustment Board and designate the division on which each such representative shall serve, but no carrier or system of carriers shall have more than one representative on any division of the Board.

"(c) The national labor organizations as defined in paragraph (a) of this section, acting each through the chief executive or other medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the Adjustment Board shall be selected and shall select such members and designate the division on which each member shall serve; but no labor organization shall have more than one representative on any division of the Board.

"(d) In case of a permanent or temporary vacancy on the Adjustment Board, the vacancy shall be filled by selection in the same manner as in the original selection.

"(e) If either the carriers or the labor organizations of the employees fail to select and designate representatives to the Adjustment Board, as provided in paragraphs (b) and (c) of this section, respectively, within sixty days after the passage of this Act, in case of any original appointment to office of a member of the Adjustment Board, or in a case of a vacancy in any such office within thirty days after such vacancy occurs, the Mediation Board shall thereupon directly make the appointment and shall select an individual associated in interest with the carriers or the group of labor organizations of employees, whichever he is to represent.

"(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the Secretary shall notify the Mediation Board accordingly, and within ten days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representative, together with a representative likewise designated by the claimant, and a third or neutral party designated by the Mediation Board, constituting a board of three, shall within thirty days after the appointment of the neutral member investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with section 2 hereof and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board, and the findings of such boards of three shall be final and binding.

"(g) Each member of the Adjustment Board shall be compensated by the party or parties he is to represent. Each third or neutral party selected under the provisions of (f) of this section shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while serving as such third or neutral party.

"(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

"First division: To have jurisdiction over disputes involving train- and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of ten members, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees.

"Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, car men, the helpers and apprentices of all the foregoing, coach cleaners, power-house employees, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

"Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

"Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employees.

"(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

"(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

"(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to conduct hearings and make findings upon disputes, when properly submitted, at any place designated by the division: *Provided, however*, That final awards as to any such dispute must be made by the entire division as hereinafter provided.

"(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as 'referee', to sit with the division as a member thereof and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that

fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this Act for the appointment of arbitrators and shall fix and pay the compensation of such referees.

"(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except in so far as they shall contain a money award. In case a dispute arises involving an interpretation of the award the division of the Board upon request of either party shall interpret the award in the light of the dispute.

"(n) A majority vote of all members of the division of the Adjustment Board shall be competent to make an award with respect to any dispute submitted to it.

"(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay the employee the sum to which he is entitled under the award on or before a day named.

"(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board.

"(q) All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after.

"(r) The several divisions of the Adjustment Board shall maintain headquarters in Chicago, Illinois, meet regularly, and continue

in session so long as there is pending before the division any matter within its jurisdiction which has been submitted for its consideration and which has not been disposed of.

"(s) Whenever practicable, the several divisions or subdivisions of the Adjustment Board shall be supplied with suitable quarters in any Federal building located at its place of meeting.

"(t) The Adjustment Board may, subject to the approval of the Mediation Board, employ and fix the compensations of such assistants as it deems necessary in carrying on its proceedings. The compensation of such employees shall be paid by the Mediation Board.

"(u) The Adjustment Board shall meet within forty days after the approval of this Act and adopt such rules as it deems necessary to control proceedings before the respective divisions and not in conflict with the provisions of this section. Immediately following the meeting of the entire Board and the adoption of such rules, the respective divisions shall meet and organize by the selection of a chairman, a vice chairman, and a secretary. Thereafter each division shall annually designate one of its members to act as chairman and one if its members to act as vice chairman: *Provided, however*, That the chairmanship and vice chairmanship of any division shall alternate as between the groups, so that both the chairmanship and vice chairmanship shall be held alternately by a representative of the carriers and a representative of the employees. In case of a vacancy, such vacancy shall be filled for the unexpired term by the selection of a successor from the same group.

"(v) Each division of the Adjustment Board shall annually prepare and submit a report of its activities to the Mediation Board, and the substance of such report shall be included in the annual report of the Mediation Board to the Congress of the United States. The reports of each division of the Adjustment Board and the annual report of the Mediation Board shall state in detail all cases heard, all actions taken, the names, salaries, and duties of all agencies, employees, and officers receiving compensation from the United States under the authority of this Act, and an account of all moneys appropriated by Congress pursuant to the authority conferred by this Act and disbursed by such agencies, employees, and officers.

"(w) Any division of the Adjustment Board shall have authority, in its discretion, to establish regional adjustment boards to act in its place and stead for such limited period as such division may determine to be necessary. Carrier members of such regional boards shall be designated in keeping with rules devised for this purpose by the carrier members of the Adjustment Board and the labor members shall be designated in keeping with rules devised for this purpose by the labor members of the Adjustment Board. Any such regional board shall, during the time for which it is appointed, have the same authority to conduct hearings, make findings upon disputes, and adopt the same procedure as the division of the Adjustment Board appointing it, and its decisions shall be enforceable to the same extent and under the same processes. A neutral person, as referee, shall be appointed for service in connection with any such regional adjustment board in the same circumstances and manner as

provided in paragraph (1) hereof, with respect to a division of the Adjustment Board.

"Second. Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board."

Section 4 of the Railway Labor Act is amended to read as follows:

"NATIONAL MEDIATION BOARD

"SEC. 4. First. The Board of Mediation is hereby abolished, effective thirty days from the approval of this Act and the members, secretary, officers, assistants, employees, and agents thereof, in office upon the date of the approval of this Act, shall continue to function and receive their salaries for a period of thirty days from such date in the same manner as though this Act had not been passed. There is hereby established, as an independent agency in the executive branch of the Government, a board to be known as the 'National Mediation Board', to be composed of three members appointed by the President, by and with the advice and consent of the Senate, not more than two of whom shall be of the same political party. The terms of office of the members first appointed shall begin as soon as the members shall qualify, but not before thirty days after the approval of this Act, and expire, as designated by the President at the time of nomination, one on February 1, 1935, one on February 1, 1936, and one on February 1, 1937. The terms of office of all successors shall expire three years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term of which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. Vacancies in the Board shall not impair the powers nor affect the duties of the Board nor of the remaining members of the Board. Two of the members in office shall constitute a quorum for the transaction of the business of the Board. Each member of the Board shall receive a salary at the rate of $10,000 per annum, together with necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while away from the principal office of the Board on business required by this Act. No person in the employment of or who is pecuniarily or otherwise interested in any organization of employees or any carrier shall enter upon the duties of or continue to be a member of the Board.

"All cases referred to the Board of Mediation and unsettled on the date of the approval of this Act shall be handled to conclusion by the Mediation Board.

"A member of the Board may be removed by the President for inefficiency, neglect of duty, malfeasance in office, or ineligibility, but for no other cause.

"Second. The Mediation Board shall annually designate a member to act as chairman. The Board shall maintain its principal office in the District of Columbia, but it may meet at any other place whenever it deems it necessary so to do. The Board may designate one or more of its members to exercise the functions of the Board in mediation proceedings. Each member of the Board shall have power to administer oaths and affirmations. The Board shall have a seal which shall be judicially noticed. The Board shall make an annual report to Congress.

"Third. The Mediation Board may (1) appoint such experts and assistants to act in a confidential capacity and, subject to the provisions of the civil-service laws, such other officers and employees as are essential to the effective transaction of the work of the Board; (2) in accordance with the Classification Act of 1923, fix the salaries of such experts, assistants, officers, and employees; and (3) make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, for law books, periodicals, and books of reference, and for printing and binding, and including expenditures for salaries and compensation, necessary traveling expenses and expenses actually incurred for subsistence, and other necessary expenses of the Mediation Board, Adjustment Board, Regional Adjustment Boards established under paragraph (w) of section 3, and boards of arbitration, in accordance with the provisions of this section and sections 3 and 7, respectively), as may be necessary for the execution of the functions vested in the Board, in the Adjustment Board and in the boards of arbitration, and as may be provided for by the Congress from time to time. All expenditures of the Board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

"Fourth. The Mediation Board is hereby authorized by its order to assign, or refer, any portion of its work, business, or functions arising under this or any other Act of Congress, or referred to it by Congress or either branch thereof, to an individual member of the Board or to an employee or employees of the Board to be designated by such order for action thereon, and by its order at any time to amend, modify, supplement, or rescind any such assignment or reference. All such orders shall take effect forthwith and remain in effect until otherwise ordered by the Board. In conformity with and subject to the order or orders of the Mediation Board in the premises, any such individual member of the Board or employee designated shall have power and authority to act as to any of said work, business, or functions so assigned or referred to him for action by the Board.

"Fifth. All officers and employees of the Board of Mediation (except the members thereof whose offices are hereby abolished) whose services in the judgment of the Mediation Board are necessary to the efficient operation of the Board are hereby transferred to the Board, without change in classification or compensation; except that the Board may provide for the adjustment of such classification or com-

pensation to conform to the duties to which such officers and employees may be assigned.

"All unexpended appropriations for the operation of the Board of Mediation that are available at the time of the abolition of the Board of Mediation shall be transferred to the Mediation Board and shall be available for its use for salaries and other authorized expenditures."

SEC. 5. Section 5 of the Railway Labor Act is amended to read as follows:

"FUNCTIONS OF MEDIATION BOARD

"SEC. 5. First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

"(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

"(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

"The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

"In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 10 of this Act) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this Act.

"If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 10 of this Act, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

"Second. In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this Act, either party to the said agreement, or both, may apply to the Mediation Board for an interpretation of the meaning or application of such agreement. The said Board shall upon receipt of such request notify the parties to the controversy, and after a hearing of both sides give its interpretation within thirty days.

"Third. The Mediation Board shall have the following duties with respect to the arbitration of disputes under section 7 of this Act:

"(a) On failure of the arbitrators named by the parties to agree on the remaining arbitrator or arbitrators within the time set by section 7 of this Act, it shall be the duty of the Mediation Board to name such remaining abritrator or arbitrators. It shall be the duty of the Board in naming such arbitrator or arbitrators to

appoint only those whom the Board shall deem wholly disinterested in the controversy to be arbitrated and impartial and without bias as between the parties to such arbitration. Should, however, the Board name an arbitrator or arbitrators not so disinterested and impartial, then, upon proper investigation and presentation of the facts, the Board shall promptly remove such arbitrator.

"If an arbitrator named by the Mediation Board, in accordance with the provisions of this Act, shall be removed by such Board as provided by this Act, or if such an arbitrator refuses or is unable to serve, it shall be the duty of the Mediation Board, promptly to select another arbitrator in the same manner as provided in this Act for an original appointment by the Mediation Board.

"(b) Any member of the Mediation Board is authorized to take the acknowledgment of an agreement to arbitrate under this Act. When so acknowledged, or when acknowledged by the parties before a notary public or the clerk of a district court or a circuit court of appeals of the United States, such agreement to arbitrate shall be delivered to a member of said Board or transmitted to said Board, to be filed in its office.

"(c) When an agreement to arbitrate has been filed with the Mediation Board, or with one of its members, as provided by this section, and when the said Board has been furnished the names of the arbitrators chosen by the parties to the controversy, it shall be the duty of the Board to cause a notice in writing to be served upon said arbitrators, notifying them of their appointment, requesting them to meet promptly to name the remaining arbitrator or arbitrators necessary to complete the Board of Arbitration, and advising them of the period within which, as provided by the agreement to arbitrate, they are empowered to name such arbitrator or arbitrators.

"(d) Either party to an arbitration desiring the reconvening of a board of arbitration to pass upon any controversy arising over the meaning or application of an award may so notify the Mediation Board in writing, stating in such notice the question or questions to be submitted to such reconvened Board. The Mediation Board shall thereupon promptly communicate with the members of the Board of Arbitration, or a subcommittee of such Board appointed for such purpose pursuant to a provision in the agreement to arbitrate, and arrange for the reconvening of said Board of Arbitration or subcommittee, and shall notify the respective parties to the controversy of the time and place at which the Board, or the subcommittee, will meet for hearings upon the matters in controversy to be submitted to it. No evidence other than that contained in the record filed with the original award shall be received or considered by such reconvened Board or subcommittee, except such evidence as may be necessary to illustrate the interpretations suggested by the parties. If any member of the original Board is unable or unwilling to serve on such reconvened Board or subcommittee thereof, another arbitrator shall be named in the same manner and with the same powers and duties as such original arbitrator.

"(e) Within sixty days after the approval of this Act every carrier shall file with the Mediation Board a copy of each contract with its employees in effect on the 1st day of April 1934, covering rates of pay, rules, and working conditions. If no contract with any craft

or class of its employees has been entered into, the carrier shall file with the Mediation Board a statement of that fact including also a statement of the rates of pay, rules and working conditions applicable in dealing with such craft or class. When any new contract is executed or change is made in an existing contract with any class or craft of its employees covering rates of pay, rules, or working conditions, or in those rates of pay, rules, and working conditions of employees not covered by contract, the carrier shall file the same with the Mediation Board within thirty days after such new contract or change in existing contract has been executed or rates of pay, rules, and working conditions have been made effective.

"(f) The Mediation Board shall be the custodian of all papers and documents heretofore filed with or transferred to the Board of Mediation bearing upon the settlement, adjustment, or determination of disputes between carriers and their employees or upon mediation or arbitration proceedings held under or pursuant to the provisions of any Act of Congress in respect thereto; and the President is authorized to designate a custodian of the records and property of the Board of Mediation until the transfer and delivery of such records to the Mediation Board and to require the transfer and delivery to the Mediation Board of any and all such papers and documents filed with it or in its possession."

SEC. 6. Section 6 of the Railway Labor Act is amended to read as follows:

"SEC. 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."

ARBITRATION

SEC. 7. First. Whenever a controversy shall arise between a carrier or carriers and its or their employees which is not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation, in the manner provided in the preceding sections, such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons: *Provided, however*, That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this Act or otherwise.

Second. Such board of arbitration shall be chosen in the following manner:

(a) In the case of a board of three, the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name one arbitrator; the two arbitrators thus chosen shall select a third arbitrator. If the arbitrators chosen by the parties shall fail to name the third arbitrator within five days after their first meeting, such third arbitrator shall be named by the Mediation Board.

(b) In the case of a board of six, the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name two arbitrators; the four arbitrators thus chosen shall, by a majority vote, select the remaining two arbitrators. If the arbitrators chosen by the parties shall fail to name the two arbitrators within fifteen days after their first meeting, the said two arbitrators, or as many of them as have not been named, shall be named by the Mediation Board.

Third. (a) When the arbitrators selected by the respective parties have agreed upon the remaining arbitrator or arbitrators, they shall notify the Mediation Board, and, in the event of their failure to agree upon any or upon all of the necessary arbitrators within the period fixed by this Act, they shall, at the expiration of such period, notify the Mediation Board of the arbitrators selected, if any, or of their failure to make or to complete such selection.

(b) The board of arbitration shall organize and select its own chairman and make all necessary rules for conducting its hearings: *Provided, however*, That the board of arbitration shall be bound to give the parties to the controversy a full and fair hearing, which shall include an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel, or by other representative as they may respectively elect.

(c) Upon notice from the Mediation Board that the parties, or either party, to an arbitration desire the reconvening of the board of arbitration (or a subcommittee of such board of arbitration appointed for such purpose pursuant to the agreement to arbitrate) to pass upon any controversy over the meaning or application of their award, the board, or its subcommittee, shall at once reconvene. No question other than, or in addition to, the questions relating to the meaning or application of the award, submitted by the party or parties in writing, shall be considered by the reconvened board of arbitration or its subcommittee.

Such rulings shall be acknowledged by such board or subcommittee thereof in the same manner, and filed in the same district court clerk's office, as the original award and become a part thereof.

(d) No arbitrator, except those chosen by the Mediation Board, shall be incompetent to act as an arbitrator because of his interest in the controversy to be arbitrated, or because of his connection with or partiality to either of the parties to the arbitration.

(e) Each member of any board of arbitration created under the provisions of this Act named by either party to the arbitration shall be compensated by the party naming him. Each arbitrator selected by the arbitrators or named by the Mediation Board shall receive from the Mediation Board such compensation as the Mediation Board

may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, while serving as an arbitrator.

(f) The board of arbitration shall furnish a certified copy of its award to the respective parties to the controversy, and shall transmit the original, together with the papers and proceedings and a transcript of the evidence taken at the hearings, certified under the hands of at least a majority of the arbitrators, to the clerk of the district court of the United States for the district wherein the controversy arose or the arbitration is entered into, to be filed in said clerk's office as hereinafter provided. The said board shall also furnish a certified copy of its award, and the papers and proceedings, including testimony relating thereto, to the Mediation Board, to be filed in its office; and in addition a certified copy of its award shall be filed in the office of the Interstate Commerce Commission: *Provided, however*, That such award shall not be construed to diminish or extinguish any of the powers or duties of the Interstate Commerce Commission, under the Interstate Commerce Act, as amended.

(g) A board of arbitration may, subject to the approval of the Mediation Board, employ and fix the compensation of such assistants as it deems necessary in carrying on the arbitration proceedings. The compensation of such employees, together with their necessary traveling expenses and expenses actually incurred for subsistence, while so employed, and the necessary expenses of boards of arbitration, shall be paid by the Mediation Board.

Whenever practicable, the board shall be supplied with suitable quarters in any Federal building located at its place of meeting or at any place where the board may conduct its proceedings or deliberations.

(h) All testimony before said board shall be given under oath or affirmation, and any member of the board shall have the power to administer oaths or affirmations. The board of arbitration, or any member thereof, shall have the power to require the attendance of witnesses and the production of such books, papers, contracts, agreements, and documents as may be deemed by the board of arbitration material to a just determination of the matters submitted to its arbitration, and may for that purpose request the clerk of the district court of the United States for the district wherein said arbitration is being conducted to issue the necessary subpœnas, and upon such request the said clerk or his duly authorized deputy shall be, and he hereby is, authorized, and it shall be his duty, to issue such subpœnas. In the event of the failure of any person to comply with such subpœna, or in the event of the contumacy of any witness appearing before the board of arbitration, the board may invoke the aid of the United States courts to compel witnesses to attend and testify and to produce such books, papers, contracts, agreements, and documents to the same extent and under the same conditions and penalties as provided for in the Act to regulate commerce approved February 4, 1887, and the amendments thereto.

Any witness appearing before a board of arbitration shall receive the same fees and mileage as witnesses in courts of the United States, to be paid by the party securing the subpœna.

SEC. 8.[2] The agreement to arbitrate—

(a) Shall be in writing;

(b) Shall stipulate that the arbitration is had under the provisions of this Act;

(c) Shall state whether the board of arbitration is to consist of three or of six members;

(d) Shall be signed by the duly accredited representatives of the carrier or carriers and the employees, parties respectively to the agreement to arbitrate, and shall be acknowledged by said parties before a notary public, the clerk of a district court or circuit court of appeals of the United States, or before a member of the Mediation Board, and, when so acknowledged, shall be filed in the office of the Mediation Board;

(e) Shall state specifically the questions to be submitted to the said board for decision; and that, in its award or awards, the said board shall confine itself strictly to decisions as to the questions so specifically submitted to it;

(f) Shall provide that the questions, or any one or more of them, submitted by the parties to the board of arbitration may be withdrawn from arbitration on notice to that effect signed by the duly accredited representatives of all the parties and served on the board of arbitration;

(g) Shall stipulate that the signatures of a majority of said board of arbitration affixed to their award shall be competent to constitute a valid and binding award;

(h) Shall fix a period from the date of the appointment of the arbitrator or arbitrators necessary to complete the board (as provided for in the agreement) within which the said board shall commence its hearings;

(i) Shall fix a period from the beginning of the hearings within which the said board shall make and file its award: *Provided*, That the parties may agree at any time upon an extension of this period;

(j) Shall provide for the date from which the award shall become effective and shall fix the period during which the award shall continue in force;

(k) Shall provide that the award of the board of arbitration and the evidence of the proceedings before the board relating thereto, when certified under the hands of at least a majority of the arbitrators, shall be filed in the clerk's office of the district court of the United States for the district wherein the controversy arose or the arbitration was entered into, which district shall be designated in the agreement; and, when so filed, such award and proceedings shall constitute the full and complete record of the arbitration;

(l) Shall provide that the award, when so filed, shall be final and conclusive upon the parties as to the facts determined by said award and as to the merits of the controversy decided;

(m) Shall provide that any difference arising as to the meaning, or the application of the provisions, of an award made by a board of arbitration shall be referred back for a ruling to the same board, or, by agreement, to a subcommittee of such board; and that such

[2] Section 8 as contained in Railway Labor Act, approved May 20, 1926.

ruling, when acknowledged in the same manner, and filed in the same district court clerk's office, as the original award, shall be a part of and shall have the same force and effect as such original award; and

(n) Shall provide that the respective parties to the award will each faithfully execute the same.

The said agreement to arbitrate, when properly signed and acknowledged as herein provided, shall not be revoked by a party to such agreement: *Provided, however*, That such agreement to arbitrate may at any time be revoked and canceled by the written agreement of both parties, signed by their duly accredited representatives, and (if no board of arbitration has yet been constituted under the agreement) delivered to the Mediation Board or any member thereof; or, if the board of arbitration has been constituted as provided by this Act, delivered to such board of arbitration.

SEC. 8.[3] If any section, subsection, sentence, clause, or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. All Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed.

SEC. 9. First. The award of a board of arbitration, having been acknowledged as herein provided, shall be filed in the clerk's office of the district court designated in the agreement to arbitrate.

Second. An award acknowledged and filed as herein provided shall be conclusive on the parties as to the merits and facts of the controversy submitted to arbitration, and unless, within ten days after the filing of the award, a petition to impeach the award, on the grounds hereinafter set forth, shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter judgment on the award, which judgment shall be final and conclusive on the parties.

Third. Such petition for the impeachment or contesting of any award so filed shall be entertained by the court only on one or more of the following grounds:

(a) That the award plainly does not conform to the substantive requirements laid down by this Act for such awards, or that the proceedings were not substantially in conformity with this Act;

(b) That the award does not conform, nor confine itself, to the stipulations of the agreement to arbitrate; or

(c) That a member of the board of arbitration rendering the award was guilty of fraud or corruption; or that a party to the arbitration practiced fraud or corruption which fraud or corruption affected the result of the arbitration: *Provided, however*, That no court shall entertain any such petition on the ground that an award is invalid for uncertainty; in such case the proper remedy shall be a submission of such award to a reconvened board, or subcommittee thereof, for interpretation, as provided by this Act: *Provided further*, That an award contested as herein provided shall be construed liberally by the court, with a view to favoring its validity, and that no award shall be set aside for trivial irregularity or clerical error, going only to form and not to substance.

[3] Section 8 as contained in Public, No. 442, amendment to Railway Labor Act, approved June 21, 1934.

Fourth. If the court shall determine that a part of the award is invalid on some ground or grounds designated in this section as a ground of invalidity, but shall determine that a part of the award is valid, the court shall set aside the entire award: *Provided, however*, That, if the parties shall agree thereto, and if such valid and invalid parts are separable, the court shall set aside the invalid part, and order judgment to stand as to the valid part.

Fifth. At the expiration of ten days from the decision of the district court upon the petition filed as aforesaid, final judgment shall be entered in accordance with said decision, unless during said ten days either party shall appeal therefrom to the circuit court of appeals. In such case only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law presented by said petition and to be decided.

Sixth. The determination of said circuit court of appeals upon said questions shall be final, and, being certified by the clerk thereof to said district court, judgment pursuant thereto shall thereupon be entered by said district court.

Seventh. If the petitioner's contentions are finally sustained, judgment shall be entered setting aside the award in whole or, if the parties so agree, in part; but in such case the parties may agree upon a judgment to be entered disposing of the subject matter of the controversy, which judgment when entered shall have the same force and effect as judgment entered upon an award.

Eighth. Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor or service by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

EMERGENCY BOARD

SEC. 10. If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this Act and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute. Such board shall be composed of such number of persons as to the President may seem desirable: *Provided, however*, That no member appointed shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of the members of any such board shall be fixed by the President. Such board shall be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation.

There is hereby authorized to be appropriated such sums as may be necessary for the expenses of such board, including the compensa-

tion and the necessary traveling expenses and expenses actually incurred for subsistence, of the members of the board. All expenditures of the board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

After the creation of such board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

GENERAL PROVISIONS

SEC. 11. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

SEC. 12. There is hereby authorized to be appropriated such sums as may be necessary for expenditure by the Mediation Board in carrying out the provisions of this Act.

SEC. 13. (a) Paragraph "Second" of subdivision (b) of section 128 of the Judicial Code, as amended, is amended to read as follows:

"Second. To review decisions of the district courts, under section 9 of the Railway Labor Act."

(b) Section 2 of the Act entitled "An Act to amend the Judicial Code, and to further define the jurisdiction of the circuit court of appeals and of the Supreme Court, and for other purposes", approved February 13, 1925, is amended to read as follows:

"SEC. 2. That cases in a circuit court of appeals under section 9 of the Railway Labor Act; under section 5 of 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes', approved September 26, 1914; and under section 11 of 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914, are included among the cases to which sections 239 and 240 of the Judicial Code shall apply."

SEC. 14. Title III of the Transportation Act, 1920, and the Act approved July 15, 1913, providing for mediation, conciliation, and arbitration, and all acts and parts of Acts in conflict with the provisions of this Act are hereby repealed, except that the members, secretary, officers, employees, and agents of the Railroad Labor Board, in office upon the date of the passage of this Act, shall receive their salaries for a period of 30 days from such date, in the same manner as though this Act had not been passed.

TITLE II

SECTION 201. All of the provisions of title I of this Act, except the provisions of section 3 thereof, are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service.

SEC. 202. The duties, requirements, penalties, benefits, and privileges prescribed and established by the provisions of title I of this Act, except section 3 thereof, shall apply to said carriers by air and their employees in the same manner and to the same extent as though such carriers and their employees were specifically included within the definition of "carrier" and "employee", respectively, in section 1 thereof.

SEC. 203. The parties or either party to a dispute between an employee or a group of employees and a carrier or carriers by air may invoke the services of the National Mediation Board and the jurisdiction of said Mediation Board is extended to any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to an adjustment board, as hereinafter provided, and not adjusted in conference between the parties, or where conferences are refused.

The National Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

The services of the Mediation Board may be invoked in a case under this title in the same manner and to the same extent as are the disputes covered by section 5 of title I of this Act.

SEC. 204. The disputes between an employee or group of employees and a carrier or carriers by air growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act before the National Labor Relations Board, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to an appropriate adjustment board, as hereinafter provided, with a full statement of the facts and supporting data bearing upon the disputes.

It shall be the duty of every carrier and of its employees, acting through their representatives, selected in accordance with the provisions of this title, to establish a board of adjustment of jurisdiction not exceeding the jurisdiction which may be lawfully exercised by system, group, or regional boards of adjustment, under the authority of section 3, Title I, of this Act.

Such boards of adjustment may be established by agreement between employees and carriers either on any individual carrier, or system, or group or carriers by air and any class or classes of its or their employees; or pending the establishment of a permanent National Board of Adjustment as hereinafter provided. Nothing in this Act shall prevent said carriers by air, or any class or classes of their employees, both acting through their representatives selected in accordance with provisions of this title, from mutually agreeing to the establishment of a National Board of Adjustment of temporary duration and of similarly limited jurisdiction.

SEC. 205. When, in the judgment of the National Mediation Board, it shall be necessary to have a permanent national board of

adjustment in order to provide for the prompt and orderly settlement of disputes between said carriers by air, or any of them, and its or their employees, growing out of grievances or out of the interpretation or application of agreements between said carriers by air or any of them, and any class or classes of its or their employees, covering rates of pay, rules, or working conditions, the National Mediation Board is hereby empowered and directed, by its order duly made, published, and served, to direct the said carriers by air and such labor organizations of their employees, national in scope, as have been or may be recognized in accordance with the provisions of this Act, to select and designate four representatives who shall constitute a board which shall be known as the National Air Transport Adjustment Board. Two members of said National Air Transport Adjustment Board shall be selected by said carriers by air and two members by the said labor organizations of the employees, within thirty days after the date of the order of the National Mediation Board, in the manner and by the procedure prescribed by title I of this Act for the selection and designation of members of the National Railroad Adjustment Board. The National Air Transport Adjustment Board shall meet within forty days after the date of the order of the National Mediation Board directing the selection and designation of its members and shall organize and adopt rules for conducting its proceedings, in the manner prescribed in section 3 of title I of this Act. Vacancies in membership or office shall be filled, members shall be appointed in case of failure of the carriers or of labor organizations of the employees to select and designate representatives, members of the National Air Transport Adjustment Board shall be compensated, hearings shall be held, findings and awards made, stated, served, and enforced, and the number and compensation of any necessary assistants shall be determined and the compensation of such employees shall be paid, all in the same manner and to the same extent as provided with reference to the National Railroad Adjustment Board by section 3 of title I of this Act. The powers and duties prescribed and established by the provisions of section 3 of title I of this Act with reference to the National Railroad Adjustment Board and the several divisions thereof are hereby conferred upon and shall be exercised and performed in like manner and to the same extent by the said National Air Transport Adjustment Board, not exceeding, however, the jurisdiction conferred upon said National Air Transport Adjustment Board by the provisions of this title. From and after the organization of the National Air Transport Adjustment Board, if any system, group, or regional board of adjustment established by any carrier or carriers by air and any class or classes of its or their employees is not satisfactory to either party thereto, the said party, upon ninety days' notice to the other party, may elect to come under the jurisdiction of the National Air Transport Adjustment Board.

SEC. 206. All cases referred to the National Labor Relations Board, or over which the National Labor Relations Board shall have taken jurisdiction, involving any dispute arising from any cause between any common carrier by air engaged in interstate or foreign commerce or any carrier by air transporting mail for or

under contract with the United States Government, and employees of such carrier or carriers, and unsettled on the date of approval of this Act, shall be handled to conclusion by the Mediation Board. The books, records, and papers of the National Labor Relations Board and of the National Labor Board pertinent to such case or cases, whether settled or unsettled, shall be transferred to the custody of the National Mediation Board.

SEC. 207. If any provision of this title or application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

SEC. 208. There is hereby authorized to be appropriated such sums as may be necessary for expenditure by the Mediation Board in carrying out the provisions of this Act.

Approved, April 10, 1936.

APPENDIX B

RAILWAY LABOR LEGISLATION 1888–1934

An analysis of the amendments to the Railway Labor Act, adopted June 21, 1934, is given in the opening section of the Board's report. In the second section the legislation that preceded these amendments was referred to but not discussed because of limitation of space. Following is a review of this legislation showing the development of the various provisions from the first law of 1888 to the Railway Labor Act of 1926 which was the subject of the amendments.

1. THE FIRST ACT DEALING WITH RAILWAY LABOR, 1888

The first of the laws dealing with labor relations on the railroads was approved by President Cleveland on October 1, 1888. This law provided two methods of adjusting disputes between railway companies and their employees which threatened to interrupt interstate commerce: (1) Voluntary arbitration, (2) investigation. At the request of either party, and if the other party accepted, a dispute was to be submitted for decision to a board of three arbitrators, one appointed by each party, and a chairman selected by the two. The creation of such a board was not only dependent upon the consent of both parties, but no provision was made for enforcement of any award rendered.

The act also authorized the appointment by the President of a temporary commission to investigate the causes of any labor dispute on the railroads, of which the United States Commissioner of Labor was to be chairman, with two additional commissioners appointed by the President. The services of the commission might be tendered by the President for the purpose of settling a controversy or might be applied for by one of the parties or by the executive of a State.

During the 10 years that the law was on the statute books the arbitration provisions were never used, although this was considered the most important feature of the law and was the subject of prolonged debate in Congress. The investigation provisions of the act were used only once, during the famous Pullman strike of 1894. The investigating commission could do little to settle the strike, but it made recommendations for a permanent commission of three members to be appointed, which was to have, in the field of railway labor, authority similar to that of the Interstate Commerce Commission in the field of railway rates—the decisions of such a commission to be binding on the parties. It also recommended legislation to encourage the incorporation of labor organizations. No action was taken on these and other recommendations made by the commission, but later legislation did embody some of its suggestions.[1]

[1] Bulletin, U. S. Bureau of Labor Statistics, No. 303—Use of Federal Power in Settlement of Railway Labor Disputes, pp. 13–14.

2. ERDMAN ACT OF 1898

The ineffectiveness of the act of 1888 was generally recognized for all through the 10 years of its existence bills were being introduced and discussed in Congress for additional railway labor legislation. Finally the Erdman Act was adopted on May 19, 1898, and approved by the President on June 1, 1898.

The essential differences between this law and the previous act were that it inaugurated, for the first time, the policy of Government mediation and conciliation of labor disputes on the railroads. The United States Commissioner of Labor and the Chairman of the Interstate Commerce Commission were required, upon request of either party to a controversy concerning wages, hours, or conditions of employment that seriously interrupted or threatened to interrupt interstate commerce, to "put themselves in communication with the parties to such controversy, and * * * use their best efforts, by mediation and conciliation to amicably settle the same."

The investigation features of the act of 1888 were omitted from the new law, but the provisions for voluntary arbitration were retained and strengthened in several respects. It was provided that if the mediation and conciliation efforts of the commissioners should be unsuccessful, then the commissioners should "at once endeavor to bring about an arbitration of said controversy," and the act went on to provide details for such arbitrations. A board of 3 was to be appointed as in the previous act, but if the 2-party arbitrators could not agree on a neutral chairman within 5 days, he was to be appointed by the 2 commissioners of conciliation. The awards of such arbitration boards were made final and conclusive upon the parties, were to remain in effect for a period of 1 year, and provision was made for their enforcement. The act provided that the parties should enter into an agreement to arbitrate and acknowledge the same before a notary public or a clerk of a Federal court. While such arbitration was pending "the status existing immediately prior to the dispute shall not be changed." It was also made unlawful for the carriers to discharge employees and for employees or organizations to engage in strikes during the pendency of arbitration under the act. And for 3 months after an award was rendered 30 days' notice was required of intention to quit by an employee or to discharge by the carrier.

A distinction was made between employees who belonged to labor organizations and those who did not. Arbitration awards to which a labor organization was a party were not binding upon individual employees not members of the organizations, "unless the said individual employees shall give assent in writing to become parties to said arbitration." Further, arbitration agreements were to be executed only by labor organizations, except that individual employees might sign such agreements when they could show that they "represent or include a majority of all employees in the service of the same employer and in the same group or class, and assurance given that awards would be lived up to by all such employees." The law was made applicable only to those who were engaged in train operation or train service where organization was most extensive.

A curious provision appeared in this law that has been eliminated from all the succeeding acts. It required any trade unions which had been incorporated under an act of Congress, adopted in 1886, to expel

any member who participates in or instigates force or violence during strikes, lock-outs, or boycotts, or who attempts to prevent others from working through violence, threats, or intimidation.[2]

Another important feature of this act was that it prohibited what are now known as "yellow-dog contracts." It was made a misdemeanor for any carrier to "require any employee or any person seeking employment, as a condition of such employment, to enter into an agreement, either written or verbal, not to become or remain a member of any labor corporation, association, or organization; or (to) threaten any employee with loss of employment or (to) unjustly discriminate against any employee because of this membership in such labor corporation, association, or organization;" or to conspire to prevent employees who quit or were discharged from obtaining other employment. This section of the law was declared unconstitutional by the United States Supreme Court in the case of *Adair* v. *United States* (208 U. S. 161, 1908).

The first attempt to use the mediation and conciliation provisions of the Erdman Act was unsuccessful, the railroads refusing to enter into any proceedings. Thereafter for about 8 years no use whatever was made of the law. But beginning in December 1906 with a dispute on the Southern Pacific Railroad and until the law was repealed in 1913, 61 cases were settled under the provisions of the act; 26 by mediation alone, 10 by mediation and arbitration, and 6 by arbitration alone. All the awards were fully complied with except one which was questioned in the courts, but which was later settled by agreement of the parties.[3]

3. NEWLANDS ACT, 1913

This experience during the last half of the period the Erdman Act was in effect made it evident that it was mediation and not arbitration, on which the Government must place its main reliance for the settlement of labor disputes. The Newlands Act, adopted in 1913, established a permanent Board of Mediation and Conciliation, consisting of a commissioner of mediation and conciliation to be appointed by the President, and who was to give his full time to the work, together with two additional commissioners designated by the President from among other officials of the Government. The act also created the position of an assistant commissioner of mediation and conciliation and authorized him to act for the Board in individual cases.

The same duties of using the best efforts to bring the parties to disputes to agreement by mediation and conciliation were imposed on this permanent Board and its staff as were formerly exercised by the Commissioner of Labor and the Chairman of the Interstate Commerce Commission. And when these efforts proved unsuccessful, they were "to endeavor to induce the parties to submit their controversy to arbitration," as in the Erdman Act.

The arbitration provisions were changed in the new act to permit the appointment of boards of six members instead of three, in order to avoid objections that had been raised against "one-man decisions" made by the third or neutral arbitrator; and the time within which

[2] An Act to Legalize the Incorporation of National Trade Unions, ch. 567, U. S. Stat. L., vol. 24, 1885-87, p. 86, approved June 29, 1886. This act was repealed 1932, when it was discovered that no trade unions were incorporated under it, but that it had been used only to incorporate 28 Texas insurance companies. "Most, if not all, insure marriage; that is, they insure married couples against divorce." (House Reports on Public Bills, vol. III, 72d Cong., 1st sess. Rept. No. 1763)

[3] Bulletin 303, pp. 31-32.

arbitration boards were required to render their decisions was extended beyond the limit of 30 days fixed in the Erdman Act. If the parties failed to select any arbitrators the Board of Mediation and Conciliation was authorized to name them.

The new law did not extend the jurisdiction of the Board beyond the employees engaged in train operation or train service, but it added a provision which went a step beyond mediation toward compulsory adjudication of certain kinds of disputes. Whenever a controversy arose over the meaning or application of any agreement, that had been reached through mediation under the provisions of the act, then either party to such agreement might apply to the Board for an expression of opinion on the question and it was obligatory upon the Board, upon receipt of such request, to give its opinion as soon as practicable. This would have made the Mediation and Conciliation Board a quasi-judicial body for interpreting and applying agreements reached through mediation similar to the present National Railroad Adjustment Board. But the law said nothing about the opinions of the Board being binding and provided no method of enforcing the opinions.

On the other hand if any difference of opinion arose over the meaning or the application of an arbitration award, provision was made for rulings that would have the same force and effect as the original awards. But such rulings could be secured only by reconvening the Board of Arbitration at the joint request of both parties.

The report of the Board of Mediation and Conciliation for the period from 1913 to 1919 showed that the Board had handled 148 cases involving 586 railroads and over 620,000 employees. Seventy of these cases were adjusted by mediation alone, 21 by mediation and arbitration, and 19 were adjusted by mutua agreement of the parties, after the Board's services had been invoked. In 1917 the railroads were taken over by the Government, and most of the remaining cases were handled by the Railroad Administration.[4]

The Newlands Act definitely established mediation, under prescribed conditions, as the primary and most effective method of government intervention in railway labor disputes. But the experience with this act also revealed its limitations, and made plain that arbitration although useful as a second line of defense when mediation failed, had its own distinct weaknesses. The main difficulties arose from the imperfect machinery for interpreting mediation agreements and arbitration awards. The railroad brotherhoods charged that the management had assumed the prerogative of interpreting all agreements and awards. When a general movement for a basic 8-hour work day with time and a half for overtime was launched by the train service brotherhoods in 1916 and the carriers offered to arbitrate, the men refused to enter into an arbitration agreement. A threatened Nation-wide strike led to the enactment of the Adamson Act.

4. THE ADAMSON ACT, 1916

This law, approved September 3, 1916, was an attempt to settle a labor dispute by direct congressional action. When the dispute failed of adjustment under the provisions of the Newlands Act, President Wilson called both parties to confer with him, and proposed

[4] Bulletin 303, p. 51.

that the principle of the 8-hour day be accepted, while the question of time and a half for overtime is investigated by a commission to be appointed by him. The suggestion was acceptable to the employees, but the railroad officials would not grant the 8-hour day before an investigation was made.

A Nation-wide strike was announced to begin on September 4, but the President secured a promise that the strike would be called off if Congress enacted an 8-hour law in line with his proposal. He then recommended in a special message to Congress that the 8-hour day for train operatives be established by law, that a commission be created to observe the operation of the 8-hour law, and the Congress approve an increase in rates by the Interstate Commerce Commission if increased costs under the new law made this necessary. An additional recommendation proposed that the Newlands Act be amended to make it illegal to call a strike or order a lockout prior to an investigation of the dispute by a Government commission.

Only the first two recommendations were embodied in the law that was adopted. Beginning January 1, 1917, 8 hours was to "be deemed a day's work and the measure or standard of a day's work for the purpose of reckoning compensation for service. * * *" A commission of 3 was ordered appointed by the President to observe the operation and effects of this provision during a period of 6 to 9 months; and pending the report of the commission, and for 30 days thereafter, wages for the 8-hour day "shall not be reduced below the present standard day's wage, and for all necessary time in excess of 8 hours such employees shall be paid at a rate not less than the pro rata for such standard 8-hour workday."

Statements of brotherhood officials and railway executives indicated that apparently neither party was anxious to have this law enacted. But the dispute could not be resolved under the Newlands Act, and the law was frankly adopted as an emergency measure to head off the strike that threatened to stop commerce throughout the Nation. As such an emergency measure its constitutionality was later upheld by the Supreme Court.[5]

In the end, however, the dispute was actually settled not by the Adamson law, but through the good offices of a committee of the Council of National Defense in March 1917, just before we entered the World War. A lower court had declared the Adamson law unconstitutional, and the men again threatened to strike. President Wilson appointed the Council Committee and it induced the carriers to concede the basic 8-hour day as provided in the Adamson law. No doubt the passage of the law helped in this settlement of the controversy, but nevertheless it was through mediation by the committee that the final settlement was secured.

5. LABOR RELATIONS UNDER FEDERAL CONTROL, 1917–20

It was while the railroads were under Federal control during the war that principles, policies, and methods were developed for overcoming the weaknesses of mediation and arbitration as they appeared under the Newlands Act. A Division of Labor was set up by the Railroad Administration for handling the problems of labor relations and from time to time the Director General of Railroads issued orders

[5] *Wilson* v. *New*, 243 U. S. 332

setting forth policies and regulations, and creating agencies for dealing with disputes.

Since 1908 when the Supreme Court had declared unconstitutional the provision in the Erdman Act which prohibited discharge or discrimination against employees for union membership or labor-organization activity, there was no law guaranteeing the right of railroad employees to organize without interference by the carriers. The Director General restored this right by an order declaring that "no discrimination will be made in the employment, retention, or conditions of employment of employees because of membership or nonmembership in labor organization." [6] This guaranteed wage earners against interference by the carriers with the organization efforts of the employees; and not only did the well-organized train service brotherhoods grow in membership, but many classes of employees theretofore weak in membership developed strong organizations during Federal control of the roads, and were recognized and dealt with by the Railroad Administration.

Since the Government was now the employer, new methods of fixing and adjusting wages had to be developed. A commission of four members was appointed to make a general investigation of wages in the railroad industry and to make recommendations to the Director General. On the basis of the report of this investigation general order no. 27 was issued, readjusting rates of pay for all classes of employees, establishing the basic 8-hour day for purposes of compensation, and providing certain general rules governing conditions of employment. This order also created a Board of Railroad Wages and Working Conditions, whose duty it was "to hear and investigate matters presented by railroad employees or their representatives affecting—inequalities as to wages and working conditions * * * rules and working conditions for the several classes of employees * * * and other matters affecting wages and conditions of employment referred to it by the Director General." The Board's authority was only advisory. It submitted its recommendations to the Director General.

Subsequently the Director General entered into national agreements with some of the labor organizations that represented various classes of employees. These agreements covered rules, hours of service, and working conditions, and after wage awards were made by the Board of Wages and Working Conditions, provision was made for incorporating awards as wage schedules in the agreements. Such national agreements were made during the first year of Government operation with the older train service brotherhoods, extending to the whole transportation system the main rules and working conditions of the agreements formerly made with separate carriers. Later similar national agreements were negotiated and signed with the shop crafts organizations, stationary firemen and oilers, clerks and freight handlers, maintenance-of-way employees, and signalmen.

Another innovation was the creation of railway boards of adjustment with authority to make decisions in "all controversies growing out of the interpretation or application of the provisions of the wage schedule or agreements which are not promptly adjusted by the officials and the employees on any one of the railroads operated by the Government." These boards of adjustment were established by agreements of the regional directors and the executives of the labor organizations, which were adopted and put into effect in orders of the

[6] Order No. 8, Director General of Railroads Feb. 21, 1918.

Director General.[7] There were three of them: Board of Adjustment No. 1, for the train service employees; Board No. 2, for the shop crafts; and Board No. 3, for the telegraphers, switchmen, clerks, and maintenance of way employees. Half the members of each board were selected and paid by the railroads and half by the employees' organizations.

No dispute or individual grievance could be considered by any of these boards unless it was first "handled in the usual manner by general committees of the employees up to and including the chief operating officer of the railroad." If a controversy could not be settled in this manner, then the chief executive of the employees' organization and the chief operating officer of the railroad were required to refer the matter to the Division of Labor, which in turn presented the case to the appropriate adjustment board for a hearing and decision.

The orders, policies, and practices of the Railroad Administration laid the basis for many of the provisions later embodied in the Railway Labor Act.

6. THE TRANSPORTATION ACT OF 1920 AND THE RAILROAD LABOR BOARD

When the railroads were returned to private ownership in 1920, the Transportation Act of that year, made provision, in what was known as title III, for the settlement of disputes between carriers and all classes of their employees. At that time there was much industrial unrest, labor disputes and strikes were tying up industries throughout the country, and it was feared that the transportation system might be similarly affected when Federal control was terminated. A wide variety of proposals for dealing with railway labor relations were urged upon Congress, including compulsory arbitration and the prohibition of strikes.

Title III emerged from all the discussion, and it represented compromises and accommodations of many views. The provisions of title III and those concerning the United States Railroad Labor Board which it created were vague in their purposes, capable of a multiplicity of interpretations, and uncertain in their legal authority. They reflected an oversimplification of the problems of labor relations, as if disputes and strikes were the only evils involved and if these could be removed by decisions of a board or a series of boards on which all interests, including the public, were represented. Stripped of its verbiage the Esch-Cummins law, as the Transportation Act was commonly referred to, really provided only two things with respect to labor: (1) That all disputes should be considered first in conference between representatives of the carriers and of the employees and an effort made to dispose of them; (2) if they could not be so disposed of, they were to be referred to the United States Railroad Labor Board for "hearing and decision."

The duty was imposed on the carriers and their employees "to exert every reasonable effort and adopt every available means" of avoiding interruption of commerce by reason of any dispute between them. "All such disputes shall be considered and, if possible, decided in conference between representatives designated and authorized so to confer" by the respective parties. Carriers and their employees might, if they so desired and agreed, set up boards of labor adjustment, with authority to decide disputes involving grievances, rules, or

[7] Order Nos. 13, 29, and 53.

working conditions which failed of settlement in conference. But it was not made obligatory to set up such adjustment boards.

The United States Railroad Labor Board of 9 members was appointed by the President in 3 groups, each with 3 members; a "labor group" to represent employees, a "management group" to represent the carriers, and a "public group" to represent the general public interest. This Board was not authorized to mediate or adjust disputes. Its duty was to hear, and as soon as practicable and with due diligence decide, disputes involving grievances, rules, or working conditions, not settled in conference, or by a board of labor adjustment where such existed; and it was given sole jurisdiction of disputes involving changes in rates of pay not settled in conference.

To some extent these provisions were a reversion to the original law of 1888 which had been discarded in subsequent legislation. That act, it will be recalled, provided for investigations of disputes by a commission which was to make a report and recommendations. Similarly the Railroad Labor Board was required to "investigate and study the relations between carriers and their employees," its hearings in particular cases were like the hearings the temporary investigating commissions were authorized to hold by the early act, and its decisions were nothing more than recommendations, for they were not enforceable on either party and in actual practice were often flouted. The underlying idea in both acts was that the pressure of public opinion would serve to enforce the recommendations.

Very few of the principles and policies tested by experience under previous railway labor legislation were included in the title III of the act of 1920. Mediation was not provided for, although, if there is any one conclusion on which both carriers and employees will agree from the experience of the legislation prior to as well as since the act of 1920, it is the usefulness of mediation and its high degree of effectiveness. True the Newlands Act establishing the Board of Mediation and Conciliation was not repealed by the Esch-Cummins law, but that board's authority was restricted so that it "shall not extend to any dispute which may be received for hearing or decision by an adjustment board or by the Railroad Labor Board." As a matter of fact the Board of Mediation and Conciliation ceased to function when the Railroad Labor Board began operating.

Not only was the success of mediation thus ignored, but the obvious lesson of the Adamson Act appears likewise to have been overlooked. Neither employers, employees, nor the general public were satisfied with that attempt to settle a labor dispute by direct decision of the Government, yet a governmental body, the Railroad Labor Board was given authority to decide what wages and salaries should be paid to all classes of employees including subordinate officials in a privately owned industry. An attempt was made by Congress to prescribe standards by which just and reasonable pay was to be arrived at, but these were necessarily couched in the most general terms capable of many interpretations.[8] Although carriers were obligated by the

[8] In determining the justness and reasonableness of such wages and salaries or working conditions the board shall, so far as applicable, take into consideration among other relevant circumstances:
(1) The scales of wages paid for similar kinds of work in other industries.
(2) The relations between wages and the cost of living.
(3) The hazards of the employment.
(4) The training and skill required.
(5) The degree of responsibility.
(6) The character and regularity of the employment.
(7) Inequalities of increases in wages or of treatment, the result of previous wage orders or adjustments (sec. 307 (d)).

act to confer with representatives and organizations of employees, neither interference in the designation of such representatives nor coercion to quit union activity or membership was prohibited.

7. THE RAILWAY LABOR ACT OF 1926 AND AMENDMENTS OF 1934

Dissatisfaction with the Railroad Labor Board grew the longer it operated, so that by the end of 1925 both the carriers and the employees were agreed in their desire to have it repealed. A joint committee of management and railroad brotherhood representatives supported a bill which was enacted into law and entitled "The Railway Labor Act of 1926."

In the framing of this law the experience and the lessons learned from previous legislation were thoroughly canvassed by representatives of the parties directly affected, the railroads and their employees. Most of the principles and policies already discussed in connection with the amendments of 1934 were incorporated in this act, and many of the agencies and methods developed during Federal control were adapted to the conditions of private ownership.

The duty to exert every reasonable effort to make and maintain agreements, to settle all disputes in conference by conciliation if possible, and the right of employees and carriers alike to designate individuals or organizations as representatives, without interference, influence, or coercion were all included in this act. Provision was made for setting up boards of adjustment for interpreting agreements, and a United States Board of Mediation was set up for mediating disputes involving changes in wages, rules, or working conditions.

Failing in mediation, the Board was required to attempt to induce the parties to submit their dispute to arbitration, as already described; and if this failed an emergency board could be appointed exactly as in the amended act. The main changes which the amendments of 1934 made in the original act were (1) the creation of the National Railroad Adjustment Board, but system or regional boards of adjustment established by agreement of legally authorized representatives are not prohibited; (2) the settlement of representation disputes by the Mediation Board without the intervention of the carrier; and (3) clarification of the right to organize and to bargain collectively, and provision of penalties for interference with this right on the part of carriers or their agents. Aside from these changes the Railway Labor Act remains, in its essentials, the same as it was enacted in 1926.

8. BANKRUPTCY AND EMERGENCY TRANSPORTATION ACTS, 1933

Early in 1933 Congress amended the uniform Bankruptcy Act and in connection with these amendments certain labor provisions were included. These labor provisions are contained in section 77 (o), (p), and (q) of the amended act.[9]

The first subsection provided that "no judge or trustee acting under this act shall change the wages or working conditions of railroad employees, except in the manner prescribed in the Railroad Labor Act," or as set forth in a wage agreement entered into in 1932 by the railroad labor organizations and the class I railroads.

[9] Public, No. 420, 72d Cong., approved March 3, 1933.

The second prohibited such judge or trustee from denying or in any way questioning the right of employees to join labor organizations of their choice and made it "unlawful for any judge, trustee, or receiver to interfere in any way with the organizations of employees or to use the funds of the railroad under his jurisdiction, in maintaining so-called company unions, or to influence or coerce employees in an effort to induce them to join or remain members of such company unions."

The third subsection prohibited judges, trustees, or receivers from requiring employees to sign "yellow dog" contracts and if such contracts had been in effect prior to the receivership, an appropriate order must be issued to the employees stating that the contracts had been discarded and were no longer binding on them in any way.

The effects of these amendments to the Bankruptcy Act were (1) to make all roads in receivership subject to the provisions of the Railway Labor Act; and (2) to protect the right of employees on all such roads to organize and to be free from interference or coercion in the matter of their organization. At the time that these were adopted, the Railway Labor Act of 1926 had not yet been amended to provide these specific protections.

On June 16, 1933 the Emergency Railroad Transportation Act was approved, and section 7 (e) of this act provided that "carriers, whether under control of a judge, trustee, receiver, or private management, shall be required to comply with the provisions of the Railway Labor Act", and the provisions of section 77 (o), (p), and (q) of the Bankruptcy Act were also extended to all carriers.

These provisions in the Bankruptcy and Emergency Acts were apparently merely steps in the direction of guaranteeing to all railroad employees the right to organize and bargain collectively, which later was included in the amended Railway Labor Act. For, after the amendments to the Railway Labor Act had been adopted and all roads in receivership were made subject to it, the provisions of paragraphs (o), (p), and (q) of section 77 were omitted from the Bankruptcy Act when this was again amended in August 1935.

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