Report

TO

THE PRESIDENT

BY THE

EMERGENCY BOARD

APPOINTED BY EXECUTIVE ORDER 10306 DATED NOVEMBER 15, 1951, PURSUANT TO SECTION 10 OF THE RAILWAY LABOR ACT, AS AMENDED

To investigate a dispute between certain carriers under Federal management and certain of their employees represented by seventeen cooperating (nonoperative) railway labor organizations

(*N. M. B. Case No. A3744*)

WASHINGTON, D. C.
FEBRUARY 14, 1952

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LETTER OF TRANSMITTAL TO THE PRESIDENT

WASHINGTON, D. C., *February 14, 1951.*

The PRESIDENT,

The White House, Washington, D. C.

MR. PRESIDENT: The Emergency Board created by your Executive Order 10306 of November 15, 1951, pursuant to Section 10 of the Railway Labor Act as amended, to investigate and report on disputes between the Akron and Barberton Belt Railroad Co. and other carriers and certain of their employes represented by 17 cooperating (nonoperating) railway labor organizations, has the honor herewith to submit its report to you.

The Board desires to acknowledge the valuable assistance rendered in the preparation of this report by its legal assistant, Prof. Phil C. Neal, of the Law School of Stanford University, California.

Respectfully submitted.

DAVID L. COLE, *Chairman.*
AARON HORVITZ, *Member.*
GEORGE E. OSBORNE, *Member.*

INTRODUCTORY STATEMENT

This case arises out of a dispute between certain railway labor organizations and most of the railroads of the country over the request of the organizations for the union shop and check-off of dues, as permitted by the act of January 10, 1951, amending the Railway Labor Act.

The parties to the dispute are some 390 carriers, listed in list A of appendix I, and the 17 cooperating railway labor organizations, listed in list B of appendix I, which represent the nonoperating railway employes of the country. The Carriers include all those on which these organizations represent employes, except those which have already executed union-shop and check-off agreements or which have executed stand-by agreements to abide by the outcome of this controversy.[1]

The organizations are represented in this proceeding by their Employes' National Conference Committee. The Carriers are represented individually, but most of them have combined for the presentation of their cases into three groups, the Southeastern group, the Eastern group, and the Western group. The Southern Railway, the Atlanta & St. Andrews Bay Railway, and many short lines made separate presentations. The appearances for each of the parties are listed in appendix II.

This Emergency Board was created, pursuant to section 10 of the Railway Labor Act, by Executive order of the President on November 15, 1951. The Executive order appears in appendix I.

The events and proceedings which led to the creation of the Emergency Board were as follows:

On January 10, 1951, Congress enacted an amendment to the Railway Labor Act authorizing union-shop and check-off agreements upon certain terms and conditions. On February 5, 1951, the 17 labor organizations, through their general chairman on each of the Carriers on which they respectively represent employes, served on the Carriers identical notices of their desire to enter into agreements for the union shop and check-off. The notices, which were served in compliance with section 6 of the Railway Labor Act, requested that individual conferences be held on each Carrier and also requested the Carriers, if such conferences did not result in agreements, to join in appointing a national conference committee to negotiate on the request on a joint national basis.

[1] American Train Dispatchers Association is excluding the St. Louis-San Francisco Railway Lines from its request in deference to the wishes of the dispatchers on that Carrier.

Following this notice conferences were held on the various systems, as required by section 6 of the Railway Labor Act. These conferences had failed to bring about settlement of the disputes when on May 23, 1951, the organizations invoked the services of the National Mediation Board, as provided by section 5 of the Railway Labor Act. Preliminary conferences with the Mediation Board led to further negotiations between the organizations and certain of the Carriers, in the hope that the disputes might still be settled by agreement. These further negotiations resulted in union-shop agreements with several carriers, including the New York Central Railroad, the Baltimore & Ohio Railroad, and the Great Northern Railroad, but failed to settle the disputes as a whole. On August 31, 1951, the Mediation Board docketed the entire group of disputes as its case No. A–3744 and informed the parties that it would proceed with concurrent mediation on October 5, 1951. No national or regional conference committees had been established by the Carriers.

Objections to concurrent mediation by the Mediation Board were made by the Carriers, both on the ground that mediation was premature because negotiations on the individual properties had not in all cases been concluded, and on the ground that mediation should proceed on the individual properties in any event. On October 5, 1951, the Mediation Board ruled that it had jurisdiction of the dispute and urged the Carriers to designate regional carrier conference committees to deal with the organizations. It set the dispute for further mediation on October 23, 1951, and stated that mediation would proceed on a concurrent basis if regional carrier committees were not established. The Carriers failed to establish regional committees and, on October 23–25, the Mediation Board made further efforts to mediate the disputes concurrently. These were unsuccessful. On October 26, the Mediation Board attempted, as required by section 5 of the Railway Labor Act, to persuade the parties to accept arbitration. This suggestion was declined by the organizations. On November 6, 1951, the Mediation Board certified the dispute to the President, pursuant to section 10 of the act, as one which threatened substantially to interrupt interstate commerce, and on November 15, 1951, the President appointed this Emergency Board to investigate and report on the dispute.

The Emergency Board convened in Washington, D. C., on December 11, 1951, and held hearings from December 11 to December 17 and from January 8 to January 29, 1952. Extensive oral and documentary evidence was presented by both sides, oral argument was heard, and briefs were filed at the conclusion of the hearings. In the course of the proceedings the Board received requests from a number

of individuals who desired to be heard. These persons were invited to file written statements with the Board and their statements have been considered along with the other evidence in the case.

The President's Executive order directed the Board to report within 30 days, or by December 15, 1951. Full preparation and investigation of the dispute was not possible within that time and, on December 13, 1951, upon the joint request of the parties and the recommendation of the National Mediation Board, the President extended the time to January 15, 1952. A further extension was granted by the President directing the Board to file its report by February 15, 1952.

THE ISSUES

The primary issue in the dispute concerns the organizations' request of February 5, 1951, for a union-shop and check-off agreement. That request proposes an agreement providing as follows:

> (a) All employes now or hereafter employed in any work covered by the rules and working conditions agreement between the parties hereto shall, as a condition of continued employment in such work, within 60 days following the beginning of such employment or the effective date of this agreement, whichever is later, become members of, and thereafter maintain membership in good standing in, the organization party to this agreement representing their craft or class: *Provided*, That such condition shall not apply with respect to any employe to whom such membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to any employe to whom membership was denied or terminated for any reason other than the failure of the employe to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.
>
> (b) The carrier party to this agreement shall periodically, at such times and intervals as the organization party to this agreement representing the craft or class shall designate, deduct from the wages of all employes now or hereafter employed in any work covered by the rules and working conditions agreement between the parties hereto all periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership in such organization, and shall within 10 days after making such deductions pay the amount so deducted to such officer of the organization as the organization shall designate: *Provided*, That the requirements of this paragraph (b) shall not be effective with respect to any individual employe until he shall have furnished the carrier with a written assignment to the organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination of this agreement whichever occurs sooner.

This proposed agreement follows substantially the language of the amendment to the Railway Labor Act which became effective January 10, 1951. Prior to the enactment of this amendment the Railway Labor Act had prohibited agreements for the closed or union shop. The 1951 amendment, so far as pertinent here, provides as follows:

ELEVENTH. Notwithstanding any other provisions of this act, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this act and a labor organization or labor organizations duly designated and authorized to represent employes in accordance with the requirements of this act shall be permitted—

"(a) to make agreements, requiring, as a condition of continued employment, that within 60 days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employes shall become members of the labor organization representing their craft or class: *Provided*, That no such agreement shall require such condition of employment with respect to employes to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employes to whom membership was denied or terminated for any reason other than the failure of the employe to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

"(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employes, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership: *Provided*, That no such agreement shall be effective with respect to any individual employe until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner."

The proposal before us represents the organizations' effort to move under the permission granted by this amendment.

A subsidiary issue in the case is whether the dispute is one which should properly be settled on a joint or national basis, or whether it should be left solely to individual system negotiations. The Carriers have urged that individual negotiations are appropriate and have declined to appoint national or regional conference committees; the organizations insist that the matter should be settled by national agreement as in the case of other so-called national movements familiar in the recent history of railway labor disputes.

Two types of issues were presented to this Board with respect to the major proposal. One group was in the form of objections raised by the Carriers, strictly legal in nature: (1) Is the proposed union-shop agreement one which is authorized by the Railway Labor Act? (2) Would the agreement violate State laws barring or restricting the union shop?; (3) The constitutionality of the union-shop amendment to the Railway Labor Act; (4) The effect of possible discrimination by the unions as to membership; and (5) The effect of the Government seizure of the railroads.

We conclude for the reasons set forth in our discussion of these issues below that these objections do not constitute obstacles to the accept-

ance of the organizations' proposal. The Carriers also questioned whether an emergency board should as a matter of authority and policy recommend a union-shop agreement at all; this we shall consider shortly.

The other type of general issue relates to the public policy and the union shop and the merits of the proposal before us and to the safeguards and limitations that should be imposed if a union-shop agreement is recommended. These several questions will be considered under appropriate headings.

I

THE UNION SHOP

A. Governmental Policy and the Union Shop

1. *Public policy as expressed in Congressional action.*—The major part of the Carriers' case against the union-shop proposal has been designed to show that the union shop is so fundamentally contrary to accepted ideals of free individual choice that even if legal it ought not to be recommended as a proper proposal for these railroads to accept. The proposal, it is said, is "repugnant to basic concepts of individual freedom," would result in unjust "sacrifice of human rights and liberties", and would subject unwilling employes to the "monopolistic and autocratic power" of union officials. In support of this position we have been referred to a variety of laws, pronouncements, and polls reflecting opposition to the principle of compulsory unionism, and we are asked in effect to examine the pros and cons of that principle, and having done so to recommend withdrawal of the unions' proposal.

Thus the Carriers would have this Board assume responsibility for a major determination of policy on a question which involves delicate balancing of competing values and which has been the subject of frequent consideration with diverse conclusions by public bodies legislative in character. We would be loath to exercise such a judgment, and we are convinced that so large a discretion was not committed to us. Our careful consideration of the union-shop amendment, the circumstances surrounding its enactment and the arguments made in this case persuade us that Congress has foreclosed any inquniry into the broad issues of principle tendered by the Carriers. By declaring that union-shop agreements may be entered into pursuant to the provisions of the Railway Labor Act, Congress has removed from our consideration all the fundamental objections to the principle of the union shop.

The Carriers deny that this is so. The view which they urge is that Congress has only declared that the union shop is legal, not that it is consistent with public policy. Although Congress has passed on the legal question, they say this Board can and should hold that the union shop is contrary to public policy. We think this position is plainly untenable and that what the Carriers are really asking us to do is to decide in another forum the very issues which Congress necessarily and deliberately decided when it passed the union-shop amendment.

To us the notion that the agreement may be legal and at the same time contrary to public policy is very strange. Legislators ordinarily do not pass laws telling people they may make agreements which are contrary to public policy. We think that when Congress declared that union-shop agreements may be made "notwithstanding any other provisions of this act, or of any other statute or law of the United States, or Territory thereof, or of any State," it necessarily said that such agreements are not contrary to the public policy of the United States.

Moreover, the evidence shows that Congress decided the issue of policy knowingly and deliberately. All the arguments against the principle of compulsory unionism which have been placed before us were placed before Congress. It is not as though Congress had believed it was merely removing some abstract legal barrier and not passing on the merits. It was made fully aware that it was deciding these critical issues of individual right versus collective interests which have been stressed in this proceeding.

Indeed, Congress gave very concrete evidence that it carefully considered the claims of the individual to be free of arbitrary or unreasonable restrictions resulting from compulsory unionism. It did not give a blanket approval to union-shop agreements. Instead it enacted a precise and carefully drawn limitation on the kind of union-shop agreement which might be made. The obvious purpose of this careful prescription was to strike a balance between the interests pressed by the unions and the considerations which the Carriers have urged. By providing that a worker should not be discharged if he was denied or if he lost his union membership for any reason other than nonpayment of dues, initiation fees or assessments, Congress definitely indicated that it had weighed carefully and given effect to the policy of the arguments against the union shop.

There is still another consideration which seems important to us. The Carriers do not deny that it is proper for them to enter into union-shop agreements voluntarily. Indeed, some of the same Carriers which have argued before us the unfairness of compelling employees to join a union have already entered into union-shop agreements with

other unions than those involved in this case. Such action is hard to reconcile with the position that union-shop agreements are bad in principle and contrary to public policy. These Carriers are saying in effect that though there are fundamental objections to compelling an employee to join a union, these objections disappear if the employee's employer is willing to have him compelled. We find it difficult to believe that Congress refrained from considering questions of policy affecting the vital interests of individual employees and left those vital interests to be determined instead by the self-interest of employers. We think the proper view is that Congress did consider the policy questions involved in compelling union membership and itself determined what minimum safeguards the individual employee was entitled to. It would be inappropriate for us to say that Congress valued those interests too lightly or protected them too meagerly.

The short of it is that the Carriers' arguments against the principle of the union shop tend to prove too much. If they are sound and if they should be accepted by us it would result that the union shop cannot properly be adopted on the railroads at all. If it is against public policy to coerce the nonunion employees on one road, it is against it on all. Thus the arguments based on policy are of a piece with the arguments of statutory construction advanced by some of the carriers. They tend to show that Congress did a futile thing in passing the union-shop amendment—what it granted with one hand we must say it took back with the other. This Board could hardly take a position which would so completely stultify the action of Congress.

From all of this it follows that the range of considerations open for a public board in this dispute is much narrower than the Carriers would have. We must decline their invitation to review the broad questions of public policy suggested by the union shop. Whatever our own notions might be if we were legislating we are not at liberty to recognize objections which go to the heart of the action taken by Congress.

2. *The Statute as a guide respecting the merits of this dispute.*— If we cannot regard the union shop proposal as contrary to public policy it does not follow that we are to regard it as actively favored by public policy or by the statute.

As the Carriers have emphasized repeatedly, the statute is merely permissive. It imposes no duty upon the Carriers to enter into union-shop agreements. It does not say that they should do so or that it would be desirable if they did so. It does not state what circumstances would make the union shop appropriate or what circumstances would make it inappropriate. On these questions the statute is silent, so far as its language goes.

To what circumstances, then, can this Board properly look in reporting upon the merits of this dispute? Does the statute leave the Board without any guide as to the fairness and reasonableness as to the positions taken by these parties?

We are inclined to think that a partial answer may be found by considering in fair perspective the action which Congress was taking in passing this amendment to the Railway Labor Act. A common-sense understanding of the purposes of Congress requires us to look beyond the particular language of the amendment to the background and circumstances of its enactment. Among the important elements of that background are the underlying purposes of the Railway Labor Act as a whole; the history of the union-shop prohibition in the act; the development and extent of union-security arrangements in industry outside the railroads, especially under the Taft-Hartley law; and Congress' knowledge of the characteristics of bargaining in the railroad industry and the probable consequences of enacting the union-shop amendment.

Passage of the union-shop amendment to the Railway Labor Act came at the end of a period of considerable development in the status of closed shop and other union security arrangements in American industry. That period began roughly with the closed-shop proviso in the Wagner Act, extended over the war-time problems of union security and the widespread acceptance of maintenance-of-membership clauses as a normal feature of collective bargaining, and culminated in one modification of the Wagner Act proviso by the Taft-Hartley amendments. It is fair to say that the national policy toward the closed or union shop evolved and became crystallized during this period. Despite the controversy over union security engendered by the problems of World War II, and despite the opposition to the union and closed shop which sought expression in the Taft-Hartley legislation, the Taft-Hartley Act itself did not forbid the union shop but instead prescribed rather definite terms on which it could be established. Since that act did forbid the closed shop, it was in a sense all the more significant that it nevertheless recognized the place of union-security agreements of some kind. It is now well known that union-shop elections in the years immediately following the enactment of the Taft-Hartley law resulted in overwhelming approval of the union shop in virtually all the elections held. Indeed, at the very time Congress had the Railway Labor Act amendment under consideration it also had before it, and later passed, an amendment repealing the provision for special union-shop elections under the Taft-Hartley law. It is also the fact that during this period immediately preceding the union-shop amendment great numbers of em-

ployes in industry outside the railroads had come under union-shop agreements.

When Congress passed the union-shop amendment to the Railway Labor Act, therefore, it was really acting to bring the railroads into line—to let them catch up, so to speak—with the important developments concerning union security which had been taking place over the 17-year period since the prohibition against the union shop had been adopted in the 1934 Railway Labor Act. The Committee reports and the debates on the union-shop amendment strongly reflect this purpose to accord the railroad industry parity of treatment with the rest of industry. The large margin by which the legislation was approved also suggests that Congress had ceased to regard the problem as a highly controversial one and was in a sense merely following an established policy.

In addition to the significant developments in industry generally, of which Congress was certainly aware, the purposes and history of the Railway Labor Act itself must be considered. In passing the 1951 amendment, Congress, it is true, merely removed a prohibition from the law. In this sense its action was purely negative. But we must not overlook the fact that the Railway Labor Act as a whole is an instrument with strong affirmative purposes. It is not merely a chart of abstract legal rights, duties, and privileges, but a scheme designed to foster sound labor relations in a critical industry. As we have already emphasized, its overriding purpose is to avoid industrial strife and promote the orderly settlement of disputes between employer and employe. It represents the current stage of development in a long effort to improve the mechanisms and institutions for achieving these goals. All its provisions are pointed strongly toward these goals.

We cannot assume, therefore, that Congress enacted the union-shop amendment without due regard for these positive purposes of the Statute. We cannot assume that Congress granted a permission which it thought was, or might be, a serious qualification of the underlying theories and principles of the act as a whole. Although it stated that the permission was granted "notwithstanding any other provisions of this act," Congress must in fact have regarded the permission as thoroughly consistent with the dominant principles of the act. Indeed, it is reasonable to suppose that Congress would not have granted the permission unless it had believed that union-shop agreements might even further the affirmative purposes of the act. That such a belief would have been plausible is indicated by the following statement of the Supreme Court with reference to the relationship, under

the Wagner Act, between the closed-shop proviso and the basic purpose of the act:

> One of the oldest techniques in the establishment of collective bargaining is the closed shop. It protects the integrity of the union and provides stability to labor relations. To achieve stability of labor relations was the primary objective of Congress in enacting the National Labor Relations Act (*Colgate-Palmolive-Peet* v. *N. L. R. B.*, 338 U. S. 355, 362).

All these considerations impel us to believe that Congress was doing something more than declaring union-shop agreements legal when it passed the 1951 amendment. It was according such agreements a recognized place in the structure of industrial relations in the railroad industry. True, it did not attempt to encourage the making of such agreements or declare them affirmatively desirable. But it did contemplate and accept the possibility that these agreements would become a normal aspect of labor relations in at least some parts of the railroad industry, and it regarded that development as thoroughly consistent with the important objectives of the Railway Labor Act. To us these inferences are not unimportant in appraising the reasonableness, as distinguished from the legality, of the Organizations' proposal in this case.

There are still other factors which strengthen this evaluation of Congress' action. Congress was not legislating in a vacuum or passing a law to deal with remote contingencies. It was dealing with a specific industry. It was acquainted with the general structure of labor relations and the collective bargaining processes of the industry. It could not but realize the uniform patterns which tend to emerge from the practice of national handling of important labor issues. Indeed it was specifically and emphatically advised by several of the Carrier spokesmen that passage of the amendment would mean enactment of the union shop for the whole industry. And even if these statements were to be discounted as advocacy, Congress was in no doubt as to the intention of the unions to press vigorously for the union shop on a national basis. Congress cleared the path for such uniform national treatment of the issue by enacting that State laws against compulsory unionism should not stand in the way of agreements on the railroads—departing in this respect from the model of the Taft-Hartley legislation. But Congress did not stop there. It provided detailed terms on which union-shop agreements might be made, dealing not only with the problem of discrimination and arbitrary union action against members but also, and in careful detail, with the problem of dual membership in the operating phases of the industry. And all this Congress did with thorough knowledge of the facts concerning the current status of the unions on the railroads.

The members of its committees, at least, were fully informed through statements and cross-examination at the hearings on such topics as the number of union members among railroad employes, the basis for determining union policy on the union-shop issue, and the reasons why the unions considered the union shop necessary (reasons, incidentally, which closely paralleled the ones presented in this case).

In the face of all this, it would seem naive to suppose that Congress enacted the amendment without reference to the specific conditions then prevailing (and substantially unchanged at this time) in the railroad industry. We cannot disregard this when we consider what circumstances may make it appropriate to enter into a union-shop agreement. Surely it must have been the judgment of Congress that such circumstances were present at least somewhere in the railroad industry. Yet the position of the Carriers in this case seems to be that there are no circumstances presently in view which would make a union shop appropriate in the railroad industry. We are forced to conclude that their position is at odds not only with the deeds (if not the words) of members of their own industry, but also with what Congress manifestly contemplated when it passed the union-shop amendment.

B. The Board's Position as a Government-Appointed Agency

Carrier representatives advanced the proposition that a Government body should not under any circumstances order or recommend any form of compulsory union membership, and particularly not the union shop or the closed shop, finding support for this position in statements of certain wartime agencies, notably the National Defense Mediation Board, the 1943 Sharfman Emergency Board, and the National War Labor Board.

Considering the functions of this Emergency Board and the circumstances and purposes for its creation, we are of the opinion that such a view is most untenable.

The emergency-board technique was devised to lead collective-bargaining disputes on the railroads to reasonable conclusions without impairment of commerce, in the public good. It represents outstandingly a recognition of the rights of the public, in the face of differences which the industry and the labor representatives would be unable to resolve, without depriving the country of essential transportation service. It is clearly an aid to or an extension of collective bargaining.

The emergency board is an instrumentality originating in the Railway Labor Act, and is merely one step in the procedures established by the act. It is not used until it is found that a dispute

remains unadjusted, despite the application of all other provisions of the act. As the final step in a series of procedures, it is governed by the general provisions of the act as a whole. The general purposes of the act are objectives which apply to emergency boards as well as to all other administrators of the act. These include avoiding any interruption to commerce and providing for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions. It has been suggested that the disputes contemplated would not encompass those over union security. The answer suggests itself in the first purpose of the act, namely, to avoid interruptions to commerce. If further technical justification is desired, it may be found in two facts evident on the face of the act. A dispute concerning *rules* is a dispute over the provisions to be included or already included in the agreement, other than the wage schedule, the word "rules" having this broad meaning in labor relations in the railroad industry. Moreover, in section 5 First, under the heading "Functions of Mediation Board," it is stipulated in subsections (a) and (b) that the services of the Mediation Board may be invoked, not only in disputes concerning changes in rates of pay, rules, or working conditions, but also "in any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused." This is a description in the broadest terms of all kinds of disputes other than those over the application or meaning of provisions of an existing agreement.

Section 10 of the act describes the final procedure under the act. It states:

> If a dispute between a carrier and its employes 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.

The dispute which the Mediation Board may pass on to the President, and which he in turn may delegate to an emergency board is obviously one of the types described in section 5, for the handling of which the services of the Mediation Board may be invoked in the first place.

There can no longer be any serious question as to whether a dispute over union security is a proper subject of collective bargaining. There are now collective bargaining agreements affecting millions of American wage-earners which provide for compulsory union membership. One would have to be most naive to believe that such provisions were not the results of demands by the unions and of collective bargaining on the subject thereafter.

In *Order of Railroad Telegraphers* v. *Railway Express Agency*, where the Supreme Court had occasion to consider the scope of collective bargaining contemplated under the 1926 Railway Labor Act, it stated:

> Collective bargaining is not defined by the statute which provided for it, but it generally has been considered to absorb and give statutory approval to the philosophy of bargaining as worked out in the labor movement in the United States (321 U. S., 342, 346).

Additional support for the proposition that union security is a proper subject of collective bargaining may be found in the *National Liquors Company* v. *N. L. R. B.*, 309 U. S. 350, 360, and in *N. L. R. B.* v. *Jergens Co.* 175 Fed. 2d 130, certiorari denied 338 U. S. 827 Ninth Circuit, 1949.

When the 1951 union-shop amendment to the Railway Labor Act was under consideration by Congress, not only were all the arguments of principle and policy thoroughly reviewed in the committee hearings or on the floor of both Houses, but there were many general discussions concerning the act as a whole. Congress was fully aware of the provisions of the Railway Labor Act as to the purposes and functions of emergency boards under the act. In electing to make union-shop agreements permissive thereafter, nothing can be found in the statute or in the legislative history of the amendment which even remotely suggests that the Congress intended to set disputes between carriers and labor organizations over union shops apart from all other kinds of disputes. If the Congress meant to exclude disputes over the union shop from the procedures of the act for the treatment of disputes, including the emergency board provisions, it is not unreasonable to believe it would have said so in the statute.

When the wartime agencies expressed their doubts as to whether a Government agency should affirmatively order or recommend the union shop, it must be remembered that they were functioning in a setting peculiar to their times. The maintenance of membership which the National War Labor Board directed in numerous cases was itself an innovation at that time. In some respects it was more severe than the type of union shop here proposed. For the term of the contract, which was 1 or 2 years, employes who were members of the union had to continue their membership in order to retain their jobs. Expulsions from the union for any reason during the term of the contract, however capricious or arbitrary, required the discharge of the employe. Under the request before us, discharge would be required only if expulsion from the union is due to the failure to pay dues, initiation fees, or assessments. Having themselves pioneered in the field of union security, it is difficult to accept as final and

binding the views of the wartime agencies that Government agencies should not order or recommend union shops. Surely, the progress which their own action typified hardly reflects a sound belief that no further progress need ever be made, regardless of developments thereafter.

The 1943 Sharfman Board has been cited as authority that our Board should not assume the right to recommend a union shop. In the first place, that Board was careful to point out that it was confining itself solely to the circumstances then present, and it did not say that a Government agency should not investigate and make a recommendation on the subject. It may be seriously questioned whether an *ad hoc* emergency board is truly a Government agency at all. In the second place, when the Sharfman Board had the union-shop question before it the Statute explicitly prohibited the making of union-shop agreements, and that Board was considering a request that it advise the President to set aside this statutory prohibition, under his war powers, or that it recommend to Congress that it change the act, so that Government action rather than a simple suggestion to the parties was the end sought at that time. Since then the act has been amended, and the issue before us is, therefore, of an entirely different nature. We do not regard the observations of the Sharfman Board as applicable to the facts before us.

The emergency board investigates the disputes and reports its findings and recommendations to the President. While it is hoped that its report will be influential in suggesting a basis for settlement to the parties, it is important to note that the board makes no directive order and it issues no binding award. The board is the creature of the Government but does not wield its authority. It still remains for the parties to reach an agreement.

The instrinsic nature of the procedure calls for submission to such a board of any all types of disputes over changes in existing agreements between railroad management and labor which threaten to interrupt interstate commerce. It follows, therefore, that if a dispute over union security is submitted to an emergency board, the board must be expected to make findings and recommendations with respect thereto, just as it does as to any issue before it. No question is raised over the right of an emergency board to investigate and report on disputes over wages, hours, or other conditions which may involve great costs or major changes in methods of operation. If a dispute over union security is not to be entertained at all, or must under any and all circumstances lead only to one finding, namely, that the board cannot make a favorable affirmative recommendation, then it is clear that a sanctity is thereby given to this issue which is superior even

to the desire to avoid the threat to the public welfare. Congress certainly cannot be charged with leaving interstate commerce unprotected save by the chance of amicable settlement between the parties—something Congress has been unwilling to do in the railroad industry for at least 25 years.

It would ill behoove such a board to report back to the President that, irrespective of the reasons for its creation, however imperative, and without finding any support therefor in the Statute to which it owes its existence, it holds it to be improper to make any finding or recommendation on the sole dispute referred to it, except one favorable to industry.

We conclude, therefore, that we are under a duty to consider the proposal before us on its merits.

C. The Merits of the Specific Proposal

To the extent that Congress has expressed or indicated a policy with reference to the union shop in the railroad industry, it is clearly beyond the scope of our authority to reconsider that policy. Many of the arguments most strongly advanced by the Carriers would require that we do so. Many of the objections we have received from individual employes are also of this nature. In fact, some of them are in the form of copies of protests which were filed with the congressional committees when the 1951 amendment to the Railway Labor Act was under consideration. We conceive it to be our function solely to investigate the conditions and circumstances now found in the industry as they pertain to the 17 labor organizations before us and to the employes whom they represent, and to determine what to report to the President as the appropriate course the Carriers and the Organizations should now follow. The proposition advanced by some Carrier representatives that, despite the 1951 change in the Railway Labor Act, under no circumstances whatsoever should a union-shop contract be recommended by an emergency board, must be emphatically rejected.

Our consideration will exclude the arguments advanced for or against the present proposal for a union-shop agreement which go to the questions of policy or principle which have now been determined by the Congress. The legislative policy is an important and unalterable fact before us.

Some of the arguments combine to a degree circumstances now said to be peculiar to the railroad industry with contentions relating to general principle. In discussing such points we desire to emphasize that we are not undertaking in the slightest to pass on the questions determined by Congress.

The Carriers urge that these nonoperating employes' organizations do not need the union shop since they are old, well organized, and entirely secure unions, with representation rights on almost all the railroads of the country. These unions have conducted themselves properly, and have not engaged in undemocratic or dishonorable activities. There has not been a strike conducted by any of them on the railroads for more than 25 years; and yet there was no question but that they have effectively and conscientiously protected and advanced the interests of the employes for whom they speak. It would seem that their stability and effectiveness and their sense of responsibility would be reasons for rather than against their right to have union-shop provisions in their agreements. It was just such tests that were applied by the National War Labor Board in judging which unions it should give the benefit of maintenance of membership or in certain cases even the full union or closed shop. It is interesting to speculate on what the position of the Carriers would now be if these unions were weak, unstable, or uncertain of their standing.

Security may be a fleeting quality. In 1920, under the encouragement and protection of Federal control, these unions attained their highest degree of strength and influence up to that time, representing on the average probably 80 percent of all employes within their respective crafts or classes. Yet 3 years later they were struggling for existence, and as a matter of fact lost their positions on railroad after railroad in the face of company unions or complete disorganization. In some instances they were unable to regain representation rights for 10 or 15 years. Regardless of the reasons of this decline in fortunes, the fact is indisputable that it occurred.

Management representatives maintained that since compulsory union membership was forbidden by law in this industry for 17 years it is unfair to require an employe who accepted work on a railroad with the knowledge of this prohibition to join a union now, that this is changing the rules in the middle of the game. The answer which immediately suggests itself is that there could by this token never be a union shop in this industry. If the effect of the prohibition is carried forward then the same position could be taken for the employes who enter the service hereafter, and so on. The same argument could be made in every industry which first faces a request for a union shop, yet history shows clearly that very little weight has been given to it. In 1951 the Bureau of Labor Statistics found from a study of well over 2,500 collective bargaining agreements made in a great variety of industries that 61 percent had provisions for the union shop. More pertinently, perhaps, several air transportation companies, which are also governed by the Railway Labor Act, have not

been influenced by this point and have made union-shop agreements since the 1951 amendment to the Railway Labor Act, and the same is true of a substantial number of railroads about whom more will be said presently.

Great emphasis was placed by Carriers on the desirability of preserving the right of employes to refrain from joining unions or to withdraw if they dislike the activities or policies of the union. To require them to join, the Carriers say, might impair the loyalty of some of the employes to their employer. This argument goes essentially to the validity of the compulsory union membership in general. It was pressed before the congressional committees and yet it did not dissuade the Congress from enacting the 1951 amendment. Insofar as it is contended that it has special application to these nonoperating employes, it should be discussed.

It must be remembered that these seventeen nonoperating employe organizations now hold representation rights on the railroads before us pursuant to the Railway Labor Act, by virtue of which they have both the right and the duty to represent all employes within their respective classes and crafts. They are prohibited by law from shirking their obligation to all employes, including nonmembers. Accordingly, for all practical purposes they control the economic destiny of the employes within their respective groups, nonmembers as well as members, subject to being held to account by their members directly within the union and by others perhaps by resort to the courts. When such authority is reposed in an organization by law it would seem that the affected persons would want to exercise all the rights which membership would give them in formulating the union's aims and policies and in directing the strategies and courses to be followed.

It would also seem that if an employe's wages and hours and other working conditions are to be bargained about by a union, the employer would want the employe to have something to say about the matter as a voting and participating member of the union. The problem of split loyalty would arise more logically at the time the organization is given the task of helping to establish the terms of the worker's employment rather than when he is asked to join the organization. If a union is following an ill-advised or harmful course, why shouldn't the persons affected thereby who are qualified to do so become active members and express their criticism and displeasure? We are told that these unions have governed themselves honorably, that they have not resorted to practices which have brought notoriety and discredit to certain other unions. All the more reason, then, why employes who are vitally concerned in what course these unions propose to follow should become voting and active members. To suggest

that this would not be an effective approach is to indict democratic processes as a whole, a conclusion to which we are certainly not ready to subscribe.

If resignation rather than discussion, debate and the use of the ballot is restored to, then the very purpose of the resignation will be lost. The field will be left in the hands of those who advocate the undesirable policy or activity and under the representation rights given the organization by the Railway Labor Act, all employes, including those who resigned, will then surely be bound and affected by the very policy or activity which prompted them to withdraw.

It may be observed that most employes are now union members. One would think that their loyalty to a more restricted, fraternal type of union which they voluntarily joined would be stronger than the loyalty resulting from enforced membership in a union which has practically all the employes in it.

Yet our investigation has revealed no specific evidence whatever of any impairment of the loyalty of employes who are now union members. On the contrary, we have heard direct testimony that one of the unions before us, the Brotherhood of Railway Clerks, which is particularly concerned with this problem of possible split loyalty because of the character of some of the positions covered by its agreements, has a definite policy of insisting that the employes' duties and obligations to the employer must never be questioned or interfered with by the union.

There is the likelihood that with general membership will come a broader representation, the expression of more varied views, and a better rather than lesser control over the activities of the leadership.

The specific question posed by management as to whether there are not some types of positions which should be regarded as peculiarly part of management and hence incompatible with union-shop requirements is considered under the heading of "Coverage" in section E 1 of this report.

One further thought on this subject. The impression must not be left that refusals to join these unions or resignations from them have been mainly for the reason that their policies or principles have been questioned. We have information, both in the form of testimony at the hearings and letters from protesting employes that a not uncommon reason lies in the unwillingness of the union to prosecute grievances or claims which it does not deem to be meritorious. Individual employees disappointed by such decisions of union committees are now among the most outspoken critics of the unions. Whenever such screening is done unhappy critics will be made, but this is not a sound argument against requiring the employe to continue his membership.

Management, we should suppose, would want these screening operations to be continued and to be used as objectively as possible.

Some of these unions are very old as the labor movement goes, running up to 50 years or more, some have been active on large numbers of Carriers, with interruptions, for almost their entire existence and particularly since the Railway Labor Act was enacted in 1926. The Supreme Court has spelled out the definite legal and equitable duty on them to protect the welfare of all employes within their respective coverages, including nonmembers. As far as these 17 organizations are concerned, these duties appear reasonably to have been met. It seems odd, then, that some carriers should still insist on referring to these unions as "outsiders." The Carriers accept them as an integral part of the industry in addressing and hearing from their employes with respect to the terms and conditions of employment. Carriers have not hesitated to move through these unions on certain occasions for wage reductions, nor have they hesitated to enlist their aid when the interest of the industry required legislative attention.

In the same vein is the labeling of dues and other payment by members as "tribute." It is estimated that the charges of none of these unions have exceeded the equivalent of 3 cents per hour. Measured against benefits attained of various kinds through concerted and organized efforts, such charges certainly are not extreme or unreasonable. These unions in recent years have made public their statements of income and expenditures, and they assured this Board on the record that their charges to members will merely be such as will be necessary from time to time to continue their normal operations. Rather than to label as tribute to the unions the membership dues and other fees, one might think in terms of a fair description of the unwillingness of some employees to pay their share toward the expense of operating and maintaining the union which looks out for their welfare. The legal expression "unjust enrichment" comes to mind, and in many respects seems to be a fair description of the fact. This doctrine was urgently presented to Congress when the union-shop agreement was under consideration, and apparently made a strong appeal. Throughout our hearings it was referred to as the problem of the "free-rider."

Individuals who do not share with their fellow employees the cost of the union's activities, the benefits of which they are perfectly willing to accept, present a problem in equities which is very real. They incur the displeasure and resentment of those who are members, and this may cause frictions and feuds which will lead to disunity in the normal causes of the employees, a result definitely not in keeping with the purposes of the Railway Labor Act.

The Carriers devoted some time to a description of excesses and of disreputable behavior on the part of certain unions and union leaders in some other industries. The impression they sought to convey was that such activities resulted from too much power in the hands of the unions. The union shop, they pointed out, would enhance the power of the labor organizations before us. Nevertheless, they prefaced this argument, and repeatedly restated, that none of the descriptions of these unions or union leaders, who are foreign to the railroad industry, apply in the remotest to any of the 17 nonoperating employee unions involved in our case or to any of their leadership.

The inferences to be drawn from such an arugment leave us completely unimpressed. Much more to the point is the behavior of these very unions over the course of many years during many of which, by the Carriers' own testimony, they have been very strong and influential and have nevertheless conducted themselves in an exemplary manner so far as ethics and honorable representation are concerned. It is also noteworthy that several of these unions represent large numbers of people who work in other industries, in many of which they have had union-shop agreements for years, and still the Carriers find no evidence of misbehavior on their part. The Carriers fail to mention the favorable and satisfactory experience in labor relations of many other industries in which unions have for a long time had closed or union-shop agreements. Nor do they make any reference in some of the notorious illustrations they give to the part played by some of the managements in those industries. The syllogistic type of reasoning in this argument of the Carriers could lead to some strange conclusions.

It was urged by the Carriers that the opposition to compulsory union membership on the part of railroad employes is so strong that many will forfeit their jobs rather than to join. Because of the specialized skills of railroad workers, the Carriers contended, this would be most unfair to them, and it would also deprive the Carriers of valuable trained employes. In our inquiry into this contention we were fortunately not required to look into the experience in outside industries, and from that to speculate concerning the parallels or dissimilarities on the railroads. A number of railroads have made union-shop agreements with operating unions, including several of the railroads involved in the dispute before us. Other railroads have made such agreements with the very unions in our case. Information was given to us by the labor representatives as to the number of employes who declined to join the nonoperating unions, and we were furnished similar information by the employers as to what happened

in this regard on several Carriers which have made union-shop agreements with other unions.

On the New York Central System there are approximately 26,000 employes covered by the union-shop agreement of the Brotherhood of Railway Clerks. Since the union-shop agreement was made a few months ago some 27 employes have left the service of whom 17 were discharged, because of their unwillingness to join. On the Lehigh Valley only 1 employe subject to the Clerks' coverage was discharged, and on the Baltimore & Ohio a total of only 8 notices were served and these are still pending, as compared with a coverage of some 11,000 employes on this railroad. The experience of the Brotherhood of Railway Signalmen was that only 3 men resigned, 3 were denied membership, and none were discharged, out of a total of about 3,000 employes on the railroads with whom it has made union-shop agreements. The Order of Railroad Telegraphers has about 5,000 employes within its coverage on the New York Central; the total in doubt as to joining the union is 14, but their cases are still pending. On the Great Northern no telegraphers have either resigned, been discharged, or denied membership. The total at work in this group was about 1,850, according to the M–300 report of October 1951. The Brotherhood of Maintenance of Way and Equipment reported that on the New York Central only seven employes declined to join the union, five quitting their jobs and two being discharged. The October 1951 midmonth count showed about 16,000 employes in these Maintenance of Way classifications. The Shopcraft Unions reported that their general experience has been that action had to be taken on the average only as to 1 or 2 employes per 1,000.

The Carriers introduced evidence concerning the Pullman Car Porters. Out of 9,150 employes in active service (the full roster being 11,300) only 8 employes refused to join the union. The Pullman Company representative testified that persuasion had to be used by management people as well as union representatives to get some to join, but the result was as indicated.

The Carriers also provided some information with reference to union-shop experiences on four western railroads which have such agreements largely with operating organizations. Unfortunately, there was not available an accurate statement as to the number of employes who resigned or quit because of the union membership requirement. We were given the total number of resignations, but these included those which may have occurred regardless of the union shop, as well as those caused by the union shop, and we have no way of distinguishing them. On the Colorado & Southern three union-shop agreements were made in September 1951, with the Engineers, the

Firemen, and the Trainmen. No employes had to be discharged, and in the 3 groups there were 38 quits, out of 366 employes, but we must remember that, as throughout this paragraph, the quits include those which had nothing to do with the union shop. In August 1951, the Northern Pacific made a similar agreement with the Trainmen; of 2,460 employes, the Brotherhood requested that 12 be discharged, and there were 166 resignations. The Chicago, Burlington & Quincy made four union-shop agreements between June 1 and August 16, 1951. Of 320 Dining Car Employes 6 were discharged; of 737 Conductors none were discharged; of 3,030 Trainmen 19 were discharged; of 1,466 Firemen 2 were discharged. In September and October 1951, the Denver, Rio Grande & Western made four such agreements. Of 458 Firemen there were 15 resignations and 8 requests for discharges; of 446 Switchmen there were no discharges but 25 resignations; of 556 road Trainmen there were 7 requests to discharge; of 414 Engineers there were no resignations and no discharges. It should be stated that the total employment figures were obtained from the October 1951 M–300 report of the Interstate Commerce Commission.

The Southern Railway System lines made three separate union-shop agreements with the Brotherhood of Railroad Trainmen, one on August 15 and the others on September 1, 1951. Out of a total of 3,800 employes, no discharges were necessary, as reported by the representative of that Carrier.

Based on the most complete and competent figures which show the experience on representative carriers with broad and varied classes of employes, it appears that the compulsion to join a union has presented difficulties leading typically to the termination of employment by about one-tenth of 1 percent of the Employes. This is far less than the fears expressed by the Carriers would lead one to expect. It is true, of course, that it is exceedingly unfortunate if even a single person loses his job because of the union shop. On the other hand, the percentage of losses due to the change generally has been relatively insignificant and the impact on the work force as a whole has been negligible. The experience to date suggests that compulsory union membership on the railroads does not arouse among the employes more violently unfavorable reactions than are encountered in other industries, and that it is not likely that it would do undue violence to the employes on the Carriers in terms of jobs vacated or lost.

The subject of discrimination in membership and membership privileges was raised by the Carriers. The legal aspects of this problem are discussed in the part of this report dealing with the legal issues, under the section designated as D5. We arrive there at the conclusion that Congress resolved the problem by protecting the jobs

of employes who are denied membership for any reason other than the nonpayment of dues, initiation fees and assessments and declined to deny the right to the union shop to unions which may practice some form of discrimination.

It happens that these 17 unions are now apparently quite well behaved with respect to discriminatory practices. In the past some of them have either denied membership or have given limited membership privileges to nonwhites. Such provisions have been completely eliminated in recent years from the constitutions and laws of all these organizations, except the Order of Railroad Telegraphers, and the Order of Railroad Telegraphers by action of its convention has authorized its president to waive this restriction, and he has waived it. There are in fact only 6 Negroes in the telegrapher craft or class in the entire country, out of a total of about 50,000. Two of them have applied for membership, and pursuant to the waiver put into effect by the president, they have been admitted to full membership. The others have not yet applied but will be considered if they do on exactly the same basis as all other applicants. Moreover, the Board was assured that at the next convention of the Order of Railroad Telegraphers the international officers will recommend the complete elimination of this restrictive provision from the constitution. The Brotherhood of Railway Clerks has some segregated locals. By order of its grand president, acting under his constitutional authority, Negroes are now being admitted to so-called white lodges or locals.

In general, representations were made to the Board under oath that discriminatory practices have been substantially eliminated by all the unions before us and that they intend to eradicate at their next conventions whatever traces still remain. This is most encouraging. If the desire for compulsory union membership has hastened developments along these enlightened lines, then it has served a good and constructive purpose, aside from the merits of the union shop as a sought-after part of the technique of collective bargaining. When a union is given the benefit of the union shop, it necessarily begins to approach universal membership, and by the same token its character as a series of fraternal-type lodges is changed to what may be called a quasi-public organization. This new role fixes stronger obligations on the organization to adopt, embrace, and put into practice the ideals of equality fair treatment, and democracy which our Bill of Rights and our sound national traditions exemplify.

The organizations still have the right of blackball, and they urge that this is essential to their welfare. They maintain that they must be able to reject undesirable characters in order to maintain their

institutional integrity. This is true, yet the opportunities still exist for the blackball to be used for arbitrary and unworthy purposes. We shall recommend the adoption of the general principle that exclusion from the several unions shall in practice be limited solely to employes whose records are demonstrably such as to indicate that they would be undesirable associates, and that the blackball shall not be employed for personal or arbitrary or other reasons indefensible in a union which has the obligations of an institution which has been converted into an integral and permanent segment of our economic and industrial society.

For the same reasons these labor organizations must make membership as available and easy as possible financially. The added strength and stability which the union shop gives to them is intended to enable them to discharge more effectively their obligations to the employes they represent, to the industry of which they are a part, and to the public as a whole. It is definitely not meant to give them the power to force workers to pay dues or fees in excessive amounts. We have taken seriously the assurances that this will not be done, that the financial charges will be consistent only with their reasonable requirements to pay for normal union functions and activities, and no more. It would be a breach of faith for any of these unions to increase their charges at any time beyond what is fair or reasonably needed, or for them to permit their locals or lodges to do so.

There are some restrictions on membership which had their origin in special historic circumstances related to the difficulties of organizing in former times. For example, the Blacksmiths' Brotherhood denies the right of membership to members of the State Militia or Miners' Police. Unions enjoying the benefit of compulsory membership should modernize their membership qualification requirements in keeping with the policy of keeping their membership as open as possible. We believe this type of restriction to be inconsistent with the new role to be played by the unions, and recommend that it and similar restrictions be eliminated.

The Brotherhood of Railway Clerks in article I of its Protective Laws denies to employes who are not fully covered by the working rules agreement the right to serve as chairman or member on the local, division or district protective committee, or to serve on any board of adjustment of the particular railroad. Apparently, such employes enjoy all other privileges of membership, including the right to serve on committees, and to act as delegates to conventions. The explanation of this limitation is that such members might be embarrassed if they undertook to represent an employe involved in a grievance dispute because their position with the Carrier may be such

that they would have to try to sustain the Carrier's position with respect to the cause for the grievance. This raises a legal question, involving the interpretation of section 2, eleventh, of the Railway Labor Act, particularly subsection (a). This relates to the making of union-shop agreements, and includes protective language as follows:

> *Provided*, That no such agreement shall require such condition of employment with respect to employes to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employes to whom membership was denied or terminated for any reason other than the failure of the employe to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

We do not believe it is our function to undertake to render opinions as to the legal effect of a statute, but we do believe that in arriving at conclusions as to a fair basis for settling a dispute we should consider whether the general spirit and purpose of the law are being observed. It may be held eventually by those charged with making authoritative legal interpretations that the Brotherhood of Railway Clerks is not denying to such employes membership on the same terms and conditions as are generally applicable, since they are freely accepted into membership. On the other hand, it may be held that membership necessarily implies all the rights and privileges which normally go with membership.

We have doubts as to the law and we were not appointed to resolve such legal doubts. It is our opinion, however, that, whether legal or not, such restrictions on the membership privileges of employes whom the Union desires to have compelled to join should not be continued. We know from his testimony that the grand president of the Brotherhood has the authority to waive these limitations. In all respects in which there may be arbitrary or discriminatory exclusions from membership, he has already either taken action or assured us he will do so. We believe he should take similar action as to these limitations on the membership privileges of employes not fully covered by the working conditions rules, and we so recommend.

Some of the employees may have conscientious or religious scruples against joining a labor organization. This problem was discussed at the hearings. The labor spokesmen called attention to the position of the National Labor Relations Board, the substance of which is that such an employe is deemed to have met the condition of continued employment if he tenders the amount of the periodic dues, assessments, and initiation fees even though he remains out of the union. A ruling to this effect was approved by the United States Circuit Court of Appeals, Seventh Circuit, on February 2, 1951, in *Union Starch & Refining Co.* v. *National Labor Relations Board*, 186 Fed. (2d) 1008.

The statutory provisions of the two statutes in question being the same on this point, this seems to be a satisfactory approach and should afford such conscientious objectors with ample job protection.

In disputing the opinion of labor spokesmen that the union shop would improve morale within the employe ranks, the Carriers argued that morale has been satisfactory to the present time and if membership were made compulsory this very compulsion would probably affect the morale adversely. The same argument was made before the congressional committees. Moreover, it logically calls for an inquiry into the nature of the compulsion. The Carriers earnestly insist on their right to make union-shop agreements as a matter of free choice, holding in fact that such agreements must remain strictly a matter of choice with the Carriers. Some of the Carriers in this proceeding have made such agreements with other unions. Other railroads have made them with these 17 unions. Upon what theory, it must be asked, is the compulsion on the nonunion employes any the less if the employer decides that for good reasons of business or expediency it should enter into a union-shop agreement? The minority employes are given no right to express their preference or their willingness. If compulsion or the denial of individual freedoms is the issue, how is this grievance satisfied by leaving the decision to the employer?

Many of the affirmative reasons for favoring the present union-shop proposal have already been mentioned in our foregoing discussion of the arguments raised by the Carriers in opposition. We shall now in summary form refer to the other persuasive points which favor the unions' proposal.

These unions were legally denied the right to have union-shop agreements from 1934 to 1951. While there were differences of opinion among the leadership of these and other railroad labor organizations from time to time concerning union shops, the principal reason for the legal prohibition was given on August 9, 1950, by the Senate Committee on Labor and Public Welfare in its report to the Senate on the union-shop amendment to the Railway Labor Act which was then under consideration, in the following language:

> The present prohibition against the form of union security agreements and the check-off were made part of the Railway Labor Act in 1934. They were enacted into law against the background of employer use of these agreements as the basis for establishing and maintaining company unions, thus effectively depriving a substantial number of employees of their right to bargain collectively. It is estimated that in 1934 there were over 700 agreements between the carriers and unions alleged to be company unions. These agreements represented over 20 percent of the total number of agreements in the industry.
>
> It was because of this situation that labor organizations agreed to the present statutory provisions against union security agreements. An effort was made to limit the prohibition to company unions. This, however, proved

unsuccessful; and in order to reach the problem of company control over unions, labor organizations accepted the more general prohibitions which also deprived the national organizations of seeking union security agreements and check-off provisions. It is thus clear that these organizations did not oppose union security and check-off agreements as such, but merely their use as a means of carrier control over the bargaining process.

The statutory prohibition has been withdrawn by Congress. Considering the prevalence of such agreements in American industry, the question may be asked, why should the benefit of the union shop now be withheld from these unions? From our foregoing discussion it is apparent that the reasons advanced by the Carriers have not been very convincing to us.

We find in general that the recent trend has been in favor of union shops. The Taft-Hartley law requirement of special elections has been withdrawn by Congress, which found that the overwhelming sentiment of employees voting on the subject has been in favor of union shops. Comparing the fiscal periods 1949–50 and 1950–51, the Bureau of Labor Statistics found from an examination of over 2,000 labor agreements that the percentage providing for the union shop rose from 50 to 61 percent; that in the transportation industry there were 67 percent in the later period as against 59 percent in the earlier, in transportation equipment 59 percent as against the prior figure of 45 percent, and in public utilities 56 percent with union-shop provisions as compared with 49 percent the year before.

We also learned that in other circumstances numerous carriers have recognized the contribution toward permanence and stability which may be made by compulsory membership of their employes. Thus, prior to the 1934 amendment to the Railway Labor Act, as indicated in the above quotation from the report of August 9, 1950, of the Senate Committee on Labor and Public Welfare it was not unusual to find carrier-supported unions, many of which had compulsory membership requirements. This was pointed out in the statement of December 7, 1933, addressed to the Regional Coordinating Committees by the Federal Coordinator of Transportation. There are also a great many compulsory hospital plans or associations in the railroad industry. We do not question the value of the service rendered by these plans, but we do note that membership is compulsory and that generally the dues are checked off. Over 400,000 employes in the railroad industry are subject to compulsory membership in these plans.

It was also developed at the hearings that several airlines also governed by the Railway Labor Act, have since the 1951 union-shop amendment entered into such agreements with employes.

It was also shown that several organizations before us have union-shop agreements in other industries. In 83.4 percent of their collec-

tive bargaining agreements the Machinists have union-shop provisions, the actual number running to many thousands of individual firms. The Boilermawkers now have union shops in over 90 percent of their contracts, and the Blacksmiths in 95 percent. Others which commonly have union-shop arrangements other than in the railroad industry are the Electrical Workers, the Hotel and Restaurant group, the Firemen and Oilers, and the Clerks.

A fact that carries great weight with us is that union-shop agreements are no longer uncommon even on the railroads, including a number of the Carriers who are contesting the right of these 17 labor organizations in this proceeding. Some 40 Carriers employing over one-third of all the railroad employes of the country now have union-shop agreements with at least one of the unions on their properties. Most significant is the fact that railroads employing over 215,000 people have now made union-shop agreements with some or all of the very 17 labor organizations which in this proceeding are urging the acceptance of a similar proposal by the other Carriers. Included in this last group of railroads are the Great Northern, the New York Central, the Baltimore & Ohio, and the Lehigh Valley.

We thus find that, despite the strong protests made before us, a most representative segment of the railroad industry itself voluntarily has adopted the union-shop principle in the year since it was made legal to do so. The Carriers which have done so include not only the four important railroads named immediately above, but also other major carriers like the Burlington, the Denver and Rio Grande, the Northern Pacific, the Colorado & Southern, the Illinois Central, the Southern, the New Haven, the Lackawanna, and the Pullman Co.

We are both puzzled and struck by the fact that Carriers appear before us bitterly opposing the union shop on basic principle and yet have themselves recently entered into such agreements with other unions on their properties, in fact even after the dispute before us had already been referred to the Mediation Board.

We might also point out the numerous examples of union shops on wholly or partly owned subsidiaries of the railroads, including bus and trucking operations, but this hardly seems necessary, except to the extent of observing that the acceptance of the principle of the union shop by managers of the railroad industry started some time before the 1951 union-shop amendment.

In summary, therefore, we find that the union-shop principle is well established in American industry as a whole; that Congress by amending the Railway Labor Act in January 1951, relieved the employees of the railroad industry from the denial of the right to have the benefit of this well-established technique of or aid to collective bargaining and

thereby eliminated from our consideration all the basic questions of principle or policy commonly raised in opposition to the union shop; that Congress recognized the needlessness of special elections as a condition for making union-shop agreements by eliminating this requirement from the Taft-Hartley Act; that many airlines and railroads have since the 1951 amendment clearly evidenced their acceptance of the union-shop principle by entering into a substantial number of such agreements; on the railroads in particular some 40 Carriers employing over one-third of all railroad employees have made one or more union-shop agreements. We also fail to find substance in the special reasons argued before us for denying the union shop to these nonoperating employe labor organizations in particular. We find also that the 17 labor organizations before us have advanced sound and persuasive reasons in support of their request for union-shop agreements.

D. Legal Issues

1. *Introduction.*—A substantial part of the case presented by the Carriers has consisted of legal objections to the union-shop agreement proposed by the Organizations. Indeed, one large group of carriers has rested its case almost entirely on the asserted illegality of the proposed agreement. Others, while they have given somewhat less emphasis to the asserted legal objections, have nevertheless insisted that doubts concerning legality constitute an important obstacle to acceptance of the Organizations' request.

These legal objections which were urged throughout the proceeding raised an important question concerning the duties of an emergency board. The board's statutory duty is to "investigate promptly the facts as to the dispute and make a report thereon to the President" (Railway Labor Act, sec. 10). The board is not in any sense a court. It has no power to decide any issues, legal or otherwise, and it is not assumed to have any special legal competence. Ordinarily, therefore, an emergency board might properly consider that legal issues are beyond the scope of its inquiry or report.

In this case, however, the legal objections have been so heavily relied on by some of the Carriers that we feel they constitute an aspect of the dispute which this Board should not wholly ignore. Our investigation and report would be incomplete if we failed to take account of these objections which some of the carrier parties contend are fundamental issues in the dispute. Accordingly we have given serious consideration to the legal questions raised by the Carriers. In doing so we have not attempted to decide these issues definitively as a court might do. All we have tried to do is to discover whether these objec-

tions are so serious on their face that on legal grounds alone the Board should recommend withdrawal of the Organizations' request.

We are satisfied that they are not. On the contrary, our conclusion is that most of the legal questions raised have been answered beyond substantial doubt by Congress itself, in the union-shop amendment to the Railway Labor Act, and that any problems which may remain concern the details of operation of the unions' proposal, not its basic principles. We will deal with certain of those problems of operation of the proposal later in this report.

We will discuss each of the principal legal objections sufficiently to indicate our main reasons for holding that they do not preclude a recommendation in favor of a union shop. Not all the points have been relied on by all of the carriers, but for purposes of this discussion it does not seem necessary to differentiate among them.

2. *Authorization by the Railway Labor Act.*—This entire case arises, as was stated above, because Congress in 1951 passed a law amending the Railway Labor Act by expressly permitting union-shop agreements upon certain terms and conditions. The provisions of the amendment and of the unions' proposal have been set out above. The proposed agreement follows closely the provisions of the amendment. If one looks only at the amendment itself there would seem to be no doubt that it clearly authorizes this very kind of agreement.

Nevertheless it is contended that because of other provisions of the Railway Labor Act the amendment does not have the effect which it appears to have. Viewing the act as a whole, it is argued, this kind of agreement is not permitted. In particular it is claimed that this agreement would violate the general purposes stated in section 2 of the act and the provisions of section 2, third. The general effect of these provisions is that employes are to be protected in their right to select bargaining representatives free from coercion by the employer—a purpose which in the absence of other provisions a union-shop agreement might well be deemed to violate. It is pointed out that the union-shop amendment specifically amends certain paragraphs of the act—i. e., section 2, fourth and fifth—but leaves the other provisions untouched, including the general purposes and section 2, third. The conclusion urged is that since the union-shop proposal is fundamentally in conflict with the original purposes of the act, and since those purposes have not been explicitly amended by the 1951 enactment, the act as a whole must be read as forbidding the agreement.

The question which this position immediately suggests is whether, if the 1951 amendment does not authorize the proposal under consideration in this case, it can have any effect at all, and Carrier counsel frankly admitted that the result of the argument would be that the amendment is entirely without effect.

To our minds, however, the necessary conclusion is that the argument is bad, not that the amendment is bad. We know of no principle of statutory construction which would justify treating this action of Congress as a complete nullity merely because Congress failed to iron out all the possible literal inconsistencies remaining in the statute. The language of the 1951 amendment could hardly be more explicit in authorizing the union shop. This must be taken as a basic change in its philosophy, and it is clear that the later enactment controls and that the rest of the statute must yield wherever necessary to effectuate the plain language of the amendment. This conclusion would be necessary even if Congress had said nothing at all about other provisions of the act when it passed the amendment. It did, however, expressly recognize the possibility of conflict with other provisions, not only in subsection (d) of paragraph 11 but in the very beginning of the amendment, which states: "Notwithstanding any other provisions of this act . . ."

The failure of subsection (d) to mention other provisions than paragraphs fourth and fifth is therefore of no consequence. An explanation for specifically mentioning only those provisions, however, was that they were the ones which directly prohibited agreements of the kind authorized by the amendment, whereas other portions of the act affect the problem only in general terms.

We conclude that the Railway Labor Act does beyond doubt permit agreements of the kind proposed.

3. *The union-shop amendment and State laws.*—An objection which seems to us equally without foundation is that a union-shop agreement on the railroads might violate State statutes on the subject. Here, too, the language of the union-shop amendment to the Railway Labor Act seems perfectly clear. It provides: "Notwithstanding any other provisions of this act, or of any other statute or law of the United States, or Territory thereof, *or of any State*, any carrier or carriers * * * and a labor organization or labor organizations * * * shall be permitted" to make the described agreements. Despite this language the Carriers express concern that the statute might be held not to have superseded State law and that they will be exposed to penalties and liabilities under State laws if they enter into a union-shop agreement.

We think these fears are plainly unwarranted. It is not denied that Congress has the power to make its own law paramount in this field; the only question is whether it has done so. We think there is no room for doubt. Even if the language of the amendment were less explicit than it is, the legislative history leaves no doubt as to the purpose of the amendment. Congress had clearly presented to it the

issue whether in dealing with the railroads it should follow the pattern of the Taft-Hartley Act and leave the State antiunion shop laws in force or whether it should adopt a uniform Federal rule. The proponents of the legislation pointed out that the bill was intended "to remove any doubt that Congress intends to pre-empt the field on the question of union shop." See Hearings before Subcommittee of Senate Committee on Labor and Public Welfare on S–3295, Eighty-first Congress, 2d session, 17. When the measure was under consideration in the Senate, there was introduced and thoroughly debated a proposed amendment which would have left State laws in force. This was decisively rejected.

We see no substantial danger, therefore, that this statute might be construed as leaving in force State laws prohibiting or restricting the union shop.

4. *Constitutionality of the union-shop amendment.*—The Carriers have also argued on various grounds that the union-shop amendment to the Railway Labor Act is unconstitutional.

For purposes of this case a sufficient answer would perhaps be that this Board should not question the constitutionality of a statute, especially of the statute under which the Board is created. Even though the Board is not an administrative agency in the ordinary sense, we think it would be appropriate for us to follow the practice of administrative agencies in this respect. Such agencies have generally declined to entertain arguments against the constitutionality of the statutes under which they operate.

The reason for this was given by Chief Justice Vinson, sitting on the Court of Appeals, in *Panitz* v. *District of Columbia*, 112 Fed. 39, 74 App. D. C. 131 (1940):

> The necessities of our system require the judiciary to determine the constitutionality of acts of the legislature. There can be little doubt that it represents the highest exercise of the judicial power, and one that even the judiciary is reluctant to exercise. Interruption of the machinery of government necessarily attendant on this function not only cautions the judiciary but argues as well against its exercise by other agencies. It is this consideration for the orderly, efficient functioning of the processes of government which makes impossible to recognize in administrative officers any inherent power to nullify legislative enactment because of personal belief that they contravene the Constitution.

The Carriers urge, however, that while we should not attempt to decide these constitutional questions, the existence of substantial doubts as to constitutionality should have a bearing on our findings and recommendations. They emphasize the possible liabilities for penalties and damages which they might suffer if the union-shop amendment should ultimately be held invalid.

Upon examination of such decisions of the Supreme Court as seen to bear upon the matter, however, we cannot find any basis for substantial doubt as to the validity of a statute authorizing a closed or union shop. While the question of constitutionality does not seem to have been expressly considered, the court has assumed on a number of occasions that the objections to the closed shop raise only policy considerations which are within the range of legislative discretion.

Section 8 (5) of the Wagner Act, for example, contained a proviso protecting the closed-shop. In *Colgate-Palmolive-Peet Co.* v. *N. L. R. B.*, 330 U. S. 355, the Supreme Court upheld the employer's right to discharge employes for failure to comply with a closed-shop contract, and in doing so stated:

> One of the oldest techniques in the art of collective bargaining is the closed shop. It protects the integrity of the union and provides stability to labor relations. To achieve stability of labor relations was the primary objective of Congress in enacting the National Labor Relations Act. Congress knew that a closed shop would interfere with freedom of employes to organize in another union and would, if used, lead inevitably to discrimination in tenure of employment. Nevertheless, with full realization that there was a limitation by the proviso of section 8 (3) upon the freedom of section 7, Congress inserted the proviso of section 8 (3). It is not necessary for us to justify the policy of Congress. It is enough that we find it in the statute.

In *Lincoln Union* v. *Northwestern Co.*, 335 U. S. 525, and *A. F. of L.* v. *American Sash & Door Co.* 335 U. S. 538, the Supreme Court upheld the validity of State laws prohibiting the closed shop. While these decisions do not necessarily mean that a legislative approval of the closed shop would be equally valid, such a conclusion is implicit in the decisions. As counsel for the Organizations has pointed out in his brief to this Board, constitutional arguments against the closed shop would have been the strongest kind of arguments in support of the prohibitory laws which were under attack, yet it does not appear that such arguments were urged upon by the court or, if they were, the Court failed to mention them in its opinions.

The following statements from the concurring opinion of Mr. Justice Frankfurter seem particularly relevant (335 U. S. at 546, 550–51):

> The right of association, like any other right carried to its extreme, encounters limiting principles. * * * At the point where the mutual advantage of association demands too much individual disadvantage, a compromise must be struck. * * * *When that point has been reached—where the intersection should fall—is plainly a question within the special province of the legislature.* * * *
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> * * * Whether it is preferable in the public interest that trade unions should be subjected to state intervention or left to the free play of social forces, whether experience has disclosed "union unfair labor practices" and if so, whether legislative correction is more appropriate than self-discipline and the pressure of public opinion—these are questions on which it is not

for use to express views * * * *For these are not matters, like censorship of the press or separation of church and state, on which history, through the constitution, speaks so decisively as to forbid experimentation.* [Emphasis supplied.]

While these decisions and statements are by no means conclusive, we have been pointed to no authorities which run contrary to their indications, or which afford any basis for believing that the legislature is not free to permit as well as to forbid union-shop agreements.

We are aware of no decision in which either the closed-shop proviso of the Wagner Act or the union-shop provisions of the Labor Management Relations Act have been questioned. It seems to us that it would be highly presumptuous for this Board to act on the assumption that there is doubt not only concerning the legality of agreements authorized by the amendment to the Railway Labor Act but also concerning the hundreds of agreements which have been entered into under the National Labor Relations Act and the Labor Management Relations Act.

Apart from arguments against the union shop in general, it is argued that the union-shop amendment to the Railway Labor Act is unconstitutional because it results in certain differences in the treatment of operating and non-operating employes and in differences between railroad and non-railroad employes. We think it obvious that these are differences well justified by the facts on which Congress acted, and that the contention is without merit (*A. F. of L.* v. *American Sash & Door Co.*, 335 U. S. 538, 541).

It is further argued that because of various legal questions which may arise in the application of the amendment it is void for uncertainty. While some of the problems suggested may conceivably arise, the Statute is not bad merely because it may require interpretation. If so, there would be few valid statutes. We cannot believe that there is any serious doubt that this Statute satisfies all constitutional requirements of definiteness.

Thus, we do not find such serious doubts raised as to the constitutionality of the statute, as to deter us from considering the union-shop proposal on its merits.

5. *Effect of discriminatory or arbitrary union membership requirements.*—The argument is made that even if the union shop is legal in principle, a union-shop agreement would deprive employe of constitutional rights if made with a union which excludes Negroes from membership, or otherwise discriminates with respect to membership, or which imposes arbitrary or unreasonable membership requirements.

This raises the question whether a closed or union-shop is compatible with a "closed union." We are completely in sympathy with the decisions of State courts which hold that a union-shop or closed-

shop agreement is against public policy if it results in the *discharge* of employes who are excluded from the union because of their color. (See *James* v. *Marinship Corporation*, 25 Cal. 2d 721, 155 P. 2d 329 (1944); *Williams* v. *International Brotherhood of Boilermakers*, 27 Cal. 2d 586, 165 P. 2d 903 (1946).) If we were squarely faced with such a problem here, we should have to confess to serious doubts as to the legality of such an arrangement and we should certainly be reluctant to endorse it as a fair settlement of a dispute.

But that problem is not presented by this dispute. For one thing, the facts produced in our investigation do not indicate that racial discrimination is a real problem in the particular unions involved in this case. Only one of these unions has a constitutional provision limiting membership to white employes. The testimony showed that this provision can be and has been waived by the national president of the union and that the provision will probably be repealed, on the recommendation of the president, at the next convention of the union. Other evidence showed that these labor organizations recognize their obligation to admit employes to full membership without racial discrimination and have made unusually good progress toward eradicating discrimination and that their major officials are determined to eradicate whatever vestiges still remain.

But even if the problem of discrimination were presented in serious and clear-cut form by the facts before us, we would have difficulty in finding valid legal objections to the proposal advanced by the unions. The reason for this lies in the limited effect of the union-shop agreement proposed. Under that agreement an employe who is excluded from the union, or to whom membership is not available on nondiscriminatory terms, is not to be discharged but is excused from the union-membership requirement. Indeed, this exception applies in favor of anyone who is denied membership or expelled from membership fo rany reason other than failure to pay dues, initiation fees and assessments.

Thus the discrimination, if it exists, cannot have the drastic effect which usually follows from a union-shop agreement—i. e., loss of job. The saving clauses which the proposal of the organizations would incorporate in the agreement are virtually in the language of the amendment to the Railway Labor Act:

> *Provided:* That no such agreement shall require such condition of employment with respect to employes to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employes to whom membership was denied or terminated for any reason other than the failure of the employe to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

The rights of minority employes would be safeguarded, therefore, in a way which was specifically suggested by Congress.

We cannot say that this protection is legally insufficient. It is true that preserving the job of the employe who is discriminated against does not eliminate all the effects of the discrimination.

But the difficulty with treating these effects as raising substantial legal doubts is that Congress has not so treated them. Congress gave full consideration to the problem of discrimination and evidently concluded that protection of the employe's job was sufficient to satisfy constitutional rights. Congress was asked to enact that a union which practices discrimination is not entitled to enter into a union-shop agreement at all (Senate hearings 131, 237, 302; House hearings 275, 294). It saw fit not to do so in the statute. As we have already stated, we are obliged to assume that the statute enacted by Congress is constitutional.

Even if we look beyond the statute, however, we find no directly relevant authority which indicates that Congress has failed to protect constitutional rights. In *Steele* v. *Louisville & Nashville R. Co.*, 323 U. S. 192, the Supreme Court held that a bargaining representative which entered into a collective bargaining contract which discriminated against a racial group had violated duties imposed upon it by the Railway Labor Act. The opinion also intimated that if the act were construed to permit such discrimination it might be unconstitutional. However, the court did not suggest that mere exclusion from membership in the bargaining unit would violate statutory or constitutional rights; it implied the contrary, stating:

> While the statute does not deny to such a bargaining labor organization the right to determine eligibility to its membership, it does require the union, in collective bargaining and in making contracts with the carrier, to represent nonunion or minority union members of the craft without hostile discrimination * * * (323 U. S. 192, 204).

Our attention has not been called to any subsequent decision of the Supreme Court or the lower Federal courts which qualifies the above dictum. (A decision of the Supreme Court of Kansas, *Betts* v. *Easley*, 161 Kans. 459, 169 P. 2d 831, holds that a union may not act as statutory bargaining representative and at the same time practice discrimination in regard to membership. However, we do not think we should regard this decision as a guiding precedent on the federal constitutional issue.) If the constitution does not require admission of all members of the craft where there is no union shop, we cannot say that serious constitutional doubts arise in the case of the agreements permitted by the Railway Labor amendment. The difference is primarily one of degree, provided the excluded employe is protected in his job. The *Steele* case dictum indicates that the

employe's job is entitled to greater protection than his right to participate in the bargaining process. We are not confident that the law will come to rest at this point, but we do feel—especially in the light of Congress' deliberate action on the problem—that this Board has no basis for serious doubts as to the validity of the statutory plan at this time.

What we have said in regard to discrimination serves also to dispose of the objections relating to other allegedly arbitrary and unreasonable membership requirements. So long as such requirements cannot result in discharge of an employe who is excluded or expelled from the union, we cannot assume that his constitutional rights may be invaded. In any event we should think that the proper remedy for such arbitrary or unreasonable requirements might well be individual action against the union where such requirements are invoked. We would hesitate to assume that an otherwise valid agreement was totally bad merely because of the possibility that arbitrary action might be taken under it.

6. *Effect of Government possession.*—On August 27, 1950, the President, through the Secretary of the Army, assumed possession, control, and operation of the railroads pursuant to his Executive Order No. 10155, and possession and control still continue. The Executive order creating this Emergency Board provided:

> Nothing in this order shall be construed to derogate from the authority of the Secretary of the Army under the said Executive Order No. 10155.

We have considered whether this situation affects this Board's functions in any way or imposes any limitations upon the kind of investigation or report which the Board may properly make. We have done so because the Carriers have suggested that the fact of Government seizure presents an obstacle to any recommendation favorable to the Employes' proposal. We are unable to see that it does.

Executive Order No. 10155 includes the following provisions:

> 4. The Secretary shall permit the management of Carriers. * * * to continue their respective managerial functions to the maximum degree possible consistent with the purposes of this order. Except so far as the Secretary shall from time to time otherwise provide by appropriate order or regulation, the boards of directors, trustees, receivers, officers, and employees of such carriers shall continue the operation of the said transportation systems. * * * in the usual and ordinary course of the business of the carriers. * * *
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> 6. Until further order of the President or the Secretary, the said transportation systems shall be managed and operated under the terms and conditions of employment in effect on August 20, 1950. * * * The Secretary shall recognize the right of the workers to continue their membership in labor organizations, *to bargain collectively* through representatives of their own choosing *with the representatives of the owners of the carriers,* subject to the provisions of applicable law, *as to disputes between the carriers and the workers.* * * *

7. Except as this order otherwise provides and except as the Secretary may otherwise direct, the operation of the transportation systems taken hereunder * * * shall be in conformity with * * * the Railway Labor Act, as amended. * * *

As we read these provisions they give the Carriers the authority and the responsibility to bargain with the employes and to settle disputes according to the usual procedures of the Railway Labor Act, and they leave with this Board the normal duties of an emergency board under section 10. For anything which appears in the Executive Order, or of which we have been otherwise informed, the Carriers are able both legally and practically to enter into the union-shop and check-off agreements requested by the organizations. They are equally free to make some other agreement or none at all, except as they are bound to observe the duties imposed upon them by the Railway Labor Act. By the same token they are as free as before to accept or reject any recommendations of an emergency board. It may be that an order of the Secretary will be required to put into effect any agreement of the parties. It may also be that the Secretary has power to command or forbid the making of an agreement. But the possibility that such action might later be taken or the implications of such action if taken are not for us to consider. We must proceed on the assumption that these parties are still responsible for bargaining in accordance with the procedures of the Railway Labor Act, and that the function of this Board is to investigate and report on the dispute in the light of that responsibility. In this setting a report by this Board will be no different from those of other emergency boards. The report must be concerned solely with the merits of the dispute, and it will have available no other function than the inherent appeal, to the parties and the public, of fairness and reason. Accordingly, our views as expressed in this report are unaffected by the present temporary Government possession of the railroads.

E. Safeguards and Limitations

1. *Coverage.*—The Carriers urged that in no event should the provisions of a union-shop agreement apply to executive officers, supervisory positions, subordinate officials who exercise supervisory jurisdiction, or to positions of a technical, professional, specialist or confidential nature, and that any recommendation for a union shop should name all the positions of the above descriptions as exclusions from such an agreement. The employes on the other hand contended that the coverage of the union shop should be coextensive with the scope rules in each existing agreement. Put in another way, it is the employes' view that the coverage should include every employe whose

wages, hours or working conditions have been or may be fixed by means of the process of bargaining between the employer and one of these Organizations.

This issue was disputed at great length in these proceedings. The Carries' position is, briefly, that the scope rules were arrived at through negotiations on each railroad, with changes made from time to time, but without thought of the possibility that they might be applicable to union-shop conditions. When they were agreed upon, compulsory union membership was forbidden by law. The result is that they vary from railroad to railroad. Some have a large percentage of wholly excepted positions, some are favored by a liberal number of positions excepted from most rules; others on which the essential conditions are the same have relatively few positions that are not fully or substantially covered. If the scope rules are applied to the union-shop provisions, the Carriers assert, some railroads will find that the occupants of many positions who should not be union members will be bound to join, while on other Carriers this will not be true. The positions in question are those in which there is particular need that the incumbents be completely loyal only to their employer, and union membership would be quite inconsistent with this objective, according to the Carriers. The Carriers also drew attention to the general practice in other industries of excluding supervisors and similar categories of employes from the effect of collective bargaining agreements.

The Organizations' position is essentially that for all other purposes in connection with representation and collective bargaining the scope rules determine for whom they speak, that the scope rules were particularly designed for this very purpose, and that, since compulsory union membership will simply be another rule in the agreement, there is no valid reason for questioning that this rule should also be administered and applied by the unions with respect to the same employes for whom it acts in other regards in relationship with the Carries. The Carriers who have already entered into union-shop agreements with these Organizations have agreed to the use of the scope rules as the only fair measure of coverage, the employes point out. Further, say the employes, the scope rules in many instances may exclude more positions than the Organizations think should be, but this is purely an accident of collective bargaining and neither side should be permitted at this moment to question the soundness of any particular scope rule—that can be done as in the past by raising the question on proper notice in negotiations.

It is well established by the Railway Labor Act that each labor organization upon being duly chosen by the majority, becomes the

representative of the craft or class, and that thereupon it assumes the right and the duty of representing all the employes within that craft or class. The act describes an employe for purposes of the act as one doing any work of an employe or subordinate official as defined by the Interstate Commerce Commission. Somewhat before the act became law the Interstate Commerce Commission distinguished between subordinate officials and officials, in a ruling made February 5, 1924, and designated as Ex parte No. 72. At that early time many of the positions which the Carriers would now exclude from a union-shop requirement were classified as subordinate officials, and to a very large degree such employes have been included in the coverage of agreements since. Nevertheless, the Organizations have been persuaded to agree that they do not represent some positions at all, that some should be fully excepted from the provisions of their agreements, and that some should be partly excepted. The degree to which the last group are excepted has variations. Some are covered only in a most nominal way, some are excepted from some important rules but covered by others, some are covered by all rules except those designated as P. A. D.—promotion, assignment, and displacement. Those excepted only from P. A. D. are generally so-called personal office positions. Management is given free choice in selecting them, transferring them, and in demoting them to their original positions, without regard to normal seniority rights. If they are discharged, however, the union may represent them at hearings and throughout the grievance steps that may be taken. In many instances the exceptions are made by whole offices depending on their nature and function—executive or general offices, legal offices or departments and other of these general types.

The history of labor relations in the railroad industry clearly develops a definite difference in the theory of coverage from that used in outside industry. Collective-bargaining agreements in other industries commonly exclude completely foremen and supervisors of all higher grades. This has been formalized in the Taft-Hartley Act. Supervisors as there defined (sec. 2 (11)) are denied the right to require the employer to treat with a union on their behalf in collective bargaining. Section 14. There is no doubt that many if not most subordinate officials as defined by the Interstate Commerce Commission under the Railway Labor Act would be deemed supervisors under the Labor-Management Relations Act, 1947, and would not be entitled as a matter of right to have a union act for them in negotiations with the employer. It was proposed to the Congressional Committees conducting hearings on the union-shop amendment to the Railway Labor Act that the supervisor theory and approach of the Taft-Hartley Act be incorporated into the amendment, but Congress declined to do so.

It is worth noting a significant feature of the practices in outside industry. Supervisors are not and in general have not been covered by labor agreements for some purposes and excluded for others. They have been either excluded entirely or included for all purposes.

The question of the coverage of employes has been considerably refined on the railroads. The various kinds of exceptions reflect the course which has been followed. The scope rules have been a troublesome source of difference between management and labor, and the variations among the railroads represent in part at least differences in relative bargaining strengths or tactics. There is no doubt that in negotiations when several issues were under consideration there has been a considerable amount of trading, and this also explains in part the differences we see in the tightness or liberality of total and partial exceptions from the scope rules. Nevertheless, the scope rules have been regarded as exceedingly important. They have served as the basis for costly money claims by employes and the adjustment boards have scrutinized the coverage afforded most carefully. In the cases in which there are relatively liberal exceptions, the labor organizations think they should be narrowed; where they are relatively few or narrow the Carriers think there should be more. The important feature is that they are the product of earnest collective bargaining, and the current scope rule in each instance represents developments and changes and trades that have been argued about intermittently for a long period of time.

Naturally, viewpoints have changed on both sides in the course of time and as conditions have varied. There have been times, on the eve of representation elections, when the present positions were reversed. Nevertheless, a description of the facts pertaining to some of the positions which the Carriers seek to have excluded now given in a court proceeding by the president of a railroad company in 1936 is of more than passing interest. The case was tried in the United States District Court, Middle District of Tennessee, the title being *Brotherhood of Railway Clerks* v. *Nashville, Chattanooga & St. Louis Railway* (94 Fed. 2d 97). Mr. Fitzgerald Hall, president of the Carrier in that case, had this to say in his testimony:

> I am familiar with a group of clerical workers who are referred to, by reference to the position they occupy in the existing working agreement, as personal office force employes. The only dissimilarity between the work they perform and the work performed by other clerks is in the necessary education, training, and experience that they must have to do these particular jobs.
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> * * * * * * *
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> It is a matter of agreement whether or not a position, a particularly designated position, is included in the personal office force group and subject to the rules of that agreement * * *. Personal office force workers don't occupy any different relationship to any stenographer or clerk in any man's office, in

regard to a confidential relationship to the management. All of our records under the law are subject to public inspection. We unfortunately have no secrets.

This testimony is quoted at pages 2708 to 2710 of our transcript.

We do not say we believe there are no confidential positions in the railroad industry or other types of positions which raise questions of inconsistency or conflict when we think of them in terms of membership in a union. We believe, however, that to a large and practical degree these positions are now excluded from the coverage of the labor agreements, either by complete exclusion by treating them as non-represented or fully excepted positions, or by making them substantially excepted positions. In other words, the scope rule itself recognizes that many positions do not lend themselves to union representation. This has been brought about through collective bargaining.

On the other hand, we are not convinced that all positions which embody supervisory work, or professional or technical work, or personal or confidential work should be filled by people excepted from union membership. In varying degrees such employees have been union members on a voluntary basis and we have been offered no evidence that disloyalty or impairment of efficiency has resulted. It is traditional in the railroad industry to have the unions bargain for subordinate officials. The Carriers would, for example, exclude from compulsory union membership all dispatchers and yardmasters, among others. Yet these crafts have their own separate labor organizations created because they apparently felt the need to deal with their employers in a collective form and the railroads have been treating with them on this basis for some years. The suggestion now that these Organizations should be denied the union shop because the dispatchers and yardmasters have supervisory duties is not acceptable. These employees belong to organizations limited to their own type of position, and we fail to see how activities of such organizations with full membership will impair their value in any sense more than voluntary membership has done.

As a general proposition, we believe that the important move is made when a union becomes the exclusive representative of a craft or class; at that moment the question must be decided as to whether loyalty or devotion to the job will be affected by having the union thereafter speak for the employees as to wages, hours, or working conditions. This question was answered some time ago as to all these 17 Organizations, when they were certified in keeping with the provisions of the Railway Labor Act.

Following their several certifications as the representatives of their respective crafts or classes, these Organizations joined in many so-called national movements which dealt with the wages, hours, or working conditions of the employees whom they represent. In every national agreement made in the past 20 years the employees covered habe been determined by reference to the existing scope rules. The wage movements in which the employees who were affected were determined by the scope rules included the wage reduction of 1932, the two following annual agreements continuing the reduction in effect, the 1936 agreement gradually restoring the reduction, the wage increase of 1937, the denial of the Carriers' requested reduction in 1938, and the succession of seven wage agreements between 1941 and 1951. This approach has not been confined to wage movements. Other movements in which coverage was settled by reference to the scope rules include the Washington Agreement of 1936, which deals with jobs lost on consolidations of railroads, the two national vacation agreements of 1941 and 1945, and the 40-hour week agreement of 1949.

We regard it as most illuminating that the Carriers which have already made union-shop agreements have used the scope rules to define the employees subject to union membership.

As the representatives for their crafts or classes, with such coverage as is specifically described in the negotiated scope rules, the Organizations now urge that they be granted the right to take the next normal step, namely to have all those for whom they substantially bargain be compelled to join and share the expense and responsibility of their activities.

We believe that the Organizations are entitled to take this next step. Unfortunately, we are not qualified to make a sweeping declaration or pronouncement as to which positions should be included or excepted from this requirement of compulsory membership. Nor do we believe we should in the light of the history of the development of the scope rules. By virtue of agreements or concessions made on the record before us, we are prepared to say that certain positions treated in certain ways in the scope rules should be excepted. Beyond that we are satisfied that the matter must be left as heretofore in the hands of the parties. Either side may propose changes in the scope rule by a notice given as provided in section 6 of the Railway Labor Act, and that is just how they have been handling this problem. Some of the agreements expressly state at the end of the scope rule or after designating the exceptions that the scope rule as set forth will remain unchanged until changed by mutual agreement. It is never necessary to say that the parties may change their own agreement, yet such state-

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ments do appear, indicating that it is contemplated that changes will be considered from time to time.

The only definite exceptions from union-shop agreements which we can recommend are those which it was conceded on the record should be made. These include the positions not represented by the labor organizations, those fully excepted by the scope rules, and those which have only nominal or token coverage. In the last category are those for whom the union does not bargain for wages, hours, or working conditions in the periodic agreements negotiated between the Organizations and the Carriers on the properties. Thus, positions excepted by the scope rule from all parts of the agreement other than the retention of seniority rights, the right to a hearing or trial before being discharged by the Carrier, and/or the right to have handled any question arising out of the transfer from one seniority district to another, would be deemed to be positions with only token coverage and would not be subject to compulsory membership under a union-shop agreement.[1]

It is evident that some of the concern expressed by Carrier representatives that Carriers which do not have totally excepted positions would be compelled to have everybody join a union is not well founded. Even though not fully excepted, employees covered only to a nominal or token extent as described would also be exempted from the union membership requirement.

We recognize that this may still leave some variations or inconsistencies as between railroads. It must be remembered, however, that this is also true with respect to coverages as to other and perhaps equally or more important aspects of the agreements at the present time, a situation created by the parties themselves in the course of collective bargaining in keeping with the stipulations of the Railway Labor Act and the traditions of the industry. We can assume no responsibility for that, nor should we be expected to undo and remake what the parties have themselves seen fit to create. We can merely observe that the normal procedures under the Railway Labor Act for rectifying or changing undesirable situations remain open to the parties, just as they have always been.

2. *Protective clauses and procedures.*—In the Organizations' notices the important problem of proper protective clauses and procedures in implementing a union-shop agreement so as to afford proper protection to the parties and to employes affected by it was not spelled out.

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[1] One member of the Board, Mr. Osborne, disagrees with this conclusion. He believes that additional numbers of employees who are partially excepted from the scope rule, at least those excepted from the promotion, assignment, and displacement rules or their equivalents should be exempt from compulsory union membership.

During the course of the hearings, especially in connection with surveys and analyses of union-shop contracts already entered into by Carriers such as the New York Central and Baltimore & Ohio with the 17 Organizations in this proceeding, the Southern Railway Co. contracts with the Brotherhood of Railway Trainmen, and examples of protective clauses in nonrailroad industry agreements, the matter was discussed at considerable length and detail.

As a preliminary generalization it may be stated that, apart from details, some of them important, there is no substantial disagreement between the parties as to the procedures for carrying out the terms of the union-shop agreement. Furthermore, there is recognition by the Organizations in the agreements already negotiated by them with the New York Central and the Baltimore & Ohio, that the Carrier should be protected by the terms of the agreement from certain kinds of liability that might arise by reason of the application or misapplication of a union-shop contract. The area of chief controversy is to the extent of protection which should be given to the Carriers by the unions.

Turning first, to the types of liability to which a Carrier might be exposed we find four. One, liability to a wrongfully discharged employe, e. g., for loss of earnings. Two, liability to other employes for wrongful failure to discharge. Three, the cost to the Carrier of defending groundless claims of both kinds. Four, the cost of making determinations in discharge cases.

In the second place, we find that the kind of issues likely to arise in discharge cases are also four. One, whether there had been payment or nonpayment by an employe of dues, initiation fees and assessments. Two, whether amounts not paid by an employe fall properly within the term "dues, initiation fees, and assessments." Three, whether membership in the union was available to an employe "upon the same terms and conditions as are generally applicable to any other member." Four, whether an employe was denied membership "for any reason other than the failure of the employe to tender the periodic dues, initiation fees and assessments." For example, is a refusal of an employe to take a union oath with consequent nonadmission to the union a "denial of membership."?

No issue concerning unreasonable expulsion can arise because if an expulsion is for any reason other than for nonpayment of dues, initiation fees or assessments, there is no ground for discharge under the amendment or any legal union-shop agreement conforming with it. Consequently, all the foregoing issues are ones for employer determination or employer-union determination. None of them are matters of the internal affairs of the union.

There are certain matters which can be covered by agreement between the Organizations and the Carrier which would give effective protection to the Carrier, so far as they go, and also, the first of them, safeguard the rights of the individual employe. They are as follows:

1. Agreed upon procedures in discharge cases leading to a final determination as between the Carrier and the union. This will be discussed in more detail later.

2. Assuming that a final determination results in discharge, a stipulation that no liability shall arise or accrue against the Carrier in favor of the union or other employes during the period before final determination.

3. A provision that there shall be no liability of any kind of the Carrier to the union or other employes if the final determination results in no discharge.

4. A clause saying the Carrier shall have no liability to the union or other employes in the event a discharge is stayed by a court after final determination according to the terms of the union-shop agreement.

5. Finally that there shall be no liability on the part of the Carrier to the union or other employes for restoring a discharged employe to his job pursuant to judicial determination.

To effectuate the foregoing, no claims shall be made and no action shall be instituted by any Organization or any employe for damages of any kind in violation of the above.

That a union-shop agreement should go at least this far in the way of protective provisions seems to us so fair and reasonable as to require no elaboration. Although not spelled out in detail, paragraph F of the letter agreement of August 28, 1951, between the Baltimore & Ohio Railroad Co. and the Organizations (Carriers' exhibit E–8, p. 27; Tr. 1072, 1073) seems designed to accomplish the last four purposes. The broader terms of section 12 of the agreement between the Southern Railway Co. and the Brotherhood of Railroad Trainmen seems to us to be preferable (Carriers' exhibit S–39, p. 3). The phrase "pursuant to the agreement" in paragraph F, supra, seems to assume the proper interpretation of the agreement by the Carrier, so that if the Carrier guesses wrong on any ambiguity, an employee could argue that he was not discharged "pursuant to the agreement." The Carrier should be relieved of such a risk of claim by an employe. The language in the Southern Railway Co.'s agreement with the Trainmen seems to accomplish this by barring any employe claim based upon "an alleged violation, misapplication or noncompliance with any part of this agreement relating to the union shop."

Whether or not the parties can, by agreement, bar claims by a discharged employe is more dubious. Sections 4 and 6 of the New York Central and Baltimore & Ohio union-shop agreements were designed to accomplish this result. Section 4 provides for a determination of whether the employe should be discharged after a proceeding in which the requirements of due process in the form of notice, hearing and opportunity for appeal are observed. Section 6 reads:

> An employe whose employment and seniority in a craft or class is terminated pursuant to the provisions of this agreement shall have no time or money claim by reason thereof.

Section 12 of the Southern Railway's Co.'s contract with the Trainmen also would cover such claims. The objection to the language in paragraph F, noted above, applies with equal or greater force to the phrase "pursuant to the provisions of this agreement" in section 6.

In support of the view that such clauses are effective to accomplish their stated purpose, it may be argued that, since the union may bargain for all employees in the unit, it may bind them to an agreement whereby the employee accepts the procedure set up for applying the contract, and waives all other rights. There are, however, possible difficulties with this. For one thing, among the discharge questions that might arise are ones concerning interpretation of the statute, e. g., was membership available "on equal terms" within the meaning of the act. A court might be reluctant to uphold a waiver of an employee's right to judicial determination of his statutory rights. Again, there exists the possibility that such an agreement might violate the doctrine of the *Tunstall* and *Steele* cases. For whatever protection it gives to the Carrier, however, such a provision barring claims by a discharged employee should be included in an agreement.

Going beyond protection to the Carrier by virtue of provisions in the agreement that neither the discharged nor other employees shall have claims against it are indemnification clauses. There are several possible categories of claims for which a Carrier may urge that it should be indemnified. On of the most sweeping, perhaps, is represented by section 13 of the Southern Railway Co.'s agreement with the Trainmen. It provides that:

> The Brotherhood shall indemnify and save harmless the Company in any and all claims for loss, liability, or damage resulting through the compliance of the Company with this Agreement (Carriers' Exs. S-39, p. 3, E-11, p. 7. See Carriers Ex. E-11 also for other examples of protective and indemnification to provisions).

Even this, apparently, does not cover the possibility of financial loss resulting from prosecution by State or Federal authorities on the

ground that a union-shop or check-off agreement violates either State or Federal law.

Less sweeping would be claims by the Carrier for indemnification for any one or all of the following:

1. Liability of the Carrier occasioned by judgment in favor of a discharged employee.

2. Any expense of an employer occasioned by defending groundless suits by discharged employees.

These may be considered together.

As was indicated above, it is not clear whether any provision in the contract between the Organization and the Carriers can prevent an employe from bringing a court action against a Carrier for discharging him. Probably there will be few such actions. Granting that some may be brought and that some decisions may go one way and some the other, the question is upon whom the incidence of loss should fall. The Board feels that some risk of loss should fall upon the Organizations to prevent hasty and ill-considered action by them. The contingencies under which serious losses might occur are those in which it is contended that the amendement and the agreements under it are illegal, or unconstitutional, or in violation of State statutes.

The Board believes that in none of these last cases should the Organizations be bound to indemnify the Carriers. Nor should the duty to indemnify extend to any case in which the Carrier is plaintiff or the moving party in the action. Further, it should not extend to any case in which the Carrier acts in collusion or collaboration with any employe.

In any other case in which an employe brings an action for allegedly wrongful discharge the Organization and the Carrier should share equally any liability imposed in favor of such employe. This liability should not extend, however, to the expense to the Carrier occasioned by defending suits by such discharged employes.

PROCEDURAL REQUIREMENTS FOR DISCHARGE

Earlier in the discussion, it was stated that a union-shop agreement should contain agreed upon procedures in discharge cases leading to a final determination as between the Carrier and the Union. The provisions in sections 4 of the New York Central and Baltimore & Ohio union-shop agreements contain, with two exceptions, adequate machinery of the sort necessary and desirable to accomplish this purpose. They give to the employe all the fundamentals of due process in the form of notice, opportunity to be heard, and to appeal to reviewing authorities. See Employes' exhibit 11, page 5, Carriers' exhibit 8, page 18. These taken in connection with provisions for stays

until a final decision previously discussed and recommended should work satisfactorily. Consequently, it is recommended that these provisions or substantially similar ones be incorporated into any union-shop contract made between the parties.

One omission in the terms of sections 4 in the above agreement is supplied by paragraph E of the letter agreement of August 28, 1951, between the Baltimore & Ohio Railway Co. and the Organizations. It provides in case the Carrier representative and the Organization representative are unable to reach a decision in a dispute over discharge under section 4 (b) that:

> * * * a neutral person shall be selected by them, to assist them in deciding such dispute. If such two officers are unable to agree upon the selection of a neutral person, either, or both, may informally request the Chairman of the National Mediation Board to appoint such neutral. Any decision by the two, or a majority of the three shall be final and binding upon the parties. Such proceedings shall operate to stay action on the termination of employment until such decision is rendered.

The Board believes that this provision or a substantially similar provision should be adopted by the parties for inclusion in any union-shop contract they may make.

It is the Board's view that the foregoing provision for arbitration is deficient in one respect. The discharged employe should have the right to request such arbitration if he is dissatisfied with the determination made by the Carrier and the Labor Organization, since his interest and that of the union are antagonistic, and in such event the employe himself should be given the same right with respect to the selection of the neutral person or arbitrator as is provided in the above-quoted paragraph, for the labor organization with the understanding that said neutral will in such cases act as the sole arbitrator.

Another desirable protection to the parties, as well as to the individual employe, is a provision, essentially procedural in nature, that every employe covered by the union-shop agreement shall be considered by the railroad to have met the requirements of the agreement unless and until the railroad is properly advised to the contrary in writing by the labor organization. Under such a provision the Carrier could proceed with its normal work assignments without the delay and disruption consequent upon a duty first to ascertain the status of every employe of each class covered by a union-shop agreement. The union would benefit by being relieved of the burden of affirmatively informing the railroad of the union-shop status of every employe in a given class or craft. And it would benefit the individual employe who believes that he has met the requirements of the union-shop agreement by assuring him that he need not have concern about his

employment rights unless he receives fair warning with time to correct his status after being warned.

MISCELLANEOUS PROTECTIVE CLAUSES

There are a number of provisions, all designed to protect either one or other of the parties or the individual employes which should be included in a union-shop agreement. The New York Central agreement deals with the subject matter of these problems in one section or another and the following discussion is for the purpose of indicating certain desirable alterations or additions to those provisions.

1. Section 5 of the New York Central agreement covers the problem of securing a qualified replacement in the event an employe's employment is to be ended. It provides that the question of whether a qualified replacement is available is to be made jointly by the parties. There is, however, no method provided for resolving a disagreement between them. There should be added a clause providing for authoritatively settling such a dispute through the intervention of a neutral.

2. There should be a provision that will spell out the status of an individual employe who is performing work which is the subject of dispute between the representatives of two or more classes or crafts. Such a provision should stipulate that when work is claimed by two or more organizations, any employe then performing the work may not be required to change his status as to union membership or give up the work pending a final disposition of the matter, provided he meets the union membership requirements applicable to any one of the interested crafts or classes.

3. It is common in the operating crafts for an employe to have seniority in more than one such craft and to shuttle back and forth between them although each craft is represented by a different organization. Operating employes under such circumstances satisfy the statutory requirements if they belong to only one of the representing organizations. The nonoperating employe, however, enjoys no such statutory protection. Such situation is rather uncommon among the nonoperating groups but there are some instances where it occurs. In the cases where it does exist the nonoperating employe, unless an agreement takes care of the matter, would have either to maintain membership in both organizations or rejoin each organization every time he is retransferred to the craft it represents. This type of hardship should be eliminated by agreement wherever it occurs. Examples of provisions to accomplish this result are found in agreements entered into by the Yardmasters with the Cleveland Union Terminals and the Train Dispatchers with the New York Central—Buffalo and East (Employes' exhibit 11, pp. 13, 14; Carriers'

exhibit 8, pp. 25–26). A similar problem exists on the Pennsylvania involving the Telegraphers and Clerks who work as Substitute Agents and there may be other like problems elsewhere. All should be taken care of in any union-shop agreement either by following the example of the Yardmasters and Train Dispatchers or by some comparable provision. It may be noted that section 2 (a) of the New York Central agreement, to some extent, protects the employe in such a situation.

4. The status of an employe not working in a craft or class is protected in considerable measure by sections 2 (a) and 2 (b) of the New York Central agreement. Those stipulations have been criticized, and, it seems to the Board properly so, as not being broad enough. It would seem a fair provision that union membership would be required in a particular craft or class only when the employe is working in that craft or class. Instead section 2 (a) is drafted in terms of exemption from union membership to employes who are regularly assigned or transferred to full-time employment not covered by the craft agreement or furloughed on account of force reduction. There was testimony that this would cover only employes transferred to full-time employment with the same railroad. It would not cover employes transferred to a subsidiary company or employes given leaves of absence to work with some other railroad, railroad bureau, railroad association, or to work in some government service or project dealing with the railroad industry. The section seems too narrow and should be broadened. Similarly, section 2 (a) protecting the seniority of employes furloughed to serve in the Armed Forces should be widened to include employes granted leaves of absence to engage in studies under the GI bill of rights.

The foregoing enumeration is not intended to be definitive but merely representative of matters which should be worked out by the parties in negotiating an agreement for a union shop. They happen to be problems which were particularly called to the Board's attention. No doubt there are others. It is not within the Board's capabilities to explore and evaluate them. Indeed, it is with doubts that it has gone into as much detail as it has.

One other matter may be mentioned. Although the question is not directly before this Board, it seems appropriate at this point for it to state its belief that any provisions of a national agreement that may be worked out between the parties to this hearing which are better or are more favorable to the Carrier than similar provisions in agreements previously negotiated with Carriers not parties to this proceeding should be made available by the Organizations to such Carriers without demanding any quid pro quo for them. It would be manifestly unfair if Carriers who resisted granting the demands of the

Organizations in this proceeding should ultimately fare better by having done so than Carriers who at once entered into agreements with the unions.

II

CHECK-OFF

The Organizations' request for a check-off is phrased substantially in the language of the amendment to the Railway Labor Act, section 2, eleventh (b), which authorizes such agreements. The deviations from the words of the amendment are in respect to details not supplied in the law, and specify: That the deductions should be at such times and intervals as the Organization should designate; (2) that the employees subject to the check-off should be those employed in any work covered by the rules and working conditions agreement; (3) that the deductions should be paid over within 10 days to the Organization to an officer to be designated by it.

In resisting this demand, the Carriers made no objections based either upon legality or principle. In this connection, it should be noted that, pursuant to law, under any agreements which might be entered into in respect to it, only employes who make voluntary assignments to the Organization would be bound. And, further, that any such assignment is revocable after 1 year or upon the termination date of the applicable agreement between the Organization and the Carrier.

The Carriers' objections to check-off agreements were based on practical considerations and raised two main issues. First, should the burden of collecting union dues, initiation fees and assessments be placed on the Carriers as requested by the Organizations? Second, if it should be, what ought to be the specific terms of an agreement to accomplish that end?

Chief opposition by the Carriers to any agreement for a check-off centered upon the complexity and cost of making deductions affecting such a large number of employes and involving payments to 17 different organizations with differing schedules of amounts and times of payments. Unlike other large-scale deductions, such as withholding Federal income taxes, Railroad Retirement Act deductions and similar ones which can be handled by automatic machine methods, deductions of dues, initiation fees, and assessments would have to be balanced against deduction lists furnished by the Organizations. This would make them even more expensive and burdensome. One witness testified that it would cost an additional $11,000 a month to handle deductions of dues only for the 23,000 employees on his road represented by these 17 Organizations. And that was on the assumption that the dues were

uniform. This would amount to roughly 50 cents a month per employe. While this is not a large per capita amount, it nevertheless is equivalent to from one-fourth to one-sixth of the monthly dues now paid by members in these unions. In sharp contrast to this estimate are the terms of agreements for compensating the Carrier for making the check-off for the Brotherhood of Railroad Trainmen on the Boston & Maine, the Portland Terminal, and the Maine Central. They provide that the Carrier shall be paid 8 cents for the first and every changed deduction and 4 cents for each subsequent deduction. No explanation of the great disparity of the two amounts was offered to the Board and it has no means of determining which would be the better criterion should a carrier be entitled to be paid for making the deductions. Whichever extreme might be the more valid measure, there is no doubt that making a check-off would entail extra burden and expense upon a Carrier.

The unions counter this argument of costs and burden upon the Carriers by asserting that savings will accrue to offset it by avoiding the waste of time and energy of employes during working hours now expended in dues collections. Further, that there is an advantage to the Carrier in that the check-off is a practical answer to the danger of liability under the union shop. Employes can be taken out of employment only for failure to tender dues, fees, and assessments. If the Carrier has checked off these payments it will know from its own records there is no ground for dismissal—at least as to all employes who have made assignments. These benefits seem real and may account, in part at least, for the divergence noted above between the estimated cost of making deductions and the actual figures agreed on in the Trainmen's contracts with the Maine Carriers as compensation for doing the job.

Granting that there will be burdens and some extra costs to the Carrier for doing the work of deducting and remitting dues, initiation fees and assessments, and disregarding at this point the problem of whether the Carrier should be compensated for the extra cost, the question is whether this fact is sufficient to deny to the unions their request for the check-off. Our conclusion is that it is not.

It is undenied that the checkoff of union dues is the prevailing practice in American industry. The 1951 study of the Bureau of Labor Statistics analyzing 2651 labor agreements covering 5,581,000 workers showed that the checkoff is included in 67 percent of the agreements covering 78 percent of the employes. Furthermore, in the railroad industry itself the principle of the checkoff has been accepted by a substantial number of Carriers. Those Carriers who have voluntarily entered into union-shop contracts with the Organizations

have included in their agreements an acceptance of the checkoff although the details are to be determined by later negotiations. A number of the Carriers before us in this proceeding, including the Maine railroads previously mentioned, have also granted the checkoff to other unions. Additionally, the evidence before us disclosed that the Carriers are accustomed to handling various kinds of deductions from wages. Not only are there the withholdings for income taxes and for Railroad Retirement, but large numbers of Carriers also make such deductions for hospital or health plans, for payments to go toward the cost of work clothes and supplies, for payment of premiums to commercial insurance companies, and prior to 1934 many carriers checked off the dues to go to the company-unions. The machinery for making deductions of this sort, therefore, is already set up by the Carriers. Adding deduction of union dues, initiation fees and assessments would only be an extension of it to one more of a large number of fields.

On whether the Carrier should be compensated, the chief argument in favor of it is that the checkoff is principally for the benefit of the union. The Carriers argue that the fact they make other complex and large-scale deductions is no basis for their doing so for the unions since the others are required by law, e. g., income tax deductions, or are done because there is a public interest in the service being rendered, e. g., defense bond subscriptions. Further, although there may be practically no agreements for compensation in outside industries, that fact, it is urged by the Carriers, is no reliable guide for the railroad industry. Rather, the three agreements with the Maine Carriers mentioned above should serve as the precedent.

In answer, the unions, in addition to stressing savings of time and advantages to the Carrier as a result of a checkoff, point out that the Carriers have never sought payment for making other deductions closely related to conducting the railroad business. Payments for making deductions have been made by a carrier only occasionally in connection with deductions made for some commercial insurance company. Also, the Organizations point to the fact that in outside industry agreements for compensating an employer for making union dues deductions are practically nonexistent.

There is one other and, in the Board's view, extremely important consideration in evaluating these conflicting arguments. If the costs of collecting dues come out of the Union treasury it will mean almost certainly, if the cost is substantial, that the individual employes will have to pay it in the form of increased union dues. On the other hand, if the Carrier bears the cost it is simply another item of business expense.

We have already concluded that the checkoff be granted as a reasonable incident of union-Carrier labor relations. Although the conclusion does not inescapably follow from this that the expense should fall on the Carrier, we believe that, taking everything into account, it throws the balance in favor of that view.

Turning to objections to the specific proposal for checkoff as submitted by the unions, the Board finds that several bring out very real difficulties and have undoubted validity. For example, the 10-day period for remittance by the Carrier after making the deductions is unquestionably too brief a time. In many States there are laws fixing pay dates. The time required to make the additional complex computations and deductions required by a checkoff might make it difficult or impossible for a Carrier to comply with the law unless the times and intervals of the deductions were properly selected. The power to determine the periodicity should not be left solely to the discretion of the Organizations. Again, there are, in many States, statutes regulating the making of deductions to which the Carrier may have to conform or incur liability. Any agreement should take this possibility into account. And there are many other important details in the actual mechanics of the checkoff in operation which were left unresolved by the Organizations' proposal.

The Organizations recognized the merit of at least some of these objections by stating that many of them could be worked out in negotiations. This was specifically recognized as to the short 10-day period allowed the Carrier for remitting to the union. There was a recognition, also, that some of the details might have to be resolved on the properties of the individual Carriers.

It is the opinion of the Board that the foregoing difficulties and all other matters of detail in installing a checkoff system are readily susceptible to settlement between the parties by normal bargaining processes. Further, we do not feel, on the basis of the presentation made to us, that we should attempt to spell out the detailed provisions of an agreement on the matter.

The provisions of sections 7 (a) and 7 (b) of the New York Central and Baltimore & Ohio agreements were designed to accomplish the purpose of having the parties themselves attempt to work out the problem. Section 7 (a) seems undesirable because it contains some provisions which, as we pointed out above, are clearly objectionable. In its place a similar provision could be drafted embodying the checkoff as part of the agreement between the Carriers and the Organizations. Section 7 (b) seems well drafted to effectuate its purpose. It reads as follows:

7. (b) The provisions of subsection (a) of this section shall not become effective unless and until the carriers, or any of them, and the organizations, or any of them, shall, as a result of further negotiations, agree upon the terms and conditions under which such provisions shall be applied; such agreement to include, but not be restricted to, the means of making said deductions, the amounts to be deducted, the form, procurement and filing of authorization certificates, the frequency of deductions, the priority of said deductions with other deductions now or hereafter authorized, the payments and distribution of amounts withheld, and any other matters pertinent thereto.

Our recommendation, therefore, is that the parties should settle this aspect of their dispute by entering into an agreement containing provisions substantially to the same effect as those in section 7 (a), altered as suggested above, and section 7 (b) of the New York Central and Baltimore & Ohio contracts.

III

THE ISSUE OF NATIONAL HANDLING

The Carriers have urged the Board to remand the Organizations' demand for a union-shop and checkoff agreement to the individual properties for the purpose of negotiating individual agreements. One Carrier insisted that such bargaining by the individual Carrier should be with each of the 17 organizations separately. Another similar but less extreme view was that bargaining on the roads should follow past patterns in which case some agreements would be negotiated with individual organizations, while others would be with groups of organizations. A third position was that the separate bargaining by each Carrier should be with the entire 17 unions collectively. This would follow the precedent set by roads like the New York Central and others, which have already negotiated agreements. Apparently, although not certainly, this represents the attitude of most Carriers. All of the Carriers were opposed to national handling of the movement.

The Carriers' arguments against national handling of the movement were partly legal and partly practical. They will be dealt with in the following discussion.

1. One contention repeatedly advanced in opposition to national handling was that the Railway Labor Act requires individual bargaining on the property and that negotiations in the manner contemplated by the statute were never undertaken by the Organizations. Instead, the argument continues, the unions insisted that the uniform proposal, and no other, would be submitted to each Carrier; and that if an individual railroad refused to accept this demand, all handling thereafter would be on a uniform national scale.

To this objection there are sufficient answers. One is that the prior handling by the National Mediation Board and its certification of the dispute as one for consideration by an emergency board and the exercise of discretion by the President in creating such a board should not be questioned by us. As we read the statute, it is not necessary that there be any bargaining at all on the property. Certainly, it is entirely proper that the National Mediation Board step in even though bargaining on the property has not been completed. Section 5, first (b), by providing that "The Mediation Board may proffer its services in any case any labor emergency is found by it to exist at any time" makes this sufficiently clear. Not only is the question of whether and when it should intervene in a dispute left to the judgment and discretion of the Mediation Board but so also is the question of when and whether, having intervened, further attempts to settle it by direct negotiation between the parties or through efforts of the Board would be fruitless and that it is its duty to report to the President that it threatens substantially to interrupt interstate commerce, Railway Labor Act, section 10. For an emergency board to try to reexamine whether such judgment or discretion was properly exercised would be both impossible and undesirable even if it had the power to do so. The Mediation Board, dealing directly with the parties for the very purpose of determining these matters was in a position to make an appraisal and judgment not possible for an emergency board. The impropriety of an emergency board questioning the exercise of discretion of the President in creating it, after notification by the Mediation Board, is so obvious as to need no elaboration. For these reasons alone, we would conclude that the objection by the Carriers that there had not been proper prior bargaining on the properties as required by the act is without merit.

There are, however, additional reasons for such a conclusion. For one thing, there is nothing improper in making a demand on a national scale. For 20 years such movements have been initiated and progressed and the first one on such a basis was suggested by the Carriers. Both parties during that period have repeatedly and consistently recognized national handling as an essential procedure for disposing of national movements on a great diversity of issues covering not merely wages but a wide variety of rules changes including vacations, hours, starting times, craft lines, the 40-hour week, loss of job on railroad consolidations, and, in 1943, a union-shop proposal. In the face of such a firmly established and recognized pattern of collective bargaining on a national scale a finding that a demand for such a procedure in this case was improper could not be made.

Going beyond the question of propriety of such a demand this Board is convinced that a national movement should be handled upon a national scale unless and to the extent it appears that there is some good reason for local bargaining. The test of a national movement is whether identical demands are made on, or by, all Carriers at the same time so that each one is faced at the same time with the identical problem. Unless, in such an event, the demand presents differing considerations from Carrier to Carrier so that only by individual bargaining, road by road, can a fair solution be reached, concerted bagaining on a national scale, at least concurrently and, preferably, with selected spokesmen for all, is clearly the best way effectively to dispose of it. This being so, the real question for this Board to determine is whether the issues in this case, or any phase of them, are so local in nature as to make it desirable, in the interest of fair and equitable solutions, to remand them to the individual properties for separate handling. And, additionally, whether and to the extent that we remand them, the bargaining should be separately with each union or with the group as a whole.

2. Addressing ourselves to the last stated question, two things may be said at this point. One is that, if the controversy were remanded it would entail negotiating a minimum of almost 400 agreements even though the 17 Organizations were dealt with as a unit. If the suggestion were followed that there should be separate bargaining with each union there would be the staggering total of approximately 6800 agreements. The delay, waste and ineffectiveness of such a procedure are so apparent that it should be avoided unless extremely strong considerations demand it. The Mediation Board machinery, in point of manpower alone, would be incapable of functioning adequately if faced with disputes on so extensive a scale. The result could easily be to delay indefinitely or to defeat entirely the settlement of demands.

The second point is that carriers are required by law to bargain with the duly designated representatives of the employes. Each of the 17 unions here is designated representative of its craft on most of the individual Carriers. If, as is the case, each one chooses to select the same spokesman to negotiate concerning the dispute, it is difficult to see on what grounds a Carrier properly could refuse to negotiate with such a single spokesman.

3. The Carriers have urged a number of reasons why the issues presented by the Organizations' demands are so essentially local in nature as to make it necessary that they should be bargained out on the individual properties. They are dealt with seriatim below.

(a) By far the most important of these contentions is that the demand for a union shop is tied to the coverage of and exceptions to the scope rules of the unions; that this coverage and these exceptions are variable and inconsistent as between the various Carriers; that the scope rules are purely the product of, and responsive to local conditions on each property; and to use the scope rules as the basis for determining the coverage of the union shop upon all Carriers would therefore produce irrational and indefensible differences between the Carriers.

The validity of this argument is treated at length in another section of the report. See section I, E, 1. Hence it will not be considered further at this point.

(b) A second reason urged for local handling is that many of the Carriers operate in and through states having legislation, varied in character and extent, which make illegal or place restrictions upon union-shop agreements. The possibility of Carrier liability under such statutes if it entered into such agreements would pose different problems for different Carriers. For this reason, therefore, the dispute should be remanded to the properties.

A short and conclusive answer to this proposition, as the Board elsewhere points out, it that there clearly is no danger of such liability since the operation of State laws have been excluded by the union-shop amendment to the Railway Labor Act. Even if this were not so patently true, there would be little force in remanding the entire dispute back to the individual Carriers. It would be sufficient that the one narrow problem of whether and what provision should be agreed on to take care of such a contingency should be referred back to those Carriers faced with such a problem.

(c) A third argument advanced was that the agreements entered into through individual negotiations on the properties by the unions and the New York Central, the Baltimore & Ohio, and other Carriers, demonstrated the need for individual bargaining on each property. The Board believes that those agreements do show the need for bargaining between the parties in order to canvass and work out by agreement the detailed problems of operation and application of the proposed union-shop contract. There is no evidence, however, that these problems could not have been solved equally well by national negotiations. There is nothing to indicate that the subject matter dealt with and solutions of problems raised should not be uniform. Indeed, it seems probable that the combined attention and experience that would have been available to work out solutions in a national handling would, and still might, produce better solutions than those evolved by a single carrier.

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(d) Another consideration advanced for local handling was that by bargaining on individual roads, there would exist the possibility that agreements might have been reached for some sort of union security short of a union shop, e. g., a modified maintenance of membership clause. Further, in an industry in which voluntary unionism only has been practiced it would be highly desirable to make such a more cautious and experimental step before going to the full length permitted under the amendment.

The answer to this contention is that the possibility of such a solution exists in the case of national handling. It may be true that, if the issue were handled locally, the chances would be greater that some carriers by virtue of a stronger bargaining position or ability than others would succeed in reaching such an arrangement than would be the case in national handling. But there is nothing in the nature of such a solution which makes it any more desirable or beneficial for any one Carrier than for another. In other words there is nothing of such a local character about it to make it advisable to send the whole controversy back to the individual roads.

(e) One Carrier witness urged that two of the organizations in the movement were so different from the others that a different type of agreement would be required as to them. Which unions were meant or why a different sort of agreement would be necessary was not specified. We assume he referred to the Dispatchers and Yardmasters.

Granting that there might be substance in such a contention it is difficult to see that it constitutes any reason for local handling. The same two organizations are represented on practically all Carriers. There is nothing in the record to show that the problem of this particular railroad in respect to these two unions was unique or why the same problem of a possible separate contract with them could not be worked out by negotiations on a national basis.

(f) Before leaving the general question of the feasibility and desirability of national as contrasted with local handling two general comments seem appropriate.

(1) One answer to the argument that this dispute can and should properly be handled only locally is the character of the presentation by the Carriers before this Board. Although there was no concerted or coordinated national handling or representation of all Carriers, nevertheless substantially the same arguments were made by all on practically every point raised. Although the testimony of different Carriers or groups of Carriers was specifically addressed to and stressed only certain aspects of the problem, nevertheless practically all gave at least lip service to the grounds of opposition urged by the others. Thus all, or nearly all, indorsed opposition to the demands

on the grounds of illegality and unconstitutionality. They all, or nearly all, voiced concurrence in objecting to it as a matter of principle even though they themselves directed their own attention to matters such as coverage, indemnification, practical procedural problems in implementing a union-shop agreement, if entered into, and a few other minor matters. And, as to these latter, too, they took substantially the same positions.

(2) The other general comment is that in the Board's opinion none of the main arguments advanced by the Carriers against the union shop or check-off are in any way local or unique to any one Carrier. The objections of legality and unconstitutionality are the same for all. The matters of principle urged against the union shop are the same on each Carrier. The substantive merits and demerits of the union shop and check-off are the same for all. Even the practical problems of administration and procedure are no different on one road than another.

4. It was vigorously urged upon the Board that it had no power to make any recommendation to the parties on the question of whether the handling of this demand should be on a local or national basis. The argument was based upon the undeniable right of each Carrier under the act to select its own bargaining representative. It follows, the argument continues, that such choice may not be questioned.

> Thus, no legal "dispute" as to choice of representative can actually arise between these parties; and therefore no question involving such choice may properly be presented to or passed upon by an emergency board. * * * The express provisions of the act remove the "question," if it be such, from the scope of matters to be resolved under the statutory procedures.

We find the argument to be without merit. The act itself contemplates that disputes may arise not only between "a carrier" and its employes but between "groups of Carriers" and their employes. Thus in the act, under title I, "General Duties," it is provided, "Second, All disputes between a carrier or *carriers* and its or *their employes* 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 employes thereof interested in the dispute." Again, under title I, "Definitions" the act reads, "Sixth, the term 'representative' means any person or persons, labor union, organization, or corporation designated either by a carrier or '*group of carriers*' * * * to act for it or them." And also, in title I "General Duties, Eleventh," is found the same language, "carrier or carriers" permitting the making by or with them of agreements for a union shop and check-off. [Italics added.]

Elsewhere in this report the Board has stated its finding that a demand for a union-shop and check-off agreement is a dispute within

the meaning of the act which may properly be presented to and passed upon by an emergency board. The fact that such a dispute arises between groups of employees and groups of carriers, as in the instant case, does not remove it from the category of controversies upon which it is the power and duty of an emergency board to make findings as to the merits of the matter. Since this is so, it is difficult to see why such a Board should be barred from suggesting procedural methods as to how the matter may best be settled between them. The Board in making a recommendation that there shall be national rather than local handling of the dispute in no way interferes with, influences or coerces the Carriers as to their choice of representatives in such national handling. Its recommendation on this matter has no more binding force than its similar recommendations on any other matter. If it is effective to induce action it is only by virtue of its intrinsic reasonableness and its persuasiveness that it is a wise and practical method of settling the matter. Where the issues, as in this case, are the same between all the Carriers and all the Organizations, it would be an irrational limitation upon the Board's comments upon the dispute for it to be unable to say that national bargaining on both sides would be the most desirable way of disposing of the controversy. It may be reiterated that this involves no interference by the Board with anyone's choice of a representative to carry on such negotiations. It merely recommends that the parties choose representatives. Then it deals only with the manner in which such representative or representatives, after having been freely selected by them, should conduct the bargaining, i. e., whether separately with each individual union on each property, or whether it should be done concurrently or collectively with the 17 unions as a group on a national basis.

As a final comment on this point it should be noted that the prohibition in the act against interference, influence, and coercion in the choice of a representative is *directed solely against the other party to the dispute.* Hence, even if the Emergency Board had the power or were to try to interfere with a carrier's free designation of a representative which as pointed out above, it is not in any way attempting to do, it would not be barred by anything in the act.

5. A final objection to negotiation and agreement on a national scale is that it is unlawful because "it amounts to a conspiracy in violation of the antitrust laws which, under the rulings of the Supreme Court, is not within the special labor union exemptions from liability under the antitrust laws" (Brief, Southeastern Carriers, 67).

We have examined the argument with care and are convinced that it is without substantial merit and that the authorities cited do not support it.

The Supreme Court cases relied upon, *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, and *Allen Bradley Co.* v. *Local Union*, 325 U. S. 797, make completely plain that the Court thought the antitrust laws were directed at efforts of *business groups* to destroy competition so as to raise prices, restrict production, or otherwise control the market. It is true that if there is such an illegal combination to stifle *business* competition it will not be shielded from the antitrust laws by the fact that a labor union is one of the participants. Such is the only significance of the *Allen Bradley Co.* case. That it does not apply to the present demand is obvious. The agreement sought by the unions in this case in no way furthers or is intended to further any business monopoly affecting prices, production or the control of the market. And this is true whether the agreement is entered into on a national scale or individually by each union with each carrier. At least it was Justice Roberts' view that it was immaterial whether the agreement proscribed in the *Allen Bradley Co.* case was with one or many manufacturers or contractors; and this may be the view of the entire court. If so, there would be no distinction between a single union-shop agreement by one union and one carrier and a collective agreement between 17 organizations and all the carriers. Certainly it would be an impossibly tenuous distinction to say that for 17 unions to bargain with some 400 railroads and enter into about 6,800 separate union-shop agreements would not violate the antitrust laws but that it would violate them to achieve the same result by one agreement arrived at by a national negotiation. Yet the former course is advocated by many of the Carriers in this case as what they want to do.

Finally, it may be observed that the language of the 1951 amendment permitting agreements for a union shop and check-off, together with the uniform practice in the railroad industry for the past 20 years of bargaining collectively on a regional or national scale, a practice of which Congress surely must have been aware, is persuasive that Congress meant what it said. The language it used was "notwithstanding * * * any other statute or law of the United States." Congress was warned and must have contemplated that the union shop would become general if not universal on the railroads. We do not believe that it intended this result to be legal and exempted from the operation of antitrust laws only if it were achieved by the almost interminable process of separately negotiating some 6,800 individual agreements rather than through the practicable method commonly used in the railroad industry of entering into one national contract.

IV

FINDINGS AND RECOMMENDATIONS

A. We find that:

1. The union-shop amendment to the Railway Labor Act of January 10, 1951 (sec. 2, eleventh) eliminated the former prohibition against compulsory union membership and check-off and is a congressional determination that the union shop and check-off are not contrary to public policy, nor inconsistent with the dominant purposes and principles of said act, and that reasonable safeguards have been established to protect the freedom and job security of the nonunion minority of employes.

2. The congressional policy, as revealed by the language of the union-shop amendment to the Railway Labor Act and the legislative history thereof, is an unalterable fact; it is beyond the scope and authority of this Board to undertake to express any judgment as to such policy.

3. The purposes and procedures of the Railway Labor Act, as amended by the 1951 union-shop amendment, make it perfectly clear that this Board should investigate fully all the merits of a dispute over a request for a union shop and check-off, to the same extent as any other dispute which may threaten substantially to interrupt interstate commerce, and to make its report thereon to the President.

4. The emergency board makes no direct orders or binding decisions; it merely recommends what it believes to be a fair basis for agreement between the parties.

5. In stressing the difference between a recommendation by a Government-appointed board and a voluntary agreement between management and labor, providing for a union shop, the employers overlook the essential fact that the nonunion employe has no opportunity to express his wishes when the employer elects to make the agreement; no evidence was offered to show that the decisions of the employers in the railroad industry who have already elected to enter into such agreements have been dictated by the preferences of the nonunion minority of employes rather than by the business interests of the employer.

6. The requests of the 17 nonoperating employes' labor organizations for agreements providing for the union shop and check-off on some 390 railroads follow closely the statutory provisions related thereto, as set forth in the union-shop amendment to the Railway Labor Act.

7. On the merits of the proposal before us, viewed in fair perspective and in light of the national policies determined by Congress, we

find no sound or substantial basis for withholding the union shop and check-off from these 17 organizations any longer; we believe that in the framework of the dispute before us the arguments in favor far outweigh those in opposition to the proposal before us, for these reasons:

(a) Railroad employes have by law been denied the right to have these benefits since 1934.

(b) Congress has indicated that there is no public policy against the union shop and check-off.

(c) The union shop has been substantially adopted by American industry, and the trend is still in that direction; in a recent study of some 2,600 labor agreements made by the Bureau of Labor Statistics, it was found that 59 percent of the agreements and 72 percent of the 5.5 million employes in the industries in question now have the union shop.

(d) The air transportation industry, also governed by the Railway Labor Act, has made several such agreements since the 1951 amendment.

(e) Before compulsory union membership was prohibited by the Railway Labor Act in 1934, numerous carriers maintained company unions in which membership was compulsory and in which their dues were checked off.

(f) The facts that these labor organizations are now well established and responsible, and that they have made considerable progress without resorting to a strike in over 25 years are arguments for rather than against their right to have the union shop; such unions are most deserving of being entrusted with the union shop.

(g) The fact that these unions are now secure does not preclude their right to the union shop; such security may, as it has in the past, prove ephemeral. In 1920, with the encouragement and assistance of the Director General of Railroads during Federal control, they had grown to great strength, yet within 3 years thereafter they suffered a serious decline and loss of representation rights on many of the railroads.

(h) No evidence was offered to indicate that union membership of railroad employes has impaired their loyalty to their employer; we believe that since the Railway Labor Act gives to the Unions the right and the duty to represent all employes within their respective crafts or classes, it is desirable that such employes participate, through membership activity in the unions, in helping to formulate sound policies and courses of action, consistent with the duty imposed upon them by the Railway Labor Act and with their duties to their employers and to the public; to refrain from participating because

they disapprove such policies or courses, is to put complete control into the hands of those who may be advocating unwise or undesirable policies or courses, and is a denial of the strength of the democratic process.

(i) Solemn assurances having been given on the record that these labor organizations will not take advantage of the union shop to raise their charges to members beyond the point necessary to maintain normal union functions, and that they will not permit their locals or lodges to do so, it would be a breach of faith to violate such assurances.

(j) Employes who have remained out of the unions but are willing to take the benefits of collective bargaining without assuming their share of the cost or responsibility are known as the "free-riders." This group as a consequence has been unjustly enriched.

(k) The railroad industry has not hestitated to treat freely with these unions in all matters concerning the employees, including the occasions when the industry desired to have wage reductions; the Carriers also enlist and receive the aid of these Labor Organizations in legislative programs considered helpful to the industry. Thus, these Organizations serve as a responsible and integral part of the industry.

(l) The fears expressed by the Carriers that compulsory union membership would drive valuable trained employees out of the industry are not borne out by the experience of a number of railroads which have already made union-shop agreements; when union shops were established on several of the country's leading carriers it was found that the prevailing experience was that not over one employee per thousand terminated his employment.

(m) The Carriers themselves recognized the contribution toward stability and effectiveness which may be made by compulsory membership in the company unions maintained before 1934.

(n) At least 7 of these 17 unions represent employees in other industries and their agreements in such industries very generally include the union shop.

(o) Some 40 Carriers, including several who are disputing the request of these labor organizations, have recently made union-shop agreements with other unions; these Carriers with one or more union-shop agreements on their properties employ over one-third of all the railroad employees, and among them are some of the country's leading rail carriers (the Chicago Burlington & Quincy, the Northern Pacific, the Illinois Central, the Denver and Rio Grande, the Lackawanna, the New Haven and the Pullman Company).

(p) Railroads employing over 215,000 employees have made union-shop agreements with these 17 Labor Organizations in 1951; these

include the New York Central, the Baltimore & Ohio, the Great Northern and the Lehigh Valley.

8. After examining carefully into them, we have concluded that no substantial legal objections have been raised upon the basis of which we may say that we should not recommend the making of agreements providing for the union shop and check-off; we find that there is no substantial legal doubt that:

(a) The agreement proposed by the 17 labor organizations is now authorized by the Railway Labor Act, as amended on January 10, 1951.

(b) The proposed agreement would not violate State laws, forbidding or restricting the union shop, since Congress explicitly overrode such laws.

(c) The union-shop amendment appears to be constitutional; in any event, it would not be for this Board to question the constitutionality of any part of the Railway Labor Act by virtue of which it was created.

(d) Possible discriminatory practices by some of these unions would not disqualify them from having the union shop, since Congress has protected the job rights of minorities against whom discrimination may be practiced. It is appropriate in this connection that racial discrimination has been almost completely eradicated from the laws of these unions, and assurances were given by their top executives on the record that action would be taken at coming conventions to eliminate whatever traces remain.

(e) The possession of the railroads taken by the Government, pursuant to Executive Order No. 10155 on August 27, 1950, does not affect the normal functions of an emergency board.

9. For almost 20 years all major changes in wages, hours and working conditions in the railroad industry have been made effective with respect to the employes who are covered by the scope rules of the collective bargaining agreement between each carrier and labor organization; the scope rules have variations predicated on collective bargaining considerations and are subject to being changed in accordance with the procedures of the Railway Labor Act; this Board is not qualified to undertake to undo and remake such scope rules which have evolved and been adhered to over a period of years in all collective bargaining between the parties, nor to undertake to adopt a new measure of the employes to be covered by the new union-shop rule, except to the extent conceded by the Organizations on the record.[1]

10. There are several procedural and substantive problems concerned with the reasonable protection of all parties affected by a

[1] One member of this Board disagrees. See sec. E, 1, of this report.

union shop, for which provisions should be made in a union-shop agreement.

11. The check-off is generally prevalent in American industry. The above-mentioned study of the Bureau of Labor Statistics shows that some 78 percent of the employes covered by collective bargaining agreements have the check-off. In addition it is provided for in agreements with many railroads. We therefore find that a check-off should be instituted.

It is exceedingly rare for unions to be required to pay the expense entailed in the deduction of dues. On the railroads this expense would be offset in part at least by not having the time and attention of employes diverted by dues collections, and the Carrier would also have the benefit of knowing whether employes are meeting their financial obligations to their union and would thereby avoid needless disputes. It is our conclusion that the Carriers should not be compensated for making these deductions.

It is apparent, however, that a number of details remain to be worked out by the parties, and the procedures with respect thereto, set forth in the agreements of these Labor Organizations with the New York Central and the Baltimore & Ohio, furnish a good general pattern to be followed by these Organizations and the Carriers.

12. Movements initiated in the past 20 years, by either the Carriers or the Labor Organizations for changes in wages, hours or working conditions have been handled on a joint national basis. No sound or convincing reasons were advanced for handling this dispute in any other manner. The National Mediation Board has undertaken to process this dispute substantially along the customary lines, and if required to mediate this dispute as a separate one between each carrier and each organization, it would have to find the manpower for over 6,000 separate disputes, which would be a practical impossibility, and such a course would lead to long, unwarranted and disturbing delays in working out settlements. We conclude that this dispute should be handled on the customary national basis.

B. We recommend that:

1. The parties enter into a joint national agreement, through their duly designated representatives, in accordance with their usual custom, providing for a union-shop agreement as proposed by the Organizations in their notices of February 5, 1951, to the several Carriers parties to this dispute, in the form substantially as used in the union-shop agreements with the New York Central System Lines, except that:

(a) from the positions covered by said agreement, in accordance with the respective scope rules in the agreements between each carrier

and organization, there shall be excluded all positions not represented by the organization, all fully excepted positions, and all positions covered only in a nominal or token manner, which means covered only to the extent of the retention of seniority rights, the right to a hearing or trial before being discharged by the carrier, and/or the right to have handled any question arising out of the transfer from one seniority district to another.

(b) The procedures to be followed in dealing with contested cases or requests to discharge shall in general follow those provided for in the New York Central agreement of August 3, 1951, and shall also include substantially those set forth in paragraph E of the letter agreement of August 28, 1951, between the Baltimore & Ohio Railroad Co. and the Organizations.

(c) In stipulating that no claims against the Carrier shall arise or begin to accrue in favor of a discharged employe or any other employe or the union, prior to final determination of the dispute, it shall be understood that the period free of all liability shall also include the time during which action by the Carrier is stayed by any court.

(d) In describing the circumstances under which no claims shall arise or begin to accrue in favor of the discharged employe or any other employe or the union, the language used in section 12 of the union-shop agreement between the Southern Railway Co. and the Brotherhood of Railroad Trainmen of September 1, 1951, shall be used.

(e) Provisions for indemnifying the Carriers against certain types of losses which may be incurred by them under the union-shop agreement shall be made in accordance with the suggestions set forth in section E, 2, *ante*.

(f) Additional protective provisions as suggested by the Board in section E, 2, *ante*, under the sub-head "Miscellaneous Protective Clauses," shall be included in the union-shop agreement.

2. The aforementioned joint national agreement provide for the deduction of dues, initiation fees and assessments, that the details be worked out in substantially the same manner as is provided for in the agreement of August 3, 1951, between the New York Central Railroad System Lines and these Organizations, modified as suggested in section E, 2, *ante*.

Respectfully submitted.

DAVID L. COLE, *Chairman.*
AARON HORVITZ, *Member.*
GEORGE E. OSBORNE, *Member.*

APPENDIX I

EXECUTIVE ORDER

CREATING AN EMERGENCY BOARD TO INVESTIGATE DISPUTES BETWEEN THE AKRON & BARBERTON BELT RAILROAD CO. AND OTHER CARRIERS AND CERTAIN WORKERS

Whereas disputes exist between the Akron & Barberton Belt Railroad Co. and certain other carriers designated in list A attached hereto and made a part hereof, carriers under Federal management, and certain workers represented by the seventeen cooperating (non-operating) railway labor organizations designated in list B attached hereto and made a part hereof; and

Whereas by Executive Order No. 10155 of August 25, 1950, possession, control, and operation of the transportation systems owned or operated by the said carriers, together with the transportation systems owned or operated by certain other carriers, were assumed by the President, through the Secretary of the Army; and

Whereas these disputes have not heretofore been adjusted under the provisions of the Railway Labor Act, as amended; and

Whereas these disputes threaten, in the judgment of the National Mediation Board, substantially to interrupt interstate commerce to a degree such as to deprive the country of essential transportation service, and also threaten to interfere with the operation by the Secretary of the Army of transportation systems taken pursuant to the said Executive Order No. 10155:

Now, Therefore, by virtue of the authority vested in me by the Constitution and the laws of the United States, including section 10 of the Railway Labor Act, as amended (45 U. S. C. 160), and subject to the provisions of that section, I hereby create a board of three members, to be appointed by me, to investigate the said disputes. Nothing in this order shall be construed to derogate from the authority of the Secretary of the Army under the said Executive Order No. 10155.

No member of the said Board shall be pecuniarily or otherwise interested in any organization of railway employees or any carrier.

The Board shall report its findings to the President with respect to the said disputes within thirty days from the date of this order.

The Board may, to the extent it deems necessary or desirable, make separate and independent findings with respect to each of the carriers involved.

In performing its functions under this order the Board shall comply with the requirements of section 502 of the Defense Production Act of 1950, as amended.

[S] HARRY TRUMAN.

THE WHITE HOUSE,
November 15, 1951.

NOTE.—An extension was granted by the President, with the consent of the parties, directing this Board to file its report by February 15, 1952.

LIST A

EASTERN REGION

Albany Port District Railroad Co.
Akron & Barberton Belt Railroad Co.
Akron, Canton & Youngstown Railroad.
Akron Union Passenger Depot Co.
Ann Arbor Railroad Co.
Arcade & Attica Railroad Corp.
Bangor & Aroostook Railroad Co.
Barre & Chelsea Railroad.
Belfast & Moosehead Lake Railroad Co.
Bessemer & Lake Erie Railroad Co.
Boston & Maine Railroad Co.
Boston Terminal Co.
Brooklyn Eastern District Terminal.
Buffalo Creek Railroad.
Bush Terminal Co.
Canadian National Railways:
- Canadian National Railway State of New York.
- Canadian National Railway Lines in New England.
- Champlain & St. Lawrence Railroad.
- United States & Canada Railroad.
- St. Clair Tunnel Co.

Canadian Pacific Railways in the United States.
Canton Railroad Co.
Central Indiana Railway Co.
Central Railroad Co. of New Jersey:
- Central Railroad of Pennsylvania.
- Jersey Central Transport Co.
- New York & Long Branch Railroad.
- Wharton & Northern Railroad.

Central Vermont Railway, Inc.
Chesapeake & Ohio Railway Co.:
    Pere Marquette District.
    Fort Street Union Depot Co.
Chicago, Indianapolis & Louisville Railway.
Chicago South Shore & South Bend Railroad.
Chicago Union Station Co.
Cincinnati Union Terminal Co.
Dayton Union Railway Co.
Delaware & Hudson Railroad.
Delaware, Lackawanna & Western Railroad.
Detroit & Mackinac.
Detroit & Toledo Shore Line Railroad.
Detroit, Toledo & Ironton Railroad.
Detroit Terminal Railroad Co.
East Broad Top Railroad & Coal Co.
East St. Louis Junction Railway Co.
Erie Railroad Co:
    Chicago & Erie.
Grand Trunk Western Railroad Co.
Hoboken Manufacturers Railroad Co.
Huntingdon & Broad Top Mountain Railroad & Coal Co. (Pennsylvania).
Illinois Terminal Railroad Co.
Indianapolis Union Railway Co.
Jay Street Connecting Railroad.
Lackawanna & Wyoming Valley Railroad.
Lake Champlain & Moriah Railroad Co.
Lake Terminal Railroad Co.
Lehigh & Hudson River Railroad Co.
Lehigh & New England Railroad Co.
Long Island Railroad Co.
Mackinac Transportation Co.
Maine Central Railroad Co.:
    Portland Terminal Co.
Manistee & Northeastern Railway Co.
Maryland & Pennsylvania Railroad.
Merchants Dispatch Transportation Corp.
Montour Railroad.
Morristown & Erie Railroad Co.
Mystic Terminal Co. (Charleston, Mass.).
New Jersey and New York Railroad.
New Jersey, Indiana & Illinois Railroad Co.

New York Connecting Railroad Co.
New York, Chicago & St. Louis Railroad Co.
New York Dock Railway.
New York, New Haven & Hartford Railroad Co.
New York, Susquehanna & Western Railroad.
Patapsco & Back Rivers Railroad Co.
Pennsylvania Railroad Co.:
    Baltimore & Eastern Railway Co.
    Jersey City Stock Yards, Inc.
    Pittsburgh Joint Stock Yards.
Pennsylvania-Reading Seashore Lines.
Philadelphia Bethlehem & New England Railroad Co.
Pittsburgh & Shawmut Railroad Co.
Pittsburgh & West Virginia Railway.
Pullman Co.
Railroad Perishable Inspection Agency.
Reading Co.:
    Beaver Creek Water Co.
    Philadelphia Reading & Pottsville.
St. Johnsbury & Lamoille County.
St. Louis & O'Fallon Railway Co.
South Buffalo Railway.
Union Belt of Detroit.
Union Depot Co. (Columbus, Ohio).
Union Freight Railroad (Boston).
Union Inland Freight Station (New York).
Washington Terminal Co.
Western Allegheny Railroad Co.
Youngstown & Northern Railway Co.

SOUTHEASTERN REGION

Atlanta & St. Andrews Bay.
Atlanta & West Point:
    Western Railway of Alabama.
Atlanta Joint Terminals.
Atlantic & East Carolina Railway Co.
Atlantic Coast Line Railroad.
Birmingham Terminal Co.
Central of Georgia Railway.
Charleston & Western Carolina Railway.
Chattanooga Station Co.
Chatanooga Traction Co.
Chesapeake & Ohio Railway.

(Chesapeake District.)
Clinchfield Railroad.
Columbia Union Station Co.
Columbus & Greenville Railway.
Durham Union Station Co.
East Tennessee & Western North Carolina Railroad.
Florida East Coast Railway.
Fruit Growers' Express Co.
Georgia & Florida Railroad.
Georgia Railroad:
    Augusta Union Station Co.
Gulf, Mobile & Ohio Railroad.
Interstate Railroad Co.
Jacksonville Terminal Co.
Kentucky & Indiana Terminal Railroad.
Lancaster & Chester Railroad Co.
Louisville & Nashville Railroad.
    Lexington Union Station Co.
Macon, Dublin & Savannah.
Macon Terminal.
Maher, Walter C.
Meridian & Bigbee River Railway Co.
Meridian Terminal Co.
Mississippi Central Railroad.
Nashville, Chattanooga & St. Louis Railway.
Nashville Terminals Co.
Natchez & Louisiana Railway & Transfer Co.
New Orleans Public Belt Railroad Co.
Norfolk & Portsmouth Belt Line.
Norfolk & Western Railway.
Norfolk Southern Railway Co.
Norfolk Terminal Railway Co.
Piedmont & Northern Railway Co.
Port Everglades (Broward County Port Authority).
Richmond, Fredericksburg & Potomac Railroad:
    Potomac Yard.
    Richmond Terminal Railway Co.
Savannah & Atlanta Railway Co.
Seaboard Air Line Railway Co.
Southeastern Demurrage & Storage Bureau.
Southern Freight Tariff Bureau.
Southern Railway:
    Alabama Great Southern Railway Co.

Cincinnati, New Orleans & Texas Pacific Railway.
Georgia Southern & Florida Railway.
Harriman & Northeastern Railroad Co.
New Orleans & Northeastern Railroad.
New Orleans Terminal Co.
St. Johns River Terminal Co.
State University Railroad Co.
Woodstock & Blockton.
Southern Short Lines:
Blue Ridge Railway Co.
Carolina & Northwestern.
Danville & Western Railway.
High Point, Randleman, Asheboro & Southern Railroad.
Yadkin Railroad.
Tennessee, Alabama & Georgia Railway Co.
Tennessee Central Railway.
Tennessee Railroad Co.
Terminal Railway Alabama State Docks.
Virginian Railway.
Winston-Salem Southbound.
Winston-Salem Terminal Co.

WESTERN REGION

Ahnapee & Western Railroad.
Alton & Southern Railroad.
American Refrigerator Transit.
Ashley, Drew & Northern.
Atchison, Topeka & Santa Fe Railway:
Dining Car Department.
Gulf, Colorado & Santa Fe Railway.
Panhandle & Santa Fe Railway.
Atchison Union Depot & Railroad Co.
Belt Railway Company of Chicago.
Burlington Refrigerator Express Co.
Camas Prairie Railroad Co.
Cedar Rapids & Iowa City.
Central California Traction Co.
Chicago & Eastern Illinois Railroad:
Chicago Heights Terminal & Transfer.
Chicago & Illinois Midland Railway.
Chicago & North Western Railway.
Chicago & Western Indiana Railroad.
Chicago, Aurora & Elgin Railway Co.

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Chicago Car Interchange & Inspection Bureau.
Chicago, Burlington & Quincy Railroad.
Chicago Great Western Railway Co.
Chicago, Milwaukee, St. Paul & Pacific Railroad.
Chicago, Terre Haute & Southeastern Railway.
Chicago North Shore & Milwaukee.
Chicago Produce Terminal Co.
Chicago Railroad Freight Collection Association.
Chicago Railways Hotel Ticket Office.
Chicago, Rock Island & Pacific Railway:
    Peoria Terminal Co.
Chicago, St. Paul, Minneapolis & Omaha Railway.
Colorado & Southern Railway.
Colorado & Wyoming Railway.
Copper Range Co.
Dallas Car Interchange & Inspection Bureau.
Davenport, Rock Island & North Western Railway.
Denver & Rio Grande Western Railroad.
Denver Union Stock Yards Co.
Denver Union Terminal Railway.
Des Moines & Central Iowa.
Des Moines Union Railway.
Duluth, Missabe & Iron Range Railway.
Duluth, Union Depot & Transfer Co.
Duluth, Winnipeg & Pacific Railway.
East Portland Freight Terminal.
Elgin, Joliet & Eastern Railway.
El Paso Union Passenger Depot.
Fort Dodge, Des Moines & Southern.
Fort Worth & Denver City:
    Wichita Valley.
Galveston, Houston & Henderson.
Galveston Wharves.
Green Bay & Western Railroad:
    Kewaunee, Green Bay & Western.
Gulf Coast Lines—Comprising:
    Asherton & Gulf Railway.
    Asphalt Belt Railway.
    Beaumont, Sour Lake & Western Railway.
    Houston & Brazos Valley Railway.
    Houston North Shore Railway.
    Iberia, St. Mary & Eastern Railway.
    International-Great Northern Railroad.

New Iberia & Northern Railroad.
New Orleans, Texas & Mexico Railway.
Orange & Northwestern Railroad.
Rio Grande City Railway.
St. Louis, Brownsville & Mexico Railway.
San Antonio Southern Railway.
San Antonio, Uvalde & Gulf Railroad.
San Benito & Rio Grande Valley.
Sugar Land Railway.
Harbor Belt Line (Los Angeles).
Houston Belt & Terminal Railway.
Illinois Central Hospital Department.
Illinois Central Railroad:
Chicago & Illinois Western Railroad.
Steamer *Pelican.*
Illinois Northern Railway.
Joint Railway Agency (So. St. Paul)
Joint Texas Division of C. R. I. & P. R. R. Co., and F. W. & D. C. Ry. Co.
Joliet Union Depot Co.
Kansas City, Kaw Valley Railroad, Inc.
Kansas City Southern Railway:
Arkansas Western Railway.
Fort Smith & Van Buren.
Joplin Union Depot Co.
Kansas City Terminal Railway.
King Street Passenger Station (Seattle).
Lake Superior & Ishpeming.
Lake Superior Terminal & Transfer Railway.
Laramie, North Park & Western.
La Salle Street Stations.
Longview Portland & Northern.
Los Angeles Union Passenger Terminal.
Louisiana & Arkansas Railway Co.
Louisiana & North West Railroad.
Manistique & Lake Superior Railroad Co.
Manufacturers' Junction Railway.
Manufacturer's Railway.
Midland Valley Railroad:
Kansas, Oklahoma & Gulf Railway.
Kansas, Oklahoma & Gulf of Texas.
Oklahoma City, Ada, Atoka Railway.
Milwaukee-Kansas City Southern Joint Agency.

Mineral Range.
Minneapolis & St. Louis Railway:
    Railway Transfer Co. City of Minneapolis.
Minneapolis, St. Paul & Sault Ste. Marie:
    Duluth So. Shore & Atlantic Railway.
Minnesota Transfer Railway.
Missouri-Kansas-Texas Railroad Co.:
    Beaver, Meade & Englewood.
    Missouri-Kansas-Texas Railroad Co. of Texas.
Missouri Pacific Railroad:
    Missouri-Illinois Railroad.
    Sedalia Reclamation Plant.
Natchez & Southern Railway.
Northern Pacific Railway.
Northern Pacific Terminal Co. of Oregon.
Northern Refrigerator Line, Inc.
North Louisiana & Gulf Railroad Co.
Northwestern Pacific Railroad.
Ogden Union Railway & Depot Co.
Ogden Union Stock Yards.
Okmulgee Northern Railway Co.
Pacific Car Demurrage Bureau.
Pacific Coast Railroad Co.:
    Pacific Coast Co.
Pacific Electric Railway Co.
Pacific Fruit Express Co.
Paducah & Illinois Railroad Co.
Peoria & Pekin Union Railway.
Petaluma & Santa Rosa Railroad Co.
Port Terminal Railroad Association (Houston).
Pueblo Joint Car Interchange & Inspection Bureau.
Pueblo Union Depot & Railroad Co.
Quanah, Acme & Pacific.
Rio Grande Southern.
St. Joseph Terminal Co.
St. Louis-San Francisco Railway.
    St. Louis, San Francisco of Texas.
St. Louis Southwestern Railway.
    St. Louis Southwestern Railway Co. of Texas
St. Paul Union Depot Co.
Salt Lake City Union Depot & Railroad Co.
Salt Lake Union Stock Yards Co.
San Antonio Joint Car Interchange Association.

San Diego & Arizona Eastern Railway.
Sand Springs Railway Co.
Sioux City Terminal Railway.
Southern Pacific Company (Pacific Lines).
Southern Pacific DeMexico (In United States).
South Omaha Terminal Railway.
Southern Illinois & Missouri Bridge Co.
Spokane International Railway.
Spokane, Portland & Seattle Railway:
    Oregon Electric Railway.
    Oregon Trunk Railway.
Spokane Union Station Co.
Stock Yards (District Agency Chicago).
Sun Valley Operations.
Terminal Railroad Association of St. Louis.
Texarkana Union Station Trust.
Texas & New Orleans Railroad.
Texas & Pacific Railway:
    Abilene & Southern Railway.
    Fort Worth Belt Railway.
    Texas-New Mexico Railway.
    Texas Short Line Railway.
    Weatherford Mineral Wells & Northwestern Railway.
Texas City Terminal Railway Co.
Texas Mexican Railway Co.
Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans.
Toledo, Peoria & Western Railroad.
Tooele Valley Railway Co.
Tremont & Gulf Railway.
Tucson, Cornelia & Gila Bend Railroad.
Union Pacific Railroad:
    St. Joseph & Grand Island Railway.
Union Railway Co. (Memphis).
Union Terminal Co. (Dallas).
Union Terminal Railway Co. (St. Joseph, Mo.):
    St. Joseph Belt Railway Co.
Wabash Railroad Co.
Walla Walla Valley Railway Co.
Warren & Ouachita Valley Railway.
Waterloo, Cedar Falls & Northern Railroad.
Western Fruit Express Co.
Western Pacific Railroad.
Western Weighing & Inspection Bureau.

Wichita Falls & Southern Railroad.
Yakima Valley Transportation Co.

List B

1. International Association of Machinists.
2. International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America.
3. International Brotherhood of Blacksmiths, Drop Forgers and Helpers.
4. Sheet Metal Workers' International Association.
5. International Brotherhood of Electrical Workers.
6. Brotherhood Railway Carmen of America.
7. International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers.
8. Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes.
9. Brotherhood of Maintenance of Way Employes.
10. The Order of Railroad Telegraphers.
11. Brotherhood of Railroad Signalmen of America.
12. National Organization, Masters, Mates and Pilots of America.
13. National Marine Engineers' Beneficial Association.
14. International Longshoremen's Association.
15. Hotel and Restaurant Employees and Bartenders International Union.
16. American Train Dispatchers Association.
17. Railroad Yardmasters of America.

NOTE.—The Organizations reported to the Board that the following carriers should be removed from list A attached to Executive order dated November 15, 1951:

EASTERN REGION

Name of Carrier	*Reason*
Lake Terminal R. R. Co	Standby agreement entered into.
Merchants Despatch Transportation Corp.	Agreement signed.
Patapsco & Back Rivers R. R. Co	Do.
Philadelphia, Bethlehem & New England R. R. Co.	Do.
South Buffalo Ry	Do.
Youngstown & Northern	Standby agreement entered into.

SOUTHEASTERN REGION

Tennessee R. R. Co	Agreement signed.

WESTERN REGION

Davenport, Rock Island & Northwestern	Standby agreement entered into.
Northern Refrigerator Line, Inc	Agreement signed.
Pacific Coast Co	Do.
Southern Illinois & Missouri Bridge Co	Withdrawn—no notice served.
Spokane Union Station	Standby agreement entered into.

APPENDIX II

LIST OF APPEARANCES

M. C. Smith, Jr., Esq., Erie Railroad, Cleveland 15, Ohio, appearing on behalf of the following carriers:

Akron & Barberton Belt Railroad Co.
Akron, Canton & Youngstown.
Akron Union Passenger Depot Co.
Ann Arbor.
Bessemer & Lake Erie.
Boston & Maine.
Boston Terminal.
Brooklyn Eastern District Terminal.
Buffalo Creek.
Canadian National Railways:
- Lines in New England.
- State of New York.
- Champlain & St. Lawrence Railroad.
- Duluth, Winnipeg & Pacific Railway.
- St. Clair Tunnel.
- United States & Canada Railroad.

Canadian Pacific.
Central Railroad Co. of New Jersey:
- Central Railroad Co. of Pennsylvania.
- New York & Long Branch Railroad.
- Wharton & Northern Railroad.
- Jersey Central Transportation Co.

Central Vermont Railway, Inc.
Chicago, Indianapolis & Louisville.
Chicago Union Station Co.
Cincinnati Union Terminal.
Dayton Union.
Delaware & Hudson.
Delaware, Lackawanna & Western.
Detroit & Toledo Shore Line.
Detroit Terminal.
Detroit, Toledo & Ironton.
Erie.

Grand Trunk Western.
Hoboken Manufacturers Railroad.
Indianapolis Union.
Jersey City Stock Yards.
Lehigh & Hudson River.
Lehigh & New England.
Long Island.
Mackinac Transportation Co.
Maine Central:
    Portland Terminal
Montour Railroad Co.
Mystic Terminal.
New York, Chicago & St. Louis.
New York Connecting.
New York, New Haven & Hartford.
Pennsylvania Railroad.
Pennsylvania Reading SS Lines.
Pittsburgh & West Virginia.
Pittsburgh Joint Stock Yards Co.
Railroad Perishable Insp. Agency.
Reading Co.
Union Depot (Columbus, Ohio).
Union Freight (Boston).
Union Inland Freight Station.
Washington Terminal Co.
Western Allegheny.
Youngstown & Southern Railway Co.

Donald R. Richberg, Esq., 100 Vermont Avenue NW., Washington, D. C., and Andre Maximov, Esq., 60 Wall Street, New York, N. Y., appearing on behalf of the following carriers:

Atlanta & West Point—Western Railway of Alabama.
Atlanta Joint Terminals.
Atlantic Coast Line.
Bangor & Aroostook.
Central of Georgia.
Charleston & Western Carolina.
Chesapeake & Ohio.
Clinchfield.
Florida East Coast.
Fruit Growers Express:
    Burlington Refrigerator Express.
    Western Fruit Express.

Georgia:
Augusta Union Station Co.
Gulf Mobile & Ohio.
Jacksonville Terminal Co.
Kentucky & Indiana Terminal.
Louisville & Nashville:
Lexington Union Station Co.
Macon Terminal.
Nashville, Chattanooga & St. Louis.
Norfolk & Portsmouth Belt Line.
Norfolk & Western.
Norfolk Southern.
Richmond, Fredericksburg & Potomac:
Richmond Terminal.
Potomac Yard.
Seaboard Air Line.
Tennessee Central.
Virginian Railway.
Winston-Salem Southbound.

Howard Neitzert, Esq., 11 South La Salle Street, Chicago, Ill., appearing on behalf of the following carriers:

Alton & Southern Railroad.
Atchison, Topeka & Santa Fe Railway.
Belt Railway Co. of Chicago.
Chicago & Eastern Illinois Railroad.
Chicago & Illinois Midland Railway.
Chicago & North Western Railway.
Chicago & Western Indiana Railroad.
Chicago, Burlington & Quincy Railroad.
Chicago Great Western Railway.
Chicago, Milwaukee, St. Paul & Pacific Railroad.
Chicago, Rock Island & Pacific Railroad.
Chicago, St. Paul, Minneapolis & Omaha Railway.
Colorado & Southern Railway.
Colorado & Wyoming Railway.
Denver & Rio Grande Western Railroad.
Des Moines Union Railway.
Duluth, Missabe and Iron Range Railway.
East St. Louis Junction Railroad.
Elgin, Joliet & Eastern Railway.
Fort Worth & Denver Railway Co.
Green Bay & Western Railroad.
Gulf Coast Lines.

Illinois Central Railroad.
Illinois Terminal Railroad.
Kansas City Southern Railway.
Kansas City Terminal Railway.
Lake Superior & Ishpeming Railroad.
Louisiana & Arkansas Railway.
Manufacturers Railway.
Midland Valley Railroad.
Minneapolis & St. Louis Railway.
Minneapolis, St. Paul & Saulte Ste. Marie Railway.
Minnesota Transfer Railway.
Missouri-Kansas-Texas Lines.
Missouri Pacific Railroad.
Northern Pacific Railway.
Peoria & Pekin Union Railway.
St. Louis-San Francisco Railway Lines.
St. Louis Southwestern Railway Lines.
St. Paul Union Depot Co.
Sioux City Terminal Railway.
Southern Pacific (Pacific System).
South Omaha Terminal Railway.
Spokane International Railroad.
Spokane, Portland & Seattle Railway.
Terminal Railroad Association of St. Louis.
Texas & New Orleans Railroad.
Texas & Pacific Railway.
Texas Mexican Railway.
Toledo, Peoria & Western Railroad.
Union Pacific System.
Union Railway (Memphis).
Wabash Railroad.
Western Pacific Railroad.
Wichita Valley Railway.
Pullman Co.

C. A. Miller, Esq., 2000 Massachusetts Avenue NW., Washington 6, D. C., appearing on behalf of the following carriers:

Ahnapee and Western Railway Co. (The).
Arcade and Attica Railroad Corp.
Ashley, Drew & Northern Railway Co.
Atlantic and East Carolina Railway Co.
Barre and Chelsea Railroad Co.
Belfast and Moosehead Lake Railroad Co.
Broward County Port Authority.

Bush Terminal Railroad Co.
Cedar Rapids & Iowa City Railway Co.
Chicago North Shore & Milwaukee Railway Co.
Des Moines and Central Iowa Railway Co.
Detroit and Mackinac Railway Co.
East Tennessee and Western North Carolina Railroad Co.
Georgia & Florida Railroad (Alfred W. Jones, receiver).
Jay Street Connecting Railroad (The).
Lackawanna and Wyoming Valley Railroad Co. (E. McLain Watters, trustee).
Macon, Dublin & Savannah Railroad Co.
Manufacturers' Junction Railway Co.
Maryland and Pennsylvania Railroad Co.
Meridian and Bigbee River Railway Co. (J. C. Floyd, trustee).
New York, Susquehanna and Western Railroad Co. (Henry K. Norton, trustee).
Okmulgee Northern Railway Co.
Piedmont and Northern Railway Co.
Pittsburgh & Shawmut Railroad Co. (The).
Quanah, Acme & Pacific Railway Co.
Savannah & Atlanta Railway Co.
Tennessee, Alabama & Georgia Railway Co.
Tooele Valley Railway Co.
Tucson, Cornelia and Gila Bend Railroad Co.
Waterloo, Cedar Falls & Northern Railroad.

John E. Hess, Esq., 84 Harlow Street, Bangor, Maine, appearing on behalf of Bangor & Aroostook Railroad Co.

Henry L. Walker, P. O. Box 1808, Washington 13, D. C., C. D. Mackay, Fifteenth and K Streets, Washington, D. C., James I. Hardy, P. O. Box 1808, Washington 13, D. C., and W. S. MacGill, Fifteenth and K Streets, Washington, D. C., appearing on behalf of Southern Railway System Lines, et al.

James N. Frazer, appearing on behalf of Atlanta & St. Andrews Bay Railway Co.

Abraham S. Goldstein, 503 D Street NW., Washington, D. C., appearing on behalf of Chicago, Aurora & Elgin Railroad Co.

Appearing on behalf of labor:

Lester P. Schoene, general counsel.
Eli Oliver, economic advisor.
W. M. Homer, assistant economic advisor.
G. E. Leighty, chairman of Employes National Conference Committee.

Railway Employes' Department, A. F. of L.:
Michael Fox, president.
George Cucich, research director.
International Association of Machinists:
A. J. Hayes, president.
Earl Melton, general vice president.
International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America:
C. J. MacGowan, international president.
Harold Buoy, internatonal representative.
International Brotherhood of Blacksmiths, Drop Forgers and Helpers:
John Pelkofer, general president.
George F. Barna, general vice president.
Sheet Metal Workers' International Association:
J. M. Burns, general vice president.
William H. Baldock, international representative.
International Brotherhood of Electrical Workers:
D. W. Tracy, international president.
J. J. Duffy, international vice president.
Charles McCloskey, international representative.
Brotherhood Railway Carmen of America:
Irvin Barney, general president.
International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers:
Anthony E. Matz, international president.
George Wright, vice president.
Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes:
George M. Harrison, grand president.
L. B. Sneddin, vice president.
James L. Crawford, general counsel.
Brotherhood of Maintenance of Way Employes:
T. C. Carroll, president.
Frank L. Noakes, director of research.
The Order of Railroad Telegraphers:
G. E. Leighty, president.
Ray J. Westfall, director of research.
Brotherhood of Railroad Signalmen of America:
Jesse Clark, president.
S. H. Howard, grand lodge representative.
National Organization, Masters, Mates and Pilots of America:
Wm. J. Van Buren, national secretary-treasurer.

National Marine Engineers' Beneficial Association:
H. L. Daggett, national president.
International Longshoremen's Association:
J. P. Ryan, international president.
Harry R. Hasselgren, secretary-treasurer.
Hotel and Restaurant Employees and Bartenders International Union:
Hugo Ernst, general president.
R. W. Smith, secretary-treasurer.
Leyton Weston, International representative.
American Train Dispatchers Association:
O. H. Braese, president.
J. B. Springer, secretary-treasurer.
Railroad Yardmasters of America:
M. G. Schoch, president.
Verne W. Smith, vice president.

U. S. GOVERNMENT PRINTING OFFICE: 1952