

1969

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### Recommended Citation

Henry Weiss, *Search for Certainty*, 35 J. AIR L. & COM. 493 (1969)  
<https://scholar.smu.edu/jalc/vol35/iss3/19>

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## SEARCH FOR CERTAINTY

BY HENRY WEISS†

MY ORIGINAL intention was to review recently proposed airline legislation, however, upon listening to my fellow panelists, I have decided to set aside that review and follow a few targets of opportunity. Therefore, the review of legislation is appended in condensed form.

A case has not been made for compulsory terminal process in air transport labor relations. Whether it be seizure, a labor court or compulsory arbitration, the underlying impulse is much the same. The search for procedural and substantive certainty is often commensurate with an unwillingness or inability to engage in effective free collective bargaining. The public interest in the prevention of major disruptions is a traditional argument basic to an imposed solution, notwithstanding major disruptions in the aviation industry have been relatively infrequent and few. This fact is particularly notable in an industry expanding and changing at an increasing rate. Moreover, such change has been accompanied by a constellation of factors normally causative of labor stress.

It is to be expected that there will be differences concerning the meaning of "major disruption" or "substantial interruption" and kindred phrases. They are used to invoke a particular result such as some form of government intervention or the imposition of a status quo obligation. Depending upon the attitude found in various quarters of aviation labor relations, these phrases come more or less freely and vary in content. Statistics of dollars lost by strikes in transportation are commonly cited as persuasive arguments for procedural certainty. Loss of service to the public is also cited. The secondary effects on employment resulting from a strike by a small but key group are likewise marshalled to support an imposed solution. None of these situations are enjoyable and all are to be avoided; the question is by what means? Are these losses of such kind or magnitude as to require an imposed solution?

The interest of the public in its convenience must be balanced against its interest in the maintenance of free collective bargaining which is an interest much more deeply rooted than convenience. Unwillingness to balance these interests is central to the popular myth surrounding labor disputes in the aviation industry where inconvenience to the public is almost automatically equated with crisis, national emergency and substantial interruption. There is a demonstrated capacity to absorb economic and sociological shock. This is not to say that this shock can occur without limitation, nor does it follow that the individual loss or hardship is lessened.

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It is highly desirable that such disruptions be avoided. However, some strongly suggest that alterations in the structure may not be essential and may exact greater costs, though of a different kind, than would flow from most disruptions.

Proponents of the imposed procedural solution do not often note the preponderance of labor disputes which are peacefully settled. Some years ago it was comparatively easy to secure an emergency board under section 10 of the Railway Labor Act. The boards became debased for a variety of reasons. More recently, boards have become more difficult to obtain. What has happened to all those "substantial interruptions" to commerce? Statistics would not support a contention that they ripen into strikes. It is evident that the parties addressed themselves to their collective bargaining responsibilities in the majority of situations. However, there have been those who have avoided collective bargaining and decision making, confident that these painful processes would be performed by neutrals sitting as an emergency board. It seemed at times that it did not matter what was the substance of the recommendations because the important element lay in the "safety" and certainty that someone else made the decision.

The phrase "imposed procedural solution" has been used to describe that approach to labor disputes which envisions as a probable terminal step resolution by some agency or device not established by the parties. Though it would appear that this solution does not involve a substantive element, close inspection reveals that such is not the case. The amount of compensation, the disposition of the work force and the problem available for bargaining are very much in the forefront of the thinking of those who advocate imposed procedural solutions. However, these substantive considerations, that is, the terms of the settlement, are not commonly articulated.

Nevertheless, there are those who seemingly are primarily concerned with procedural certainty. Yet the problems could be more effectively assessed and rational solutions developed if the underlying apprehensions were confronted. Arthur M. Wischart, in his article<sup>1</sup> states:

From the standpoint of transportation, the Taft-Hartley Act offers a few advantages and contains some positive disadvantages; grievance disputes can still be a source of strikes; status quo and cooling-off periods are not as widely available; mediation has less power and flexibility; and there is no requirement that unions can be organized on a system-wide basis. Moreover, the fact that presidential boards have no power to make recommendations on the merits of disputes has been long criticized as a defect. The RLA, on the other hand, was developed solely as a transportation measure and it has been successful in narrowing the causes of economic warfare. The only remaining difficulty with the RLA is how to handle "major" disputes after the statutory procedures have failed, and this problem also exists under the Taft-Hartley Act.<sup>2</sup>

The difficulty does not rest only with those disputes which are economically pervasive, those which threaten the national security or those which cause

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<sup>1</sup> Wischart, *Transportation Strike Control Legislation*, 66 MICH. L. REV. 1697 (1968).

<sup>2</sup> *Id.* at 1713.

substantial interruption. On a non-delineated basis the deficiency in the Railway Labor Act is that it does not "handle" unresolved collective bargaining disputes which could lead to strikes. In his article, Mr. Wisehart also states:

Government cannot sit idly by when the nation's rail or air transportation is disrupted, when New York City's subways are shut down, or even when a needed hospital is closed.<sup>3</sup>

Mr. Wisehart cites with approval the statement made by Everett M. Goulard, Vice President, Industrial Relations, Pan American World Airways, Inc., on behalf of American, Eastern, National, Pan American and Trans World Air Lines to a Committee of the American Bar Association. In that statement Mr. Goulard makes it quite clear that in his view strikes are outmoded devices for dispute settlement within the context of our current industrial structure. Although both Mr. Wisehart and Mr. Goulard argue the effect of major disruption in supporting procedural certainty, there is a much deeper apprehension and a much more broadly based thrust to their concepts.

Whether the possibility and the reality of economic action in achieving labor agreements has become at least in part anachronistic must be evaluated. However, this analysis should not be obscured by pictures of economic catastrophe or large displacements of employees, although these possibilities are not to be ignored. I think it a grave alienation from the tradition of collective bargaining to assert as Mr. Wisehart does that "strikes are an indication of sickness." There has been an emboldened shift of position in support of compulsory procedural processes. No longer is this theory based upon major disruptions, but is clearly intended to apply to all strike situations. It is also clear that more than an imposed procedural solution is sought. Indeed, the very nature of mandatory terminal devices which supplant bargaining lead to the imposition of parameters which control the terms upon which the dispute is resolved.

Mr. Wisehart, Mr. Goulard and others like-minded, freely express their concern over so-called excessive settlements and costly terms reached. The preoccupation is not simply with the possibility of strikes in major situations but with a manifest intention to shape the substantive basis for dispute disposition. To illustrate the degree of involvement in the terms of settlement, let us examine the criteria as set forth in the Compulsory Arbitration Bill introduced by Congressman Pickle in the 90th Congress, which the Arbitration Board considers in reaching an award:

- (A) Equality of treatment of the various classes and crafts of employees of the carrier involved;
- (B) The wages paid generally in other industries for similar kinds of work;
- (C) Changes in the level of wages paid generally in other industries;
- (D) The relationship between wages and the cost of living;
- (E) The relationship between wages and productivity;
- (F) The hazards of the employment, if any;
- (G) The training and skill required;

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<sup>3</sup> *Id.*

- (H) The degree of responsibility;
- (I) The character and regularity of the employment;
- (J) The ability of the carrier to pay existing or increased labor costs;
- (K) The effect of technological improvements;
- (L) The public interest in the development and maintenance of a safe, adequate, economical, and efficient transportation system;
- (M) The public interest in price stability and prevention of inflation.<sup>4</sup>

In the 90th Congress approximately eleven bills were introduced which imposed procedural and substantive solutions. These bills have been analyzed in the appendix to this paper. Grouping them generally, we find that only one seizure bill was introduced. This was not a new device and has had an unhappy history, for it solved little and as a predetermined device, suffered from the vulnerability common to all such techniques: The parties were frozen into immobility.

Labor courts have had a considerable legislative vogue. Senator Smathers in the 90th Congress introduced S. 176 which would establish a Labor Court. The details of that bill and the comments thereon are set forth in the appendix to this paper.

A number of compulsory arbitration bills have been introduced. For example, the 1967 Pickle Bill takes up existing Railway Labor Act provisions at the point where the parties would be available for a section 10 emergency board. Thereupon, the President could establish a compulsory arbitration process, or remand the dispute to Congress. Under the 1969 Pickle Bill the President may also utilize seizure.

Although the arbitration provisions in the Pickle Bills are typical, the timetable is interesting because the effective contractual coverage could amount to as much as three years and eight months. This procedure is hardly an acceleration of the agreement-making process which many view as one of the troublesome areas under the Railway Labor Act.

Touching briefly upon Mr. Wisheart's proposal, which would put the determination of arbitrability in the hands of an emergency board, he states:

One advantage of this proposal is that issues not susceptible to collective bargaining could be sorted out so that the proper functioning of bargaining on other issues would not be impaired.<sup>5</sup>

As to the criteria for bargainable issues Mr. Wisheart states that crew complement, where it involved the flight engineers, was not such an issue. What about crew complement on the B-737? Three able arbitrators commended the parties for the manner in which they bargained a constructive procedural solution to crew complement on the B-737. This solution, incidentally, was bargained at a time when the pilots were legally free to strike and the solution was generated within the free collective bargaining process.

Further questions remain unanswered: What happens to the non-

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<sup>4</sup> H.R. REP. NO. 8446, 90th Cong., 2d Sess. (1968); H.R. REP. NO. 5638, 90th Cong., 1st Sess. (1967).

<sup>5</sup> Wisheart, *supra* note 1, at 1720.

bargained issues? Mr. Wishart states that "collective bargaining also fails to function well in settling issues involving technological change."<sup>6</sup> What are pay and working conditions issues which stem out of technological change entailed in the introduction of the B-747 or the SST? What about qualifications, crewing and working conditions which surround the use of such equipment? Are these issues then to be removed from the bargaining table? Anyone in the industry who would remove issues "involving technological change" from the bargaining table is, for all practical purposes turning to compulsory arbitration on most key problems. Yet, this seems to be the direction which Mr. Wishart takes in his seductive conclusion:

All that is involved is a change in the locus of determination from Congress to the emergency board . . . .

His thesis is almost wistfully concluded by the observation that it is intended to "give collective bargaining a last chance by strengthening mediation, and place in the hands of disinterested experts the delicate question of whether the nature of the dispute and the public interest are such as to require third-party determination."<sup>7</sup> However, the transfer of responsibility in the collective bargaining process to "experts" is the antithesis of free collective bargaining.

## APPENDIX

### A REVIEW OF RECENTLY PROPOSED AIRLINE LEGISLATION

An exhaustive review of recently proposed airline legislation is not intended. Rather, legislative activity which exemplifies doctrinaire positions or indicates possible trends is dealt with herein.

In his State of the Union Message in 1966, President Johnson indicated that he would recommend appropriate legislation to deal with strikes that affect the national interest.<sup>1</sup> Since 1966, resolutions have been introduced in Congress which would require the Secretary of Labor to submit proposals dealing with national emergency strikes. In the 90th Congress, for example, Senator Javits of New York and others sponsored a joint resolution which directed the Secretary of Labor to study the operation and adequacy of the emergency disputes provisions of the Labor-Management Relations Act and the Railway Labor Act and to make suitable recommendations.<sup>2</sup> No action was taken by the Senate on these proposals.

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 1722.

<sup>1</sup> 1966 State of the Union Address by President Johnson, January 12, 1966, in weekly compilation of *Presidential Documents*, January 17, 1966 at 30.

<sup>2</sup> S.J. Res. No. 9, 90th Cong., 1st Sess. (1967). See also S.J. Res. No. 195, 89th Cong., 2d Sess. (1966).

## I. JAVITS - KUCHEL: S. 1456 (1967)

Seizure has been urged by some in recent years to deal with emergency labor disputes. Seizure is not new; in 1916, Congress authorized the President in time of war to seize transportation companies when necessary to insure their continued operation.<sup>3</sup> That law was utilized on several occasions by Presidents Roosevelt and Truman to keep the railroads from being strike bound.<sup>4</sup> On 6 April 1967, Senators Javits of New York and Kuchel of California introduced a National Emergency Labor Disputes Act which provided additional machinery under the National Labor Relations Act and the Railway Labor Act for the settlement of labor disputes which would imperil the national health or safety.<sup>5</sup> At any time after receiving a report with respect to a labor dispute from an emergency board constituted under section 10 of the Railway Labor Act, the President would be authorized to direct the Attorney General to petition a federal district court for the appointment of a receiver to take possession of essential transportation facilities which have been struck or which have been threatened with a strike and to operate them "in the interests of the United States." Supposedly, to compel the parties to reach a settlement, the receiver would be authorized to maintain, without change, the wages, hours, conditions and other terms of employment effective at the time of seizure, unless the presidential emergency board has recommended changes in which case the receiver could make such recommended changes effective, in whole or in part. The receivership would continue until the dispute was resolved. While a facility would be operated "for the account of" its owners, a carrier could file a petition with the President for payment of "just, fair and reasonable compensation." In resolving the compensation question, the President would be directed to consider the value of the seized facility as though it were shut down or threatened with a shutdown. An owner dissatisfied with the President's decision could file suit against the United States in the Court of Claims or any district court.

Between 1945 and 1953 seizure failed to prevent stoppages on a number of occasions.<sup>6</sup> Most commentators on emergency strike legislation do not view seizure as a supportable alternative. United States Representative Herlong of Florida has observed that seizure is not a remedy at all. "Being more in the nature of a punishment, by itself it solves or settles nothing. Only when coupled with some form of governmental prescription of rates of pay, rules or working conditions, does it move in the direction of settlement, and the more it moves in that direction the less value can be ascribed to the 'remedy' of seizure standing alone."<sup>7</sup> The history of this "device" is not a happy one. Certainly as a predetermined terminal step it suffers from the vulnerability common to all such techniques.

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<sup>3</sup> Army Appropriation Act of 1916, 10 U.S.C. 9742, 9743 (1964).

<sup>4</sup> E.g., *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

<sup>5</sup> S. Doc. No. 1456, 90th Cong., 1st Sess. (1967).

<sup>6</sup> Cox, *Seizure in Emergency Disputes*, 1955 EMERGENCY DISPUTES AND NATIONAL POLICY 224, 227.

<sup>7</sup> Herlong, *Transportation Strikes: A Proposal for Corrective Legislation*, 36 FORDHAM L. REV. 175, 178 (1967).

## II. PICKLE: H. R. 5683 (1967) AND H. R. 8446 (1969)

In 1967, Representative Pickle of Texas introduced H. R. 5683, a bill designed to provide the President with an apparent "choice of weapons" to deal with emergency situations. The bill, which included a form of compulsory arbitration, would have preserved much of the present process under the Railway Labor Act. As is now the case, the National Mediation Board would be empowered to notify the President of a threatened substantial interruption to commerce. The President then could take either of two approaches: (1) He could appoint a non-binding emergency board as at present; or (2) he could announce his intention to impose binding arbitration by establishing a special board. If an emergency board were appointed, and the dispute were not settled within 60 days, the board would report to the President and, for 30 days after the report was made, there would be a cooling-off period during which no change in the working conditions current at the time the dispute arose could occur except by mutual agreement. Thereafter, the President could exercise any or all or none of three alternatives. These alternatives were: (1) He could transmit the report of the emergency board to Congress for such action as he might recommend; (2) if the report included recommendations for settlement, he could provide by executive order that these recommendations were to serve as the working conditions for a period not to exceed 120 days; or (3) he could notify the parties of his intentions to establish a special board.

Should the President announce his intentions to establish a special board, the parties would have a limited period in which to select members of that special board, which would have authority to make a final and binding determination of the matters in dispute. If the parties failed to establish such a board, the President would be required to do so. Taking into consideration such criteria as equality of treatment of the various crafts of employees of the carrier involved, the wages paid generally in other industries for similar kinds of work, the relationship between wages and the cost of living and so forth, the special board would make and publish its determination within 60 days after its appointment, although the President could extend the determination period for not more than an additional 60 days. With certain exceptions, the determination of a special board would be final and binding upon the parties for the period described by the special board, but not to exceed two years. The decision of the special board would be enforceable by proceedings in the United States district courts. Judicial review of the substance would not be available.

Some of the provisions in the Pickle Bill are already in the Railway Labor Act. The Act includes negotiation, mediation, proffer of voluntary arbitration, emergency board investigation, reports and recommendations and, presumably through publication of the latter, public pressure on the unyielding party. The compulsory arbitration aspect of the Pickle Bill is its distinguishing feature and its essential weakness. No action was taken



by the House on the so-called Pickle Bill and it died in the House Interstate and Foreign Commerce Committee.

On 6 March 1969, Representative Pickle introduced H. R. 8446, a bill which revives most of the provisions of the original Pickle Bill and also provides an additional "weapon" for the President. Upon notification by the National Mediation Board of a threatened substantial interruption to commerce and after a determination that a dispute "immediately imperils the national defense, health or safety" the President may direct the Secretary of Commerce to take possession in the name of the United States "of any or all of the facilities, equipment, or other property of any carrier which is a party to the dispute," and to do all things necessary for their operation. The wages, hours, conditions and other terms of employment effective at the time of such seizure are to be maintained without change, unless the parties otherwise agree. The facilities, equipment and property so taken are to be returned to the carriers as soon as practicable, but in no event later than 30 days after the dispute has been settled. If the dispute is not settled, such facilities, equipment and property must be returned to the carrier at the end of two years after the Secretary of Commerce has taken possession thereof. This new bill, H. R. 8446, was referred to the House Committee on Interstate and Foreign Commerce, and has not as yet been acted upon.

### III. HOLLAND: S. 79 (1967)

In January, 1967, Senator Holland of Florida introduced S. 79 in the Senate to provide for the compulsory arbitration of labor disputes by air carriers and their employees in lieu of the present provisions under the Railway Labor Act. It contemplated the establishment of a three-member arbitration board (to consist of one member appointed by the President and one member by each of the parties to the dispute). The award of the board (to be rendered within 60 days, unless extended by the President for an additional 30 days) would become binding and remain effective for one year. The bill also provided for an appeal by either party within 15 days from the date of the arbitration award to the appropriate United States district court on any of the following grounds: (1) The parties were not given a reasonable opportunity to be heard; (2) the arbitration board exceeded its powers; (3) the award was unreasonable in that it was not supported by the evidence; or (4) the award was procured by fraud, collusion, or other unlawful means or methods. The district court's decision would be final unless either party appealed to the appropriate United States court of appeals within ten days. From the time when the President directed arbitration to the date when the arbitration award ceased to be in effect, both parties were obligated to maintain the status quo.

### IV. HERLONG: H. R. 8320 (1967)

Representative Herlong of Florida introduced H. R. 8320 in April, 1967. Herlong's bill required the President, when notified by the Na-

tional Mediation Board (at the request of the parties) that a "major" dispute might cause a work stoppage, to create a presidential board composed of not less than five members to investigate and decide the dispute upon hearings. Rates of pay, rules and working conditions prescribed by the board were to be "just and reasonable" and were to continue in effect until changed in accordance with the procedures of the Railway Labor Act. The decisions of the presidential board would be "conclusive and binding on the parties and enforceable by appropriate proceedings" in the federal district courts. Provision was made for a very limited form of judicial review. A new section 10A, proscribing specific types of strikes and lockouts, would be added to the Railway Labor Act by H. R. 8320, and would provide civil and criminal sanctions for violations. An unlawful strike or lockout would be subject not only to injunctive relief but could result in damages as well.

#### V. SMATHERS: S. 176 (1967)

Senator Smathers introduced S. 176 in the Senate on 11 January 1967. (Its counterpart, H. R. 11471, was introduced in the House of Representatives by Congressman MacGregor of Minnesota on 13 July 1967.) S. 176 was intended to reach all labor disputes which threatened strikes adversely affecting the public interest to a substantial degree. As the ultimate means of resolving such disputes, this bill would have created a United States Court of Labor-Management Relations consisting of five judges appointed by the President. The President was authorized to appoint a board of inquiry if he believed that a threatened strike might adversely affect the public interest. The board would inquire into the issues and report its findings to the President who could direct the Attorney General to petition the Court of Labor-Management Relations to have the strike enjoined. The court could issue injunctive relief only after finding that the strike involved all or a substantial part of an industry, and that if not stopped would "adversely affect the public interest of the Nation to a substantial degree." Injunctive relief would last for 80 days, during which time the court could issue whatever orders might be necessary to require the parties to make every effort to settle their differences through negotiations. If the stalemate has not been broken during the 80-day period by such mediatory and conciliatory effort and if it were apparent that further bargaining would be futile, the court could continue the injunction and schedule immediate hearings which would result in a final and binding determination covering wages, hours and other points of conflict. In all cases, the court would have to consider as a primary factor the national and public interest involved in a fair and just settlement which would promote to the greatest extent possible, fair, equitable and workable industrial relations between the parties in the future. A limited form of direct judicial review by the United States Supreme Court was also provided.

The question is raised whether the existence of a permanent judicial

body to determine disputes would discourage the substantive and procedural innovation and experimentation which sometimes lead to strikes but often result in imaginative and constructive solutions to difficult problems. One of the remarkable attributes of collective bargaining has been that the intense interplay of ideas on difficult problems has often resulted in acceptable solutions not originally conceived by either party. The labor court concept may result in a premium being placed upon winning cases instead of developing joint solutions. Lawyers and judges, rather than the parties, become the dominant figure, and judicial procedures replace the bargaining process. Does this theory neglect the fact that it is the parties who must live with and administer the agreement on a daily basis, and in the following years negotiate new agreements?

Section 5 (g) of S. 176 provides that the court shall "have the power to fix only such rates or conditions as . . . are fair and equitable to both employers and employees. . . ." The bill goes on to provide that "in all instances rates of pay fixed by the Court must be within the employer's ability to pay." Suppose rates which are fair and equitable do not fall within the employer's ability to pay. The latter is made an absolute condition of the determination. Should not the court also assure itself that the rates so established will be adequate to sustain the employee? What happens if these objectives do not reconcile with each other? Does "within the employer's ability to pay" mean that inefficient management will be subsidized out of the employees' wages? Suppose an ability to pay issue is presented to the court and the argument is made that too much profit is being siphoned to the stockholders. Would the court then enter into questions of profit ratios and dividends? Would the court have to assess the stockholders' proper share? How could the court determine ability to pay and not enter upon such considerations? The question is posed whether we want courts to intrude into such areas. A wage determination involving such issues indirectly, but just as effectively, determines profits. Suppose the ability to pay argument turned around the contention that executive compensation was too high. Do we now move the court into such areas of determination? Suppose it is shown that the price of a service is either too high or too low when viewed from profitability and the employer's ability to pay. Do we have the court enter into the area of price fixing? If not, have we not effectively stripped the court of its power in a given case to deal with wage determinations? In aviation what tensions are thus generated between intergovernmental agencies and the labor court concerning rate determination? These dilemmas are present whether or not the bill stipulates ability to pay. These questions will surely arise and must be determined. It is interesting to compare the labor court proposal with the Pickle Bills which deal with the same general problem and which contemplate many of the same criteria.

Section 5 (a) of S. 176 would condition issuance of an injunction upon a finding by the court that a strike or lockout "affects an entire industry or a substantial part." Does a strike or lockout over an issue which is com-

mon and vital to the entire industry, but which is presented only in the immediate single carrier stoppage, "affect an entire industry?" What is a "substantial part?" Is it measured from the consumer's point of view? Is it based on a total, industry-wide evaluation of the service rendered by the industry? Is a city cut off from a product or a service a "substantial part?" Does a small community which makes parts needed in the automobile industry constitute a "substantial part" if deprived of a needed product or service? Should alternate facilities to serve the public convenience be considered even though a "substantial part" of the particular industry is affected? The foregoing are some instances of the depth of involvement in the fabric of our economic and political structure which devices such as a labor court necessarily entail.

Section 5 (b) of S. 176 makes it a continuing duty of the parties following the issuance of an injunction to make every effort to settle, but section 5 (c) gives the court the power to require hearings accompanied by the production of documents and testimony as well as settlement efforts. These two types of obligations both follow the issuance of an injunction. Down which path do the parties go? It is difficult to negotiate with the great probability of litigation at hand. What would be the probable direction given by judges who may have to decide the issue? Is it not likely that we will end up with judicial determinations, and effective collective bargaining crowded out of the picture?

Section 5 (d) provides that after the issuance of an injunction if the parties have not voluntarily adjusted the dispute or if they "fail or refuse voluntarily to agree to continue to attempt to adjust and settle such disputes . . . the Court shall thereupon on its own motion continue such injunction in full force. . . ." In short, the deliberate refusal of either labor or management to bargain or to settle can be used to assure a continued injunction and a court decision on the merits. The bill in this respect does no more than to make explicit the power to frustrate collective bargaining which looms behind all such devices. Its existence makes likely the inhibition of collective bargaining, with strategy and dependence built around the labor court.

In the last Congress a number of bills were introduced in the Senate and the House of Representatives proposing the establishment of a labor court to assume the functions of the National Labor Relations Board with respect to the administration of the National Labor Relations Act. S. 1353 (Griffin and others, 21 March 1967) and H. R. 8640 (Fisher, 17 April 1967) are representative. S. 103 (Griffin, 15 January 1969) and H. R. 453 (Fisher, 3 January 1969) which also call for the establishment of a United States labor court, are presently pending before Congress. None of these proposals, however, would touch airlines subject to the Railway Labor Act.

#### VI. HOLLAND: S. 140 (1969)

A most recent Congressional compulsory arbitration proposal to deal

with emergency labor disputes was made by Senator Holland of Florida in January, 1969. S. 140 represents an attempt by the Senator to revive the provisions of S. 79, which died in the Senate Labor and Public Welfare Committee during the 90th Congress.

VII. YOUNGER: H. R. 1474 (1967)

BERRY: H. R. 8600 (1967)

In 1967 Representative Younger of California introduced H. R. 1474, and Representative Berry of South Dakota introduced H. R. 8600 to amend the Railway Labor Act to provide for a secret ballot vote of the employees after an emergency board report. Under section 209(b) of the Labor-Management Relations Act, such a "last offer ballot" was taken in 14 labor disputes from 1947 to 1965. In all instances the employees rejected the final offer of settlement made by their employer.<sup>8</sup>

VIII. BROCK: H. R. 10530 (1967)

On 5 June 1967, Representative Brock of Tennessee introduced H. R. 10530, a bill which would have required that strikes by railway and airline employees be authorized by a secret ballot of the employees in the bargaining unit.

IX. GRIFFIN: S. J. RES. 15 (1969)

On 10 January 1969, Senator Griffin of Michigan introduced in the Senate S. J. Res. 15, which was referred to the Senate Committee on Labor and Public Welfare. The joint resolution was designed to create a joint congressional committee composed of eight members of the Senate and eight members of the House of Representatives who would hold hearings and conduct investigations in order to review and recommend revisions in the laws relating to industry-wide collective bargaining and industry-wide strikes and lockouts. The committee was authorized to study ways in which the bargaining process might be improved to avoid or minimize industry-wide strikes and lockouts. Concentrations of economic and other power under the control of business and labor organizations which affected industry-wide collective bargaining were also areas for investigation, as were procedures for aiding the collective bargaining process such as various forms of mediation, conciliation and arbitration. The committee was also to examine the administration and operation of existing federal laws which in any way concerned industry-wide collective bargaining, strikes or lockouts.

The Mutual Aid Pact which has been the subject of three Civil Aeronautics Board proceedings, was last approved by the CAB on 10 July 1964<sup>9</sup> and is now again under consideration. The Pact exemplifies a dubious

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<sup>8</sup> U.S. BUREAU OF LABOR STATISTICS, DEP'T OF LABOR, BULL. NO. ...., *National Emergency Disputes* (1966).

<sup>9</sup> *The Mutual Aid Pact*, CAB DOC. NO. 9977, ORDER NO. E-21,044 (July 10, 1964).

development in the process of collective bargaining. It was originally conceived and entered into as part of a multi-carrier assault upon long established collective bargaining relationships under the Railway Labor Act. In the CAB's 1963 Initial Decision, Hearing Examiner Simon found that the carriers' program included serious consideration of group bargaining, consideration of such devices as discharges and lockouts and activity directed to amendment of the Railway Labor Act.

#### X. FISHER: H. R. 815 (1969)

On 3 January 1969, Representative Fisher of Texas introduced a bill which makes it unlawful for any labor organization in concert with any other labor organization (whether it is affiliated with the same national or international union) "to combine, agree, conspire, or reach or attempt to reach" a common understanding with respect to wages, rates of pay or any other terms or conditions which such labor organization might seek from any employer in an industry affecting commerce. The bill would also make it unlawful to strike for the purpose of compelling such an employer to accede to any demand made pursuant to a combination, agreement or conspiracy where the effect may be to substantially affect the production, use, cost or distribution of any commodity or service in common. The bill was referred to the House Committee on Education and Labor and has not as yet been acted upon.