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**USE OF FEDERAL POWER IN  
SETTLEMENT OF RAILWAY  
LABOR DISPUTES**

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## USE OF FEDERAL POWER IN SETTLEMENT OF RAILWAY LABOR DISPUTES.

### INTRODUCTION.

The transportation act of 1920 has directed attention again to a serious problem in connection with the railroads of the country, the problem of the settlement of railway labor disputes. The observer of contemporary events during the last three decades has seen a decided change in the attitude of the public toward the organization and the operation of what are called "public utilities." In no field has this development been more significant than in that of the railroads, and especially in the settlement of labor disputes thereon. A condition of affairs that was largely academic 30 years ago has now become one of the most momentous of questions. The general public perhaps realized this difficulty more keenly than ever before in the summer of 1916, when the railroad brotherhoods and the railroads reached such a point in their controversy as to cause grave concern on the part of the public at large—the controversy culminating in the passage of the so-called Adamson law.

Instead of a typically *laissez faire* point of view with reference to this matter, a decided change of opinion has developed. An interesting illustration of the present opinion is to be found in the award of the arbitration board that settled the controversy between the engineers and the railroads in the eastern section of the United States in 1912. The report contained this, then radical, statement:

A strike in the Army or Navy is mutiny and universally punished as such. The same principle is applied to seamen because of the public necessity involved. A strike among postal clerks, as among the teachers of our public schools, would be unthinkable. In all these cases the employment, to borrow a legal phrase, is affected with a public use, and thus of necessity qualifies the right of free concerted action which exists in private employment.<sup>1</sup>

This study will consist of an examination of the general methods, so far as the Federal Government is concerned, that have been adopted for the settlement of railway labor disputes. The experience of the past will be examined in some detail. Briefly stated, that experience has found legislative expression in five statutes. The first of these

<sup>1</sup>Report of the Board of Arbitration in the Matter of Controversy Between the Eastern Railroads and the Brotherhood of Locomotive Engineers, p. 108.

was enacted October 1, 1888.<sup>2</sup> A more important law, from the point of view of its actual operation, was the so-called Erdman Act, passed June 1, 1898.<sup>3</sup> Then, in 1913, what was in reality an amendment to and an enlargement of the Erdman law was passed, the law commonly known as the Newlands law.<sup>4</sup> In 1916, as a result of the largest concerted movement in the history of the railway brotherhoods, came the Adamson law.<sup>5</sup> Finally, in 1920, Congress enacted the transportation act of 1920, the Esch-Cummins law, a law changing radically the machinery for the adjustment of railway labor controversies.<sup>6</sup> This last law was built largely upon the experience of the Government during the war administration of the railroads.

This study will treat in some detail the events leading up to the passage of these respective laws, the operation of the laws, and the attitude of the various interests affected thereby. A brief chapter will also be devoted to the period of the war administration of the railroads—the period ending with the enactment of the transportation act of 1920.

It should be borne in mind that the situation dealt with is not one affecting labor in general, but only a special kind of labor in a particular field. It is readily conceded that it would not be desirable, or even possible, to apply to all classes of labor the plan which would best meet the ends of justice and of expediency in the field of railway labor. No attempt is made here to present or to defend a solution for all the ills of society that may come as a result of the maladjustment of the factions of capital and labor. Railway labor, and railway labor alone, is the problem under examination. Nor is it proposed to suggest that any device, however well planned and however well administered, will usher in a Utopian railway labor commonwealth. It is believed, though, that some plans give promise of better results than do others. Doubtless there are objections to any method mentioned. But this holds true with reference to almost any proposed remedy for any condition that needs remedying. All that is attempted here is an examination of the several solutions that have been proposed, a study of the causes leading to each proposal, and the reactions thereto of the classes of people affected, i. e., an examination in the light of the experience in the United States.

Incidentally, the critical examination of the methods of Government intervention will serve the purpose of bringing out the strong points that can be urged in favor of the solution attempted in the transportation act of 1920.

A brief discussion, by means of an examination of some of the leading cases, of the constitutional issues involved in Government action for the prevention and the settlement of railway labor disputes appears in Appendix A.

Copies of the act of 1888, of the Erdman Act, of the Newlands law, of the Adamson law, and of that section of the transportation act of 1920 in which provision is made for the adjustment of railway labor controversies are set forth in Appendix B.

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<sup>2</sup> 25 Stat., 50th Cong., ch. 1063.

<sup>3</sup> 30 Stat., 55th Cong., ch. 370.

<sup>4</sup> 38 Stat., 63d Cong., ch. 6.

<sup>5</sup> 39 Stat., 64th Cong., Pt. I, ch. 436.

<sup>6</sup> 41 Stat., 66th Cong., 2d sess., ch. 91.

## CHAPTER I.—EARLY PERIOD: LAW OF 1888.

### ATTITUDE OF LABOR AND RAILWAY INTERESTS.

Although the first act of the Federal Government for the settlement of railway-labor disputes was not passed until 1888, mediations and arbitration had for a number of years attracted the attention and challenged the thought of men interested in such matters. Several attempts had been made to pass a law applying to such controversies. But the labor problem at that time was relatively simple and the disturbances were relatively infrequent as compared with those that have come in recent years. Therefore the issue was a less pressing one then than it has later come to be.

It is interesting to note that the early attitude of the railway-labor organizations was quite different from what it has been within the last few years. Most of the labor interests then favored the settlement of disputes by arbitration; some of them even went so far as to advocate compulsory arbitration. Charles Wilson, grand chief of the Brotherhood of Locomotive Engineers, as early as 1873, said that his organization had always favored arbitration.<sup>7</sup> Eugene V. Debs, editor of the *Firemen's Magazine*, expressed himself as opposed to strikes:

We have said we are opposed to strikes as a means of settling controverted labor questions. We are opposed to strikes primarily, because we are satisfied they do not promote the welfare of the laboring man. We are persuaded from readings, observation, and experience that there is a better way out than to "strike" out.<sup>8</sup>

The *Brotherhood of Locomotive Engineers' Journal*, for February, 1886, printed with evident approval an article by an American inventor advocating the introduction of a plan for the amicable settlement of labor disputes—a plan binding alike upon employer and employee. The disorganization of industry occasioned by the calling of strikes was given consideration.

It should be said, however, that in the main the labor interests favored voluntary arbitration only. At no time in the history of organized labor has there been a majority in favor of compulsory arbitration. But the railway-labor organizations in the early days were comparatively weak. They realized the inequality of any conflict between themselves and the managers. Therefore the employees welcomed the solution of their difficulties by any agency through which they believed they had nothing to lose and a possibility of gain. An examination of the evolution of the organizations and of

<sup>7</sup> *The Railroad Gazette*, Vol. V, pp. 156, 157.

<sup>8</sup> *Brotherhood of Locomotive Firemen and Enginemen's Magazine*, Vol. VIII, p. 279 (May, 1884).

their attitude toward the successive forms of arbitration will show that they have modified from time to time their attitude toward Government intervention and toward the form which arbitration for the settlement of their controversies should take. Along with the marvelous growth of the brotherhoods there has come such a degree of power that they are reluctant to forego the use of collective action, their most effective weapon.

But the labor element does not hold a unique position because of having changed its views on arbitration. During the period prior to the passage of the interstate commerce act in 1887 the railroads wanted no interference on the part of the Government. Their objection was not limited to intervention for the purpose of adjusting controversies with the men; they regarded with disfavor any Government activity that would tend to interfere with the freedom of action of the managers. One illustration of this position in the year 1874 will suffice to make the point clear. Representative McCrary of Iowa suggested in Congress that a commission be appointed for the purpose of regulating the railroads. He defended the validity of his proposal on the basis of the commerce clause of the Constitution. The Railroad Gazette, which in the main represented the point of view of the railroads, said:

If transportation is commerce, it certainly is not all of commerce. Those who buy and sell are engaged in commerce as certainly as those who carry the materials bought and sold; and if, under this constitutional provision, Congress has the right to determine the prices at which the work shall be done in the case of the latter, so it must have in the case of the former; and the profits of merchants on goods bought in one State and sold in another are subject to the decision of Congress at Washington.<sup>9</sup>

The writer of the above editorial did not have in mind the settlement of the labor problem. Yet the theory of noninterference, if subscribed to as to the regulation of rates, would inevitably imply noninterference in the regulation of the labor end of the business. But the Gazette, in theory at least, favored voluntary arbitration; or, rather, it expressed the belief that there was no reason why the opposing interests should not reach an amicable adjustment of whatever differences might arise between them.<sup>10</sup> The Gazette was quite vigorous in its opposition to compulsory arbitration. When a bill was introduced in Congress for the purpose of securing compulsory arbitration, the Gazette, in its issue of April 2, 1886, said:

A bill has been introduced in Congress to prevent it [a strike] by Government arbitration, the results of which the railroads and their employees shall be forced to accept. Aside from other objections, the fatal one to this is that the men can not be forced to accept any terms they do not like, and it is feared that there would be no end of strikes or appeals to arbitration if the men stood a chance of gaining by them and no chance of losing.<sup>11</sup>

#### PRELIMINARY CONGRESSIONAL CONSIDERATION AND VIEWS ON PROPOSALS.

As early as 1882 Congress began the consideration of methods and devices for the settlement of railway labor disputes. On June 15, 1882, Senator Morgan of Alabama offered a resolution calling for

<sup>9</sup> The Railroad Gazette, Vol. VI, p. 113 (Mar. 28, 1874).

<sup>10</sup> Idem, Vol. IX, pp. 74, 75 (Feb. 16, 1877).

<sup>11</sup> Idem, Vol. XVIII, p. 232.



the appointment of a committee to investigate and to propose a solution for railway labor troubles.<sup>12</sup>

The Senators speaking on the resolution agreed that it was an important one and that it should have congressional consideration. They disagreed, however, as to which of the Senate committees should have the resolution referred to it. It was finally agreed to refer it to the Committee on Education and Labor. Mr. Morgan, in advocating the resolution, said:

For my part, I confess that I am ignorant of this great industrial agitation in the land, and I am apprehensive as to its results, and I think it is the duty of Congress, in the protection of all the industrial classes of this country, as well as in the protection of the capitalists, to look into this question through one of its select committees.<sup>13</sup>

Mr. Morgan mentioned the railroad strike of March 1, 1882, on a railroad at Omaha, as the kind of trouble to which he made reference.

On June 28, Senator Blair, of New Hampshire, for the Committee on Education and Labor, reported a substitute for the Morgan resolution.<sup>14</sup> In effect, this resolution was that a committee be appointed to investigate the causes of labor troubles and to report remedies therefor. The resolution passed the Senate. Again, on February 26, 1883, at the request of Mr. Blair, the committee was authorized to continue its investigations.<sup>15</sup>

While it would be inadvisable to discuss in detail all the bills and resolutions that Congress has had under consideration as measures for meeting the railroad labor problem, attention is called to this one as an illustration of the early recognition by Congress that the railway labor problem was one which should be solved by the Federal Government. Congress seems to have neglected further consideration of the matter until the spring of 1886. This neglect was perhaps due to the fact that in this period railway labor difficulties were not of such importance as to demand congressional action.

President Cleveland is commonly believed to have started the congressional consideration of railway labor legislation in 1886. However, the Congressional Record shows that several bills of this kind were introduced in the House of Representatives in March, whereas the President's recommendation was made in April.<sup>16</sup> One of the bills (H. R. 7479) reported favorably by the Committee on Labor<sup>17</sup> provided that in any controversy between the railroads and their employees which threatened to interfere with interstate commerce, either party to the dispute might make a written request for arbitration. Should the other party accept the proposed arbitration each side was to appoint one representative, and these two were to select a third member of the arbitration board.

A great deal of discussion was precipitated as a result of the introduction of this measure by the committee. Some of the Members of Congress approved the proposal, while others of them pronounced it as so much "buncombe." Its provisions were too stringent to meet with the approval of some of the Members and too lenient to win the indorsement of others. Representative Glover, of Missouri, presented

<sup>12</sup> Congressional Record, Vol. XIII, p. 4924.

<sup>13</sup> Idem, Vol. XIII, p. 5161 (June 21, 1882).

<sup>14</sup> Idem, p. 5430.

<sup>15</sup> Idem, Vol. XIV, p. 3266.

<sup>16</sup> 49th Cong., H. R. 7020; H. R. 7081; H. R. 7479.

<sup>17</sup> Congressional Record, Vol. XVII, p. 2959 (Mar. 31, 1886).

a substitute bill, in which he gave either party the right to demand arbitration, the award of which was to be binding upon both.

Failure to comply with the decision of the arbitrators was to be punished by fine or imprisonment.<sup>18</sup> Representative Anderson, of Kansas, presented another substitute.<sup>19</sup> He would have the President of the United States appoint a permanent commission of arbitration consisting of five members to examine, upon its own initiative, into a railway labor controversy and to suggest a settlement to the contending parties. It could appeal to a court for an injunction to enforce the acceptance of its award.

Perhaps Representative Foran, of Ohio, summarized as well as any Member of the House the feeling of opposition to these bills:

I am opposed to all arbitration for the adjustment of industrial controversies between labor and capital which is based upon legislative enactment, whether it be voluntary or compulsory. Hence I am opposed to the substitute offered by the gentleman from Missouri [Mr. Glover] and I am opposed to the bill of the gentleman from Kansas [Mr. Anderson] and the bill introduced yesterday by the gentleman from Missouri [Mr. O'Neil]. All these bills, unlike the measure now under consideration by the House, favor and provide for compulsory arbitration. Without the spirit of mutual conciliation, the disinterested desire to amicably adjust differences of opinion, arbitration is a nullity and must necessarily fail. \* \* \*

I am not prepared to give the judges of the courts of the United States the right to imprison men for contempt, to coerce by the military arm of the Government men who are honestly contending for a principle they believe to be right. Compulsory arbitration would so shackle labor that its freedom and its right to organize for self-protection would eventually disappear.<sup>20</sup>

The excerpt given above is representative of the feeling expressed by many of the Congressmen in reference to the proposed measures. Other speakers insisted that arbitration was the only way in which the trouble could be settled. And the great majority wanted this arbitration to be voluntary. Some, however, persisted in upholding compulsory arbitration.

Representative McKinley, who later became President of the United States, spoke in favor of the adoption of the bill introduced by the committee. He dwelt upon the efficacy of arbitration as a means for the adjustment of difficulties and for the promotion of the right relationships in the industrial field.<sup>21</sup>

Consideration of this legislation was not confined to the halls of Congress. Several Congressmen adverted to the public interest in railway labor strikes. Following is an excerpt from a speech by Mr. Glover:

Now, I do not speak either in the interest of capital or in the interest of labor. There is besides these two the great body of people whose interests are supreme, and the cry coming from the third party is rising loud enough to be heard in this House. That third party is the public.<sup>22</sup>

Some leading newspapers published editorials calling attention to the public nature of the railroads and insisting that neither party to a dispute should be allowed to subject the public to the inconvenience incident to the calling of strikes on the railroads.<sup>23</sup>

<sup>18</sup> Congressional Record, Vol. XVII, pp. 2960, 2961 (Mar. 31, 1886).

<sup>19</sup> Idem, pp. 2980, 2981 (Mar. 31, 1886).

<sup>20</sup> Idem, p. 2962 (Mar. 31, 1886).

<sup>21</sup> Idem, pp. 3038, 3039 (Apr. 2, 1886).

<sup>22</sup> Idem, p. 2970 (Mar. 31, 1886).

<sup>23</sup> The Chicago Tribune said: "When the parties charged with the duties of operating and keeping open the railroad highways of the country enter into combinations to close these avenues of traffic, derange business, and expose the whole American people to

Strange as it may seem, the organization of the Knights of Labor was in favor of compulsory arbitration at the period under observation. The preamble to the constitution of the order demanded "The enactment of laws providing for arbitration between employers and employed and to enforce the decision of the arbitrators."<sup>24</sup> Several of the local chapters of the organization petitioned Congress for the passage of arbitration laws.<sup>25</sup>

Commissioner of Labor Carroll D. Wright, in his annual report for 1886, advocated the establishment of some sort of Government agency to facilitate the arbitration of disputes in the field of labor.<sup>26</sup> Mr. Wright insisted, however, that such arbitration should be voluntary on the part of the parties to the disputes. At no time did Mr. Wright favor compulsory arbitration.

In spite of the vigorous opposition to House bill 7479, with a few amendments of minor importance it passed the House of Representatives on April 3, 1886.<sup>27</sup> One hundred and ninety-nine voted in favor of the bill and 30 against it. This bill, as passed by the House, was later—February 28, 1887—passed by the Senate without amendment.<sup>28</sup>

But President Cleveland had views of his own as to what provisions should be incorporated in the bill passed by Congress. He therefore refused to approve the measure within the 10-day period provided to make it law. In his message of April 22, 1886, President Cleveland had outlined the terms he thought necessary in such legislation.<sup>29</sup> He proposed a permanent commission consisting of three members appointed by the President. The permanence of the commission was designed to give it stability and to enable the members to acquire skill in the handling of labor controversies. The commission was to have full authority to investigate any difficulty between capital and labor which threatened an interference with interstate commerce:

If the usefulness of such a commission is doubted because it might lack power to enforce its decisions, much encouragement is derived from the conceded good that has been accomplished by the railroad commissions which have been organized in many of the States, which, having little more than advisory power, have exerted a most salutary influence in the settlement of disputes between conflicting interests.

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harmful disorder and injury, no further argument is needed to show the necessity of a compulsory settlement of all disputes between common carriers and their employees. It is time for the law to declare that neither party to such controversies shall use public necessities to force a compliance with its demands by throttling the lines of communication." The New York World said: "It can be seen at once that railroad strikes are very different things from those arising in business of a private character. It is simply a matter of necessity that the liability of the occurrence be reduced to a minimum, if indeed it can not be ended altogether. \* \* \* Courts of arbitration can determine what is fair and compel the companies to live up to their contracts with the public accordingly." (In statement by Mr. Glover: Congressional Record, Vol. XVII, p. 2971 (Mar. 31, 1886).)

<sup>24</sup> Constitution of the Independent Order, Knights of Labor, Washington, 1888, p. 8.

<sup>25</sup> "Resolved, That we call upon our legislatures, both State and National, to enact such measures as will compel the recognition of labor organizations, and compel corporations to arbitrate differences between and with themselves and their employees." (Presented by Mr. Glover: Congressional Record, Vol. XVII, p. 2973 (Mar. 31, 1886).)

In the Senate Senator Harrison, of Indiana, presented a petition from 11 officers of the Knights of Labor of Fort Wayne, Ind., praying for the speedy passage of the bill for the arbitration of all disputes. (Congressional Record, Vol. XVII, p. 3349.)

Mr. Blair presented a similar petition from the labor organization at Manchester, N. H. (Congressional Record, Vol. XVII, p. 3375.)

<sup>26</sup> U. S. Commissioner of Labor, First Annual Report, p. 275.

<sup>27</sup> Congressional Record, Vol. XVII, p. 3066.

<sup>28</sup> Idem, Vol. XVIII, p. 2376.

<sup>29</sup> Idem, Vol. XVII, pp. 3728-3729.

The President suggested that the commission might be composed of the Commissioner of Labor, whose appointment Congress had authorized in 1884, and two other members to cooperate with the commissioner. In his special message of December 6, 1886, President Cleveland again recommended the creation of such a commission.<sup>30</sup>

A committee of the House of Representatives, appointed to investigate railroad strikes, made its report on March 3, 1887. This report emphasized the public nature of the railroad business and the legal basis for the regulation of it. But arbitration did not seem to this committee to be the solution of the labor problem on the railroads.<sup>31</sup>

During the following session of Congress two bills for the settlement of railway labor disputes were considered.<sup>32</sup> The bill which ultimately received the approval of Congress was House bill 8665, introduced by Representative O'Neill, of Missouri. This bill contained the provisions of the one passed in the preceding session, modified, however, in such manner as to comply with the suggestions made by President Cleveland. The President was authorized to appoint a special board to visit the scene of any threatened strike and to report the causes of the trouble. Arbitration under the measure was to be voluntary.

Just as in the case of the bill of the preceding session of Congress, this one elicited expressions of approval and of disapproval from the Members of Congress. Those who opposed the enactment of the law did so, in the main, upon the theory that the new legislation would add nothing to the existing facilities for the adjustment of controversies in the railway labor field.<sup>33</sup>

On the other hand, the bill was heartily approved by many of the Members. Representative Cannon, of Illinois, said that he considered the most important part of the bill that provision which called for the appointment by the President of a special commission to investigate any controversy that might arise.<sup>34</sup> As will appear in the following chapter, Mr. Cannon was correct in his appraisal of the relative merits of the provisions of the bill.

<sup>30</sup> Congressional Record, Vol. XVIII, p. 11.

<sup>31</sup> "Whatever remedy will give the proper protection to capital invested in the railroads of the country and at the same time protect their employees from injustice and oppression, your committee propose that they shall together, as a single instrument of our interstate commerce, be looked upon as servants of the people of the United States, and as such be regulated and protected by law \* \* \*"

"A majority of your committee can not believe that arbitration can be effective for the reason that there must be two parties to the arbitration, and either may decline. And said majority further believe that when disturbances occur it would not be effective in immediately redressing wrongs or restore the means of transit of person and property to the people of the country." (H. Rept. 4174, 49th Cong., Pt. I, p. xxiv.)

<sup>32</sup> 60th Cong.: H. R. 1432; H. R. 8665.

<sup>33</sup> Representative Parker, of New York, said: "I am opposed to this bill because, in my judgment, it is good for nothing. It reaches nowhere and it leads nowhere." He advocated a measure which would declare unlawful a strike pending the investigation of it and a report thereon by a Government commission. "We should have first investigation; we should have next provision for publicity throughout the country. Beyond that, we should have power to compel arbitration." He opposed this measure all the more ardently because he believed that its enactment would serve as a barrier to the passage of a law with teeth in it. Such a law, he thought, could be enacted.

Representative Tillman, of South Carolina, in characteristic terms, expressed his opposition to the bill: "I hope the House will not permit this 'fraud,' as the gentleman from New York called it, to be passed. It is as void of any practical utility to the public, to the railroads, or to the officers and agents of the railroads as a balloon." Another vigorous denunciation of the measure was made by Mr. Foran, of Ohio: "I think the enactment of this bill into law would simply place on the statute books of the United States a legislative eunuch." (Congressional Record, Vol. XIX, pp. 3099, 3100, and 3105 (1888).)

<sup>34</sup> Congressional Record, Vol. XIX, p. 3107 (Apr. 18, 1888).

**THE LAW OF 1888.****PROVISIONS.**

The bill discussed above passed the House on April 18, was accepted by the Senate without amendment on September 14, and received the approval of President Cleveland on October 1, 1888.<sup>35</sup>

The provisions of the law as enacted fall logically into two main categories.<sup>36</sup> The first five sections of the act provide for voluntary arbitration whenever any difficulty between railway managers and employees threatens to interfere with the movement of interstate commerce. Either side may apply in writing for arbitration under the law. If the other side to the controversy accepts, each side shall appoint one representative, and these two shall select a third, the three forming the board of arbitration. Power is given to the board to subpoena witnesses, receive testimony, examine records, etc. When an award is made it is to be transmitted to the Commissioner of Labor. This official shall publish the terms of the award. The essential feature of this arbitration is that it is entirely voluntary upon the part of both parties thereto. The act makes no provision for the enforcement of the award rendered. Public opinion is relied upon to force compliance therewith.

The second part of the law deals with the appointment of investigation committees in accordance with the recommendations that had been made by President Cleveland. When the President deems it necessary, in order to prevent an interference with interstate commerce, he may appoint two commissioners one of whom is to be a resident of the State in which the controversy occurs. These two appointees, together with the Commissioner of Labor are to constitute a special investigation committee. The board is to try to ascertain the causes of the trouble investigated and to make recommendations for its settlement. This report is to be published, and upon the publication the life of the commission ends. The services of the investigating commission are to be tendered upon the initiative of the President, upon an invitation from one of the contending parties, or upon the suggestion of the chief executive of the State in which the trouble arises. The commission has for the securing of information the same power and authority that arbitration boards have in arbitration proceedings. The National Government is to bear all expenses incident to arbitration and investigation proceedings under the law.

**SIGNIFICANCE.**

Notwithstanding the great commotion that was occasioned in Congress by the passage of the law the arbitration provision was never used throughout the 10 years in which the law was on the statute books. The investigation authorized by the act—the part of the law which seemed to most people at the time of the passage of the law the less important feature, although this was not true of the President—was brought into use in one strike of large pro-

<sup>35</sup> Congressional Record, Vol. XIX, pp. 3109, 8609, and 9074.

<sup>36</sup> 25 Stat., 50th Cong., ch. 1063.

portions. This will be the topic of the following chapter, in which the Pullman strike of 1894 is discussed.

While the law of 1888 had no apparent effect on the settlement of railway labor disputes in general this does not signify that the law was a complete failure. Many of its main provisions were later incorporated in the laws that were passed for the purpose of meeting the situation designed to be remedied by the enactment of this law. Perhaps, the greatest significance of the law lies in the fact that this was the initial legislation by the Federal Government with a view to handling the railway labor problem. It served as an entering wedge for the passage of similar laws which were successful in their operation. An examination of the laws enacted in 1898 and in 1913 shows a marked similarity to the old law of 1888. As a background and as a basis for the later laws, then, the one enacted in 1888 has a large place in the history of the activities of the National Government in the railway labor field.

## CHAPTER II.—THE PULLMAN STRIKE OF 1894.

### THE STRIKE, AND ACTION BY FEDERAL OFFICIALS.

In 1894, before the passage of any further legislation dealing with the settlement of railway labor disputes, the country was called upon to witness an unprecedented exercise of Federal power in this field. During the latter part of 1893 and the first half of 1894 the Pullman Palace Car Co. had a disagreement with its employees at Pullman, Ill. Wages, rents, and shop conditions were involved in the troubles. On May 10, 1894, the unions voted to strike. The American Railway Union, under the leadership of Eugene V. Debs, espoused the cause of the Pullman employees, whose union was affiliated with the American Railway Union. Debs asked the Pullman Co. to arbitrate the controversy. The company refused to do this, claiming that there was nothing to arbitrate. As a result of this attitude on the part of the Pullman officials the American Railway Union, in convention in Chicago on June 21, voted unanimously that the members of the union should refuse to haul cars belonging to the offending company. This, in effect, was the declaration of a strike in sympathy with the Pullman employees.<sup>1</sup>

During the period that followed the calling of the strike the more reckless elements indulged in outbursts of violence and caused serious inconvenience and injury to the public.<sup>2</sup> The local officials were either unable or unwilling to handle the situation. Because there was incidental interference with the movement of the mails and with interstate commerce, Federal officials intervened in the matter. Attorney General Olney sent the Federal officials throughout the part of the country affected the following telegram:

See that the passage of regular trains carrying United States mails in the usual and ordinary way, as contemplated by the act of Congress and directed by the Postmaster General, is not obstructed. Procure warrants or any other available process from United States courts against any and all persons engaged in such obstruction and direct marshal to execute the same by such number of deputies or such posse as may be necessary.<sup>3</sup>

Ordinary police proved inadequate to handle the difficulty in such a manner as to prevent violence. Therefore, the President ordered Federal troops to Chicago for the purpose of protecting Federal property; preventing the obstruction of the mails; preventing the interruption of interstate commerce; and enforcing the decrees of the Federal courts. This was all done without any application from the governor of Illinois or from the legislature of the State.<sup>4</sup> But

<sup>1</sup> U. S. Strike Commission. Report of Chicago Strike, S. Ex. Doc. No. 7, 53d Cong., 3d sess.

<sup>2</sup> Idem, pp. xliii-xlvi.

<sup>3</sup> U. S. Attorney General. Appendix to annual report for 1896, p. 6.

<sup>4</sup> U. S. Strike Commission. Report of Chicago Strike, S. Ex. Doc. No. 7, 53d Cong., 3d sess., p. xx.

sections 5298 and 5299 of the Revised Statutes authorized the President to act thus under the conditions then obtaining in Illinois.

#### ATTITUDE OF THE PEOPLE.

The action of the President and of the Attorney General raised a storm of protest from some quarters and from other sources hearty commendation for the work accomplished. From Mr. Olney's own State of Massachusetts criticisms came.<sup>5</sup> Those who approved the action of the administration saw in it the strengthening of the faith of the people in the institutions of the Government in this country;<sup>6</sup> others saw in the whole situation another argument for the stringent legislation already suggested for handling such emergencies in the railroad field.<sup>7</sup> The Railroad Gazette considered the action of President Cleveland that of a true statesman.<sup>8</sup> But, according to Mr. Gompers, president of the American Federation of Labor, the President had been guilty of a violation of our most sacred rights as free men in a free and democratic country.<sup>9</sup>

#### VIEWS OF MEMBERS OF CONGRESS.

The feeling of the Members of Congress concerning the Pullman interference was divided. Representative Fithian, of Illinois, criticized the President for sending troops to Chicago without first having been asked by the governor of the State to do so:

Federal troops, in my judgment, can not be sent into a State by the President without permission of the executive of the State or the legislature, when in session, without violating the Constitution and fundamental principles.<sup>10</sup>

Representative Bland, of Missouri, said that if we must have imperialism it should come only with the consent of the Representatives of the people in Congress.<sup>11</sup> Representative Pence, of Colorado, criticized Mr. Olney on the ground that he was a corporation lawyer.<sup>12</sup>

<sup>5</sup> The following message was sent Mr. Olney on July 8, 1894: "A meeting of citizens on Boston Common to-day passed resolution deeply regretting your delivery of the United States Government to the railroad kings, and indorsed the western strikes." (Appendix to Annual Report of U. S. Attorney General for 1896, p. 126.)

<sup>6</sup> The United States Attorney for Utah wrote to Mr. Olney: "I beg to give to you and to the President my congratulations upon the prompt and sturdy manner in which the emergency was met and dealt with. Public sentiment in this western country was greatly strengthened by such action; and it is a common thing now upon every street corner, almost, to hear people who, 10 days ago, were trembling for our institutions, give forth healthy sentiment of confidence in the future of our Government." (Idem, p. 198.)

<sup>7</sup> A message from Manchester, N. H., stated: "I think Congress should at once pass a law that whoever shall be guilty of hindering or obstructing the business of any railroad engaged in interstate business or the carrying of the United States mails, or who aids or abets, directly or indirectly, in attempts so to do, shall be imprisoned not less than 10 years nor more than 20 years." (Idem, p. 153.)

<sup>8</sup> "It must be clear to every dispassionate mind that Mr. Cleveland has acted in this trying occasion not only within constitutional limits, but with considerable moderation, forbearance, and dignity. And we shall have the more confidence in the perpetuity of our Government." (The Railroad Gazette, Vol. XXVI, p. 495 (July, 1894).)

<sup>9</sup> "The President of the United States has no more legal or moral right to violate the constitutional guaranties of the people and our States than the humblest citizen, and it is only in a humble and manly determination to maintain and defend our rights that we can hope to perpetuate our republic, and hand it down to posterity not only unimpaired but improved." (Report of Proceedings of the American Federation of Labor, 1894, p. 11.)

<sup>10</sup> Congressional Record, Vol. XXVII, pp. 2799, 2800 (Feb. 26, 1895).

<sup>11</sup> Idem, Vol. XXVI, p. 7545 (July 16, 1894).

<sup>12</sup> Idem, p. 7544 (July 16, 1894).



But the majority opinion in Congress indorsed the action of the President. On July 11, 1894, the following resolution passed the Senate:

*Resolved*, That the Senate indorses the prompt and vigorous measures adopted by the President of the United States and the members of his administration to repulse and repress, by military force, the interference of lawless men with the due process of the laws of the United States and with the transportation of the mails and with commerce among the States.

The action of the President and his administration has the full sympathy and support of the law-abiding masses of the people of the United States, and he will be supported by all departments of the Government and by the power and resources of the entire Nation.<sup>13</sup>

A similar resolution was adopted by the House of Representatives on July 16.<sup>14</sup>

## DECISION OF FEDERAL SUPREME COURT.

### IN RE DEBS.<sup>15</sup>

In 1895 the Federal Supreme Court was called upon to make a decision which involved the validity of the action of President Cleveland in intervening in the Chicago trouble. This case was the well-known one, *In re Debs*. In connection with the Pullman strike Debs and others had been enjoined by the circuit court from conspiring to do anything that would interfere with the carrying of the United States mails or with the movement of interstate commerce. They had failed to comply with the terms of the court's order and were adjudged guilty of contempt of court, having been sentenced to prison therefor. On January 14, 1895, they applied for a writ of habeas corpus, alleging the invalidity of the restraining order because, they contended, the action of the Federal Government in stepping into the local trouble was a violation of the Constitution. Should the court uphold the order of the lower court, that meant approval of the right of Government intervention.

Mr. Justice Brewer ruled against the applicants. The issue involved the determination of the sphere of Government in this field. A few of the vital sentences in the decision are herewith given:

Two questions of importance are presented: First, Are the relations of the General Government to interstate commerce and the transportation of the mails such as to authorize a direct interference to prevent a forcible obstruction thereof? Second, If authority exists, as authority in governmental matters implies both power and duty, has a court of equity jurisdiction to issue an injunction in aid of the performance of such duty?

The first of these two questions is relevant to the inquiry of this paper. Answering this the court said:

As, under the Constitution, power over interstate commerce and the transportation of the mails is vested in the National Government, and Congress by virtue of such grant has assumed actual and direct control, it follows that the National Government may prevent any unlawful and forcible interference therewith.

The entire strength of the Nation may be used to enforce in any part of the land the full and free exercise of all national powers, and the security of all rights intrusted by the Constitution to its care. The strong arm of the National

<sup>13</sup> Congressional Record, Vol. XXVI, pp. 7282, 7284.

<sup>14</sup> *Idem*, pp. 7544, 7546.

<sup>15</sup> 158 U. S. 564.

Government may be put forth to brush away all obstructions to the freedom of interstate commerce or the transportation of the mails. If the emergency arises, the Army of the Nation, and all its militia, are at the service of the Nation to compel obedience to its laws.

So, in the case before us, the right to use force does not exclude the right to appeal to the courts for a judicial determination and for the exercise of all their powers of prevention.

The National Government, given by the Constitution power to regulate interstate commerce, has by express statute assumed jurisdiction over such commerce when carried upon railroads. It is charged, therefore, with the duty of keeping those highways of interstate commerce free from obstruction, for it has always been recognized as one of the powers of a government to move obstructions from the highways under its control.

#### LABOR'S VIEW OF THE DECISION.

This decision fell like a bomb into the field of labor. The labor unionists regarded it as an evidence that the courts were partial to the capitalistic interests of the country. The leaders of the unions have always insisted that they must retain the right to leave their work either individually or collectively. Otherwise, in their view, they should be little better than were the slaves of antiquity. An editorial in the *American Federationist* for June, 1895, summarized the views of the leaders on the decision of the court:

The decision of the United States Supreme Court in the Debs case is the worst ever made by such a court, so far as the interests of labor are concerned. \* \* \*

Strikes are the last resort of working people to obtain justice at the hands of unscrupulous employers, and when the right is taken from labor, as now it is by the Federal courts, laboring men know that their liberties have been abridged for no other purpose than that of enlarging the power and privileges of capital.

It is safe to say that labor will find redress in some form or other, and that ere long.<sup>16</sup>

#### PRESIDENT CLEVELAND'S STATEMENT ON THE DECISION.

President Cleveland was very much pleased by the decision in the Debs case. In *McClure's Magazine* for July, 1904, he concluded his discussion of the case thus:

Thus the Supreme Court of the United States has written the concluding words of this history, tragical in many of its details, and in every line provoking sober reflection. As we gratefully turn its concluding page, those most nearly related by Executive responsibility to the troublous days whose story is told may well congratulate themselves, especially on the participation in marking out the way and clearing the path, now unchangeably established, which shall hereafter guide our Nation safely and surely in the exercise of its functions, which represent the people's trust.<sup>17</sup>

#### THE STRIKE COMMISSION.<sup>18</sup>

##### PERSONNEL.

President Cleveland appointed a commission to investigate the Pullman troubles. The commission consisted of United States Commissioner of Labor Carroll D. Wright; John D. Kernan, of New York; and Nicholas E. Worthington, of Illinois. The commission began hearings in Chicago on August 15, 1894, and closed on Au-

<sup>16</sup> *American Federationist*, Vol. II, p. 68.

<sup>17</sup> *McClure's Magazine*, Vol. XXIII, p. 240.

<sup>18</sup> Data in this section are from U. S. Strike Commission. Report on the Chicago strike of June-July, 1894. 1895. p. xv.

gust 30. Another hearing was held in Washington on September 26. A report of the proceedings and the recommendations of the commission was transmitted to the President on November 14, 1894.

#### FINDINGS AND RECOMMENDATIONS.

The conclusions and recommendations of the commission are of great significance in so far as they deal with the methods of settling railway labor disputes. It was suggested that a permanent commission consisting of three members be appointed. This commission was to have in the railway labor field power similar to that of the Interstate Commerce Commission in the field of railway rates. The railroads were to be compelled to obey the decisions of such a board. Pending an investigation by the commission no railroad could discharge an employee, save for certain specified reasons; nor could the employee aid or abet a strike or boycott against the railroad for a like period. For six months following a decision a railroad could not discharge an employee in whose place another man was put (except that certain specified grounds were to be regarded as justifying the discharge of a man). For the same period of time no employee was to leave the employ of the railroad without first having given 30 days' notice of his intention to leave. Some sort of legislation was to be enacted with a view to encouraging the labor organizations to become incorporated. The commission stated that it was not prepared to express either approval or disapproval of the suggestion made to it that the railroad employees be required to take out a license.

It is highly interesting to see so early as 1894 a responsible commission, headed by Commissioner Wright, give clear recognition and expression to the paramount interest of the public in interferences with the movement of railroad traffic, and also advocate positive legislative action for the purpose of making such interruptions less likely or even impossible.

The report of the commission, in an appendix, gave a digest of the suggestions it had received as remedies for the situation. These recommendations advocated such means as Government ownership and control of the railroads, the licensing of the railroad employees, pensioning the railroad men, the adoption of the single tax, statutory regulation of wages, the creation of a Federal commission to deal with the situation, changing the financial system so as to avoid depressions, etc.

It will be seen in a later chapter that several of these recommendations have met with favor in recent periods. Especially interesting is it to compare them with the views expressed at the time of the passage of the Adamson law.

### CHAPTER III.—SECOND STAGE OF FEDERAL INTERVENTION: THE ERDMAN ACT.

#### EARLY CONSIDERATION AND ATTITUDE OF THE PEOPLE.

The passage of the first law for the settlement of railway labor disputes does not appear to have decreased appreciably the agitation for Federal action in this field or the discussion of the best means for effecting a desirable solution of the problem. On December 20, 1889, Mr. Anderson, of Kansas, who had for some time taken an active part in the legislative discussions of these problems, introduced a bill to create a United States commission to arbitrate railway strikes and lockouts.<sup>1</sup> On April 5, 1890, Mr. Blair introduced in the Senate a bill the object of which was to settle such controversies.<sup>2</sup> Then, on July 12, 1892, a resolution was introduced by Senator Voorhees, of Indiana, asking the Committee on Education and Labor to report on the advisability of establishing a commission of labor in accordance with suggestions outlined in the message of President Cleveland on April 22, 1886.<sup>3</sup>

No action was taken by Congress on any one of these bills, nor was very great attention given to them in the congressional discussions. However, in 1894 the Pullman strike called the attention of Congress to the gravity of the situation and to the inadequacy of the then existing legislation to cope with the railway labor problems. During the year a number of bills dealing with the issue were proposed. In June the following bills were introduced in the Fifty-third Congress: House bill 7351, House bill 7382. In July Senate bill 2185, House bill 7727, House bill 7765, and House bill 7697 were proposed. Again, in December a bill of the same kind (H. R. 8124) was suggested. In addition to the above bills, several attempts were made by Members of Congress to have amendments made to the original act which had been passed in 1888.

Most of these bills died in the committees to which they were referred. One, however (H. R. 7727), was reported favorably to the House by the Committee on Labor, July 30, 1894.<sup>4</sup> The bill was framed in such a way as to carry out the plan which President Cleveland had advocated in his first message on the subject. A permanent commission of three men was to be appointed to examine into any controversy that threatened an interference with interstate commerce. The committee in its report insisted that the commission should be a permanent one. The object of the bill was "simply to secure, as far as possible, to every person, however humble, a hearing upon the

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<sup>1</sup> Congressional Record, Vol. XXI, p. 341.

<sup>2</sup> *Idem*, p. 3054.

<sup>3</sup> *Idem*, Vol. XXIII, p. 6036.

<sup>4</sup> H. Rept. No. 1343, 53d Cong., 2d sess.

merits of any controversy he may have, and a summary process and means of securing his rights, whatever they may be, under the laws as they now exist." The report stated that the laborers of the country desired such legislation:

The workmen of the country at this time are asking, and have been asking for many years heretofore, the establishment of an impartial board for the arbitration of all controversies that may arise between them and their employers.

No one of these bills provoked much discussion in Congress. But some of the labor interests affected by the measures expressed their views of the proposals made. Mr. Debs, editor of the *Locomotive Firemen's Magazine*, opposed the bill which Mr. Blair had introduced in 1890. This bill provided that the employees could not lawfully order a strike until they had first proposed to the employers that the difference be submitted to arbitration, and they must await an answer for five days before calling the strike. Debs characterized the bill as "unfair, one-sided, and unjust, and as such ought to be opposed by every railroad employee in the land."<sup>5</sup> He became very bitter in his opposition to any measure that purported to provide compulsory arbitration. In 1894 he said editorially:

When the people become so degenerate as to passively submit to have their individuality wiped out, to be herded like cattle, no matter what plausible arguments are used to accomplish their degradation, the time will have arrived to sing again the old song addressed to the flag:

"Haul down that flaunting lie."<sup>6</sup>

The editor of the *Railway Conductor* in August, 1894, made some comment on the Tawney bill (H. R. 7382), which had proposed the compulsory arbitration of railway labor disputes by a committee of five men to be appointed by the President of the United States. While he objected to the passage of this particular bill, the editor expressed himself in favor of some kind of arbitration of these disputes. The men, he said, could not afford to strike for any reason that could not stand arbitrament by an impartial tribunal. And, according to the opinion expressed, the men would gladly consent to such an arbitration proceeding.<sup>7</sup> Many of the magazines of the time commented upon the methods of settling railroad labor disputes. As representative of a large number, the following extract from the *Outlook* of July 21, 1894 (p. 90), may be cited:

For ourselves, we think it quite clear that a system which treats the Nation's highways as private property and which leaves the owners and the operators to settle their controversies by a strike is unphilosophical, inconsistent with national welfare or even national peace, and must give place to something better.

The remedy proposed by the editor was that the railway employees be placed in a relationship to the roads similar to that of the seamen to a ship; that a court be established for the hearing of complaints,

<sup>5</sup> *Brotherhood of Locomotive Firemen and Enginemen's Magazine*, Vol. XIV, p. 490 (June, 1890).

<sup>6</sup> *Idem*, Vol. XVIII (February, 1894).

<sup>7</sup> "No body of workmen can afford to strike in support of a cause that would not stand the test of impartial arbitrament and the great body of them would be the first to repudiate such a cause. Let them be thoroughly assured of a fair hearing before an impartial tribunal, able and willing to enforce its decree without fear or favor, and the day of the strike and the boycott will have passed forever." (*The Railway Conductor*, Vol. XI, p. 417.)

and that, in the event of a failure to accept the award of the court, the employees could leave the service. But they must leave only in such a manner as not to cripple transportation. This meant that no collective action would be tolerated if that action meant a strike. The employers were either to accept the decision or else surrender the operation of the roads.

### CONGRESSIONAL PRELIMINARIES TO ERDMAN ACT.

Throughout the year 1895 Congress continued to consider measures for the settlement of railway labor disputes. Three bills were introduced in 1895, two of these being reported upon by the committees to which they had been referred. The bills were House bills 8556 and 8404 (53d Cong.) and House bill 268 (54th Cong.). On February 2, Representative Erdman, of Pennsylvania, for the Committee on Labor, submitted a favorable report on House bill 8556.<sup>8</sup> This report showed that the representatives of the five railway brotherhoods all favored the passage of the proposed law. A communication signed by the chiefs of the brotherhoods asked the speedy passage of the law, saying that the nature of the railway business was such that Congress had jurisdiction in the field.<sup>9</sup>

A letter from Commissioner of Labor Carroll D. Wright was presented in favor of the passage of the bill.<sup>10</sup> Mr. Wright said that he considered the passage of such a law a step in the right direction. For several years he had advocated the settlement of industrial controversies without resort to violence or even to the strike. But the arbitration favored by Mr. Wright was to be altogether voluntary. However, he did recognize the paramountcy of the public interest. And in the report of the commission which investigated the Pullman strike, a commission of which Mr. Wright was a member, a considerable degree of governmental compulsion was advocated.<sup>11</sup>

In presenting the report to Congress Mr. Erdman gave to Attorney General Olney the credit for having prepared the original bill. It contained no provision for compulsion; all the procedure was to be strictly voluntary upon the part of both parties to the controversy. In this bill, for the first time, mediation and conciliation provisions ranked in importance along with arbitration. A board of mediation and conciliation was to be organized for the purpose of adjusting any controversy that might arise. This board was to be composed of the United States Commissioner of Labor and the chairman of the Interstate Commerce Commission. Hence the recommendation for a permanent commission, advocated in the early days by President Cleveland, was to be carried out in the proposed law.<sup>12</sup>

On February 26, after some discussion, in which the voluntary nature of the bill was emphasized, the House of Representatives

<sup>8</sup> Congressional Record, Vol. XXVIII, p. 8556.

<sup>9</sup> "Recognizing the jurisdiction of Congress over all matters pertaining to interstate traffic, we favor the enactment of laws by the National Congress \* \* \*. After a very careful consideration of the entire question, we have no hesitancy in urging, on the part of your committee, a favorable report on this bill as amended, and hope for such speedy and favorable action as may be necessary to place this law on the statute books." (H. Rept. No. 1754, 53d Cong., 3d sess.)

<sup>10</sup> Idem, p. 4.

<sup>11</sup> See pp. 18, 19.

<sup>12</sup> Congressional Record, Vol. XXVII, p. 2789 (February, 1895).

approved the measure.<sup>13</sup> But the bill failed to become a law because the Senate did not pass it.

The Members of the House of Representatives were not content to let the matter drop at that time. Therefore, on December 6, 1895, Mr. Erdman submitted to Congress House bill 268, a bill which in its essential provisions was a duplicate of the one which had already received the approval of the House and which had died in the Senate.<sup>14</sup> The Committee on Labor rendered a favorable report on the bill.<sup>15</sup> The reasons for the passage of the law, as given in the report of the former bill, were repeated in this instance. Commissioner Wright strongly urged the passage of the proposed bill.<sup>16</sup> He considered the new bill a decided improvement upon the old one in that it recognized the officers of organized labor and in that it declared it unlawful for the employer to discriminate against an employee because of the membership of the latter in a labor union. The last proviso, as will appear later, was incorporated in the law of 1898. But the Federal Supreme Court declared it invalid as an invasion of the right of free contract guaranteed by the Constitution. The report of the committee said that the representatives of the labor organizations had, after a year's consideration of the bill, again appeared and urged its passage.<sup>17</sup> The House passed the bill on February 26, 1897. The opposition to its passage was not very strong. One Member did protest because, he said, this was a step toward the enslavement of the laboring man.<sup>18</sup> But the unqualified indorsement of the brotherhoods was sufficient to down criticism that otherwise might have had weight with Congress. This bill, like the preceding one, failed to pass the Senate. The failure in this instance, though, was due to the fact that the House was late in passing it and the Senate did not get to the consideration of it before time for adjournment.

In the Fifty-fifth Congress new bills were introduced. This time the Senate was as deeply concerned as the House had already shown itself to be. In the Senate the following bills were proposed: Senate bill 122, Senate bill 1014, Senate bill 3653, Senate bill 3662. In the House: House bill 61, House bill 4372. The Committee on Labor of the House again reported the arbitration bill favorably, giving the testimony of Commissioner Wright and of the railway brotherhood leaders as favorable to the proposal.<sup>19</sup> This report was made to accompany House bill 4372. In the Senate the Committee on Education and Labor reported favorably on Senate bill 3662.<sup>20</sup>

The report of the Senate Committee adverted to the fact that a bill similar to this one had already passed the House at two of its sessions; that it was indorsed by the representatives of the railway labor organizations; by Secretary Mosely, of the Interstate Commerce Commission; by Commissioner Wright, and by others. The letter of the brotherhood chiefs contained one clause which has had some significance in the light of their more recent utterances:

It seems to be thoroughly conceded, also, that legislation by Congress, so as to provide arbitration in disputes arising from the semipublic duties in which

<sup>13</sup> Congressional Record, Vol. XXVII, p. 2805.

<sup>14</sup> *Idem*, Vol. XXVIII, p. 49.

<sup>15</sup> H. Rept. No. 1058, 54th Cong., 1st sess.

<sup>16</sup> Congressional Record, Vol. XXIX, pp. 2388, 2389 (speech of Mr. Erdman).

<sup>17</sup> *Idem*, p. 2388.

<sup>18</sup> *Idem*, p. 2389.

<sup>19</sup> H. Rept. No. 454, 55th Cong., 2d sess.

<sup>20</sup> S. Rept. No. 591, 55th Cong., 2d sess.

railway men are engaged is not only appropriate, but in line with the policy of Federal protection and regulation of interstate commerce.<sup>21</sup>

This is obviously a modification of the attitude formerly maintained by the brotherhood leaders. The evolution of the labor movement in the railway field has caused this modification of position.

#### PASSAGE OF THE ERDMAN ACT.

The arguments for and against the passage of the bill providing for arbitration of disputes between the railways and their employees had been given at length in the preceding sessions of the House of Representatives. In this instance, then, the discussion was brief and the bill passed on May 5, 1898.<sup>22</sup> In the Senate a vigorous opposition developed. Senator Allen, of Nebraska, said that the law would operate in such a way as to make bond servants of the railway employees.<sup>23</sup> Senator Elkins, of West Virginia, thought that the authority to be conferred on the commission should be vested in the Interstate Commerce Commission and that no new commission should be created.<sup>24</sup> Senator Kyle, of South Dakota, who had charge of the bill, emphasized the fact that the arbitration provided for was to be voluntary only.<sup>24</sup>

In spite of the opposition the bill was approved on May 12 in the Senate by a vote of 47 to 3.<sup>25</sup> As indicated above, House bill 4372 had already passed the House. On May 19 the House, upon the recommendation of a conference committee, adopted by a vote of 226 to 5 the bill that had passed the Senate.<sup>26</sup> On June 1, 1898, the bill was approved by the President and became law.<sup>27</sup>

The legislative history of this bill has been given in detail in order to show that it was no hasty and ill-advised law pushed through Congress without having received the consideration due a measure of such significance. As indicated in the preceding pages this law had been before Congress, practically in the form in which it was adopted, for more than three years. During that time all the interests affected had ample opportunity to have their case heard on the merits of the plan proposed. And, as already shown, the representatives of the railway labor organizations were enthusiastic in their approval of the measure.

#### OPINIONS CONCERNING THE LAW.

It should not be assumed that there was no opposition outside Congress to the passage of the law in question. The American Federation of Labor brought all the pressure it could in order to defeat the bill. In the annual convention of 1897 the Federation protested against its passage.<sup>28</sup> Mr. Gompers, in an editorial in the American Federationist, insisted that the law would be a mistake. He published a letter from counsel containing the following statement: "We regard the bill as dangerous in its tendencies to the extreme in

<sup>21</sup> S. Rept. No. 591, 55th Cong., 2d sess., p. 3.

<sup>22</sup> Congressional Record, Vol. XXXI, p. 4649.

<sup>23</sup> *Idem*, p. 4790.

<sup>24</sup> *Idem*, pp. 4800, 4801.

<sup>25</sup> *Idem*, p. 4858.

<sup>26</sup> *Idem*, p. 5053.

<sup>27</sup> *Idem*, p. 5566.

<sup>28</sup> American Federationist, Vol. III, p. 258 (February, 1897).



that it constitutes an attempt to wed the laborer to his employment, and the nearest analogy which occurs to us is that of the serfs who are understood to be bought and sold with the land upon which they live."<sup>29</sup>

Mr. Gompers, testifying before a committee of the House of Representatives in January, 1917, said that his opposition and that of Mr. Andrew Furuseth were responsible for the elimination of the seamen from the operation of the Erdman law. He finally withdrew his opposition only because the railway men were anxious to have it enacted.<sup>30</sup> Repeatedly in the annual conventions of the American Federation of Labor and in the editorial columns of the *Federationist* Mr. Gompers protested against the intervention of the Government in the field of labor disputes. In an address to the International Federation of Trade-Unions, however, he commented on the Newlands law, a law in its essentials like the Erdman Act:

The voluntary arbitration act for employees on railroads was amended by providing for a permanent office of Arbitration and Conciliation Board. The board has already been helpful in the adjustment of disputes between railroad managers and the brotherhoods of railroad employees, invariably with beneficial results to the workers.<sup>31</sup>

The *Railroad Gazette*, representing the point of view of the railway managers, expressed some doubt as to the good results to come from such a law. Its doubt was due to the fact that only one of the parties to the controversies was responsible; that is, in a position such that an award could be enforced against it. Only involuntary servitude could force the laborers to accept the decision of the board, and such servitude was contrary to the Federal Constitution.<sup>32</sup> In a subsequent issue the *Gazette* said that perhaps no good would come from the law, but that its passage was an encouraging sign of an increasing public interest in grappling with the problem of labor disturbances on the railroads.<sup>33</sup>

#### PROVISIONS OF THE LAW.

The Erdman law,<sup>34</sup> so called because Mr. Erdman had charge of the bill, like the law of 1888, contained two principal parts. It will be recalled that the earlier law provided for arbitration and also for investigation by a Federal board. In the Erdman Act the investigation by the Federal board was not provided for. Under its terms no investigation of the Chicago Pullman strike could have been made. But the law of 1888 had made no provision for mediation and conciliation. This was the new phase incorporated in the Erdman law. While the thought of the time seems to have centered mainly upon the arbitration features of the law, subsequent events, as will appear presently, proved that the mediation and con-

<sup>29</sup> Mr. Gompers said: "The Erdman administration bill, so called, is a piece of legislation destructive of the best interests of labor, ruinous of the liberties of our people; a step in the direction for the creation of an autocracy or an empire on the one side and a class of slaves or serfs on the other. Against such a condition of the affairs the whole sentiment \* \* \* the entire interest of wage workers should be directed." (*American Federationist*, Vol. III, pp. 249-252, 259 (February, 1897).)

<sup>30</sup> U. S. Congress. Committee on Interstate and Foreign Commerce. Hearings on H. R. 19730, 64th Cong., 2d sess., p. 96.

<sup>31</sup> *American Federationist*, Vol. XXII, p. 118 (February, 1915).

<sup>32</sup> *The Railroad Gazette*, Vol. XXX, p. 343 (May 13, 1898).

<sup>33</sup> *Idem*, p. 378.

<sup>34</sup> 30 Stat., 55th Cong., ch. 370.

ciliation clauses of the law were to be the more important in the actual operation of the act.

The Erdman Act applied only to the interruption in which were involved railroads and their employees engaged in the operation of trains in interstate commerce. When such interference of traffic was threatened because of differences arising between employers and employees it was to be the duty of the chairman of the Interstate Commerce Commission and of the United States Commissioner of Labor, upon application of either party to the controversy, to offer their services in an effort to bring about an amicable adjustment of the trouble through mediation and conciliation. Failing in this, they were to try to bring about arbitration proceedings in accordance with the act. Subsequently, when Judge Knapp of the Interstate Commerce Commission was made a member of the commerce court, the law was amended in such manner as to make it possible to retain Judge Knapp as a mediator.<sup>35</sup> The Erdman Act made no provision for the taking of the initiative by the commissioners. In this respect it was weaker than the earlier law under the terms of which the President was authorized to investigate any controversy he thought it desirable to look into.

The entire act contained 12 sections, only one of which dealt with mediation and conciliation. Yet, in the operation of the law, this one section proved of more significance than did all the other sections combined, notwithstanding the fact that at the time of the passage of the law this section was generally considered the less important part of the legislation.

In the event of the acceptance of arbitration under the law each side to the controversy was to select one arbitrator and these two were to select the third or neutral arbitrator. If they could not agree on this third man within a period of five days from their own appointment, this member was to be appointed by the chairman of the Interstate Commerce Commission and the Commissioner of Labor. The agreement to arbitrate was to be signed by both sides and was to contain the following provisions:

1. The board was to begin its sittings within 10 days from the time of appointment of the third arbitrator and was to file an award within 30 days from the commencement of hearings. Pending the handing down of the decision the existing status should be maintained by the contestants, but no individual was to be forced to remain in the service against his will.

2. The award and a record of all proceedings were to be filed with the Circuit Court of the United States in the district in which the controversy occurred, and this decision was to be conclusive unless set aside for error of law.

3. Courts of equity were to enforce the award, provided that no individual could be forced to work against his will.

4. Employees dissatisfied with the award were not to leave the service within a period of 3 months unless they gave written notice 30 days before leaving. A like limitation was placed on the employer in the dismissal of the employees.

5. The award was to be in effect for one year from the rendering of the decision of the arbitration board.

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<sup>35</sup> 36 Stat., 61st Cong., ch. 285, p. 1397.

Within 10 days from the filing of the report with the circuit court the award was to go into effect.

The necessary power in the administration of oaths, the subpoenaing of witnesses, the taking of testimony, etc., was given the board of arbitration.

Unorganized employees, if they satisfied the board of arbitration that they represented a majority of the employees involved in the controversy, were to be permitted to come under the operation of the law.

Pending the arbitration proceedings no employer could dismiss an employee, excepting for certain specified reasons; and no employees could combine to leave the service of the employer. For a period of three months after the award neither side to the controversy could terminate the relationship without 30 days' notice of an intention to that effect.

Provision was made in the law for employees working on railroads in the hands of Federal receiverships. Such employees could appeal to the Federal courts as to the terms of employment, etc.

Perhaps the one provision of the law that was most heartily approved by the employees was that contained in section 10, which provided that no employer could exact unjust terms of employment from the worker upon the entrance of the latter into the service—such terms as an agreement not to belong to a labor union, to contribute to an insurance fund, etc. This part of the law was to be the subject of court litigation, the result of which was to cause the laboring man to discount the law.

#### THE LAW IN THE COURTS.

##### CASES DECIDED.

Very soon after the Erdman law was put in operation the courts were called upon to pass upon the validity of the section which made it illegal to exact of the workingman a promise not to belong to a labor union, section 10 of the law. The first court adjudication was that of *United States v. Scott*,<sup>38</sup> a Kentucky case, decided in October, 1906. Scott, a train dispatcher of the Louisville & Nashville Railroad, threatened telegraphers with the loss of their positions if they joined the Order of Railroad Telegraphers. The defendant in this case contended that section 10 of the Erdman act was unconstitutional. Judge Evans of the district court held that section invalid.

The judge went into a lengthy discussion to show that the section in question was class discrimination:

To forbid discriminations against union labor, while discriminations against others, if made, are allowed, would not seem to be a very palpable or conspicuous example of equal or exact justice to all, and might be open to the criticism that it is class legislation.

The judge said, however, that he did not base his decision on the discrimination in the section, but on the broader ground that this was really not a regulation of interstate commerce. It was only a regulation of certain rights of the employer to choose his own servants regardless of whether they were employed in interstate com-

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<sup>38</sup> 148 Fed. 431.

merce or otherwise; and the section was so broad in its scope that it would apply to employees engaged in intrastate commerce as well as to those engaged in interstate commerce. For the latter part of the opinion he cited the precedent of the Trade-Mark cases.

In November, 1906, the Order of Railroad Telegraphers asked Judge Evans for an injunction to prevent the use of intimidation by the Louisville & Nashville Railroad Co. This railroad attempted to prevent its employees from joining the Order of Telegraphers.<sup>37</sup> Judge Evans denied the petition on the ground that, regardless of the right of action under the law, the plaintiff was not a party to the controversy and therefore had no right to benefit from the operation of the law. The railroad and the employees alone, not the Order of Telegraphers, Judge Evans said, were parties to this controversy.

A more important case, as it went to the Federal Supreme Court for final adjudication, arose in the Eastern District of Kentucky in 1907.<sup>38</sup> The contention in this case was that Adair, a master mechanic in the employ of the Louisville & Nashville Railroad Co., had discriminated against a man named Coppage. He had done this by threatening to discharge, and later by discharging, Coppage because of the membership of the latter in a labor union. The case involved the validity of section 10 of the law.

Judge Cochran upheld the section in question. He denied the three main contentions of the railroad: That the statute was unconstitutional as an interference with private rights; that the law applied to intrastate commerce and was therefore without the scope of the powers of Congress; and that it was a denial of the equal protection clause of the Constitution.

A person engaged in a lawful private business and a common carrier engaged in interstate commerce occupy entirely different positions. The former has a fundamental right upon his choice to engage in and carry on such business. The latter has no such right. It exercises a public function and has no right to exercise it except by consent of the National Government, express or implied.

As to the second objection, the judge said that it was altogether unlikely that an employee in intrastate commerce had nothing to do with the movement of goods over the road as a part of interstate commerce.

That there was class discrimination he said was no ground for declaring the law invalid, because there was nothing in the Constitution forbidding class discrimination by the Federal Government. But, aside from that, the classification made here was reasonable and was based on sound public policy.

Upon appeal to the Federal Supreme Court the decision in the Adair case was reversed.<sup>39</sup> Mr. Justice Harlan held that the section in question was unconstitutional. He said:

In our opinion that section, in the particular mentioned, is an invasion of the personal liberty as well as the right of property guaranteed by that amendment [fifth]. Such liberty and right embraces the right to make contracts for the sale of one's own labor; each right, however, being subject to the fundamental condition that no contract, whatever its subject matter, can be maintained which the law, upon reasonable grounds, forbids as inconsistent

<sup>37</sup> Order of Railroad Telegraphers v. L. & N. R. R., 148 Fed. 437.

<sup>38</sup> United States v. Adair, 152 Fed. 737.

<sup>39</sup> Adair v. United States, 208 U. S. 161.

with the public interests or as hurtful to the public order or as detrimental to the common good.

It was the right of the defendant to prescribe the terms upon which the services of Coppage would be accepted, and it was the right of Coppage to become or not, as he chose, an employee of the railroad company on the terms offered to him.

In all such particulars the employer and the employee have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no Government can legally justify in a free land.

\* \* \* we hold that there is no such connection between interstate commerce and membership in a labor organization as to authorize Congress to make it a crime against the United States for an agent of an interstate carrier to discharge an employee because of such membership on his part.

Mr. Justice McKenna and Mr. Justice Holmes each wrote a dissenting opinion in this case, declaring it to be their belief that there was such a connection between this legislation and interstate commerce as to justify Congress in making it illegal for an agent of an interstate carrier to discharge an employee for membership in a labor organization. Mr. Justice Holmes said:

It can not be doubted that to prevent strikes and, so far as possible, to foster its scheme of arbitration it might be deemed by Congress an important point of policy, and, I think, it impossible to say that Congress might not reasonably think the provision in question would help a good deal to carry its policy along.

Even according to the decision of the court there is an open gap through which a different conclusion might be reached without involving the court in any inconsistency. Mr. Justice Harlan, as noted, did not see any connection between interstate commerce and the section of the law under litigation. But, if the denial of membership in labor organization promotes strikes, then there is obviously a connection. Public opinion may conceivably force a recognition of this relationship. The justice also said that private rights and private contracts should be interfered with only upon grounds of public policy. But the prevention of strikes would seem safely within the range of things that promote the general well-being. It is a question whether the court, if passing upon a similar case to-day, would uphold the decision of Mr. Justice Harlan or accept the opinion expressed by Mr. Justice Holmes in his dissenting opinion in this case.

#### LABOR'S VIEWS ON DECISIONS.

The decision in the Adair case fell as a heavy blow to organized labor. This was the one section of the Erdman Act to which they had attached the most importance and from which they had anticipated the best results. Now, that the court held this invalid, the brotherhood leaders felt that this denied to them the essential protection given in the law. In its March, 1908, issue the Railroad Trainman expressed the disappointment of labor in this respect.<sup>40</sup> The

<sup>40</sup> "Another stinging decision has been given by the Supreme Court in which 'repugnant to the Constitution' is the leading feature.

"Just what law intended to take care of the people against the unfairness of their employers that is not repugnant to the Constitution remains to be discovered. The Constitution is the most sensitive part of our national anatomy, always on nervous edge to see if it is not being insulted or offended, and it usually is, for the eyes of the jurists who look to preserving it from insult usually see where the sacred document has been wronged."

"The employee must abandon his only way of protecting himself against the unfairness of his employer. The decision against the membership of a man in his labor union is ample evidence of that."

implication in the editorial was that any measure for the purpose of benefiting labor would be held unconstitutional by the courts. It sounded a note of despair for the employees.

The labor leaders have insisted that there is a fundamental difference in bargaining power between the employer and the employee; that, even though there may be a legal and theoretical equality, in practice there may be another story. They have held that the employer is not dependent upon the particular laborer, whereas the particular laborer may be dependent upon some one employer, and this difference, which to the worker seems essential and fundamental, did not get the recognition of the court. At least, this difference did not seem to the court to be of such importance as to warrant the majority in upholding the law upon such a basis.

### APPLICATION OF THE ERDMAN ACT.

#### RAILWAY LABOR ORGANIZATIONS.

Before discussing the operation of the Erdman Act a word should be said concerning the four railway brotherhoods that were parties to the disputes adjusted under the terms of the law.

The first of the brotherhoods to be organized was that of the Locomotive Engineers, formed in 1863. The main object of the organization was to improve the character of the members. However, almost from the founding of the organization it became instrumental in securing better working conditions for its membership. This was accomplished in the main through the agency of collective bargaining.<sup>41</sup> This organization is popularly considered the most conservative of the labor groups in the country. Its members are usually of a high type, so much so that the union is commonly known as the aristocracy in the labor world.

Next in point of time of organization came the Order of Railway Conductors. This union was formed in 1868 and was known as the Conductors' Brotherhood. Later the name was changed to that of the Order of Railway Conductors of America.<sup>42</sup> About 1890 the order began to become active in the way of getting better working conditions and higher wages for its members.<sup>43</sup>

In 1873 the Brotherhood of Locomotive Firemen and Enginemen was organized in New York State. It had as its purpose the promotion of the interests of its members through mutual association and assistance, and the improvement of working conditions in general. Its motto is indicative of the aims and purposes of the organization: "Protection, charity, sobriety, and industry."<sup>44</sup>

The fourth of the large railway labor brotherhoods in the train service was that of the Railroad Trainmen, established in 1883. In its purposes and aims this order was like that of the Firemen and Enginemen, noted above.<sup>45</sup>

<sup>41</sup> Testimony of President Arthur. (Report of the Industrial Commission, Vol. IV, pp. 116-118. 1900.)

<sup>42</sup> Order of Railway Conductors. Constitutions, Statutes, etc., p. 2 (1916).

<sup>43</sup> Statement of Mr. Clark. (Report of the Industrial Commission, Vol. IV, p. 110-113. 1900.)

<sup>44</sup> Brotherhood of Locomotive Firemen and Enginemen. Constitution, etc., pp. 2, 3 (1916).

<sup>45</sup> Brotherhood of Railroad Trainmen. Constitution and General Rules, pp. 1, 2 (1916).

SETTLEMENTS UNDER THE LAW.<sup>46</sup>

For eight and a half years after its passage the use of the Erdman Act was attempted only once. And this resulted in a complete failure. The first attempt to use the law came in a movement on the part of the trainmen and the conductors in and about Pittsburgh in 1899. Mr. P. H. Morrissey, grand master of the Brotherhood of Railroad Trainmen, requested mediation by the commission. The railroads refused to enter into mediation proceedings, and thus the first attempt to use the law ended in failure.

No further effort was made to use the act until December, 1906. In a controversy with the firemen on the Southern Pacific Railroad the company, after a strike had been ordered for the following day, requested mediation by Judge Knapp and Commissioner Neill. From that time until the passage of the Newlands law in 1913 61 cases were settled under the Erdman Act. Twenty-six of these cases were adjusted through mediation, 10 by mediation and arbitration and six by arbitration alone.

Of the remaining 19 cases some were settled without the intervention of the mediators but after their aid had been invoked, and others were cases in which the second party refused to accept the mediation by this commission.<sup>47</sup>

In some cases both parties to the controversy asked the aid of the mediators. Thus, in all, 61 requests for mediation were made to the board. The cases ranged in importance from those in which less than 100 employees were involved to those with more than 40,000 employees in one controversy. In the year 1910 there were nearly 80,000 employees and about 300,000 miles of road involved in 16 cases. The total of 61 cases affected more than 680,000 miles of trackage and over 250,000 employees. From 1906 to 1911 there were only 4 cases in which mediation was invoked directly and only 8 had to go to arbitration for a settlement. And even in those 8 cases only a part of the issues were settled by arbitration; through mediation and conciliation the contestants had already agreed upon most of the points of difference between them and had submitted to arbitration only those on which they could not reach an agreement.

There was never a repudiation of an award made by an arbitration board under the Erdman law. And in only one case was there an appeal to the courts from the decision of the arbitrators. In that case the employees appealed, filing exceptions to only a part of the award. They requested that the other parts of the decision be put into operation as rendered.

The court, however, took the position that no part of the award could be enforced pending the adjudication of the controverted points. After four months the court handed down its decision in which some of the points were favorable to the men and other points were in favor of the railroad. Thereupon the employer appealed and the case was not settled a year after the original award had been handed down by the board of arbitration. Both parties had become exasperated by this time and reopened the negotiations with each other.

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<sup>46</sup> Except where otherwise noted, data in this section are from U. S. Bureau of Labor Bul. No. 98, pp. 1-63.

<sup>47</sup> U. S. Commissioner of Mediation and Conciliation, Annual Report, 1920.

In this way they finally reached an agreement, but 14 months had elapsed since the decision of the arbitration tribunal. This single instance, Commissioner Neill said, proved that the provision of the law granting an appeal to the courts was of no real value. And, in the majority of the cases arbitrated subsequently to this experience, the parties agreed beforehand to waive the right of appeal to the courts.

It has already been mentioned that for a period of more than eight years from the passage of the law no proceedings, excepting that of the one case in which there was a failure, were held under the act. Judge Knapp explains this failure to use the act upon two grounds: First, the years following the passage of the law were years of general prosperity, a period when strikes are not to be expected; second, the change was in part due to the great advance in public sentiment which demanded some sort of peaceable settlement of such controversies.<sup>48</sup>

The application for mediation under the Erdman law was usually made by the employees in those cases in which the number of men involved was small and the railroad mileage short. This Commissioner Neill attributed to the fact that in such cases the men believed that the railroads would be able to defeat them in the event of a strike. However, in the large movements, cases in which the men had the advantage and in which the employers could ill afford to run the risk incident to a stoppage by the employees, the management as a rule applied for mediation.<sup>49</sup>

#### PROCEDURE UNDER THE LAW.

In view of the relative importance of mediation under the law something should be said of the procedure adopted. The mediators refused to intervene in any case until they were satisfied that the contending parties had exhausted all their own resources to reach an agreement.

If the application were made before the respective interests had done all within their power to effect a settlement, as it appeared to the mediators, Judge Knapp and Commissioner Neill refused to consider the dispute. In such cases they suggested to the contesting parties that they continue their own efforts toward an agreement.<sup>50</sup> Had the mediators followed any other course it is likely that they would have been overwhelmed with insignificant matters that could better have been adjusted without outside intervention. Then, too, the action of the mediators was all the more effective because of the relative infrequency with which it was put to use.

Commissioner Neill and Judge Knapp adopted early in their administration of the law a method of procedure which, as the results show, was a happy one. The contending representatives were never brought together until they had made such concessions to the mediators that the difference could be adjusted. Commissioner Neill and Judge Knapp made it a practice to meet the representatives of each side separately and to find out what was the best that each

<sup>48</sup> National Association of Railway Commissioners. Proceedings of the Twentieth Annual Convention, p. 38 (October, 1908).

<sup>49</sup> U. S. Congress. House of Representatives. Committee on Interstate and Foreign Commerce. Hearings. \* \* \* H. R. 22012, pp. 24, 25 (1912).

<sup>50</sup> *Idem*, p. 35.



would concede. If the proposals from the two sides were such as to make agreement possible, the commissioner's would draw up a plan to be accepted by the disputants. However, as a rule, several meetings were required before things came to the point that the mediators could make a proposition to both sides. Commissioner Neill said that this procedure was responsible, in large measure, for the success of the mediation under the law. In the event of a failure to reach an agreement neither side knew what concessions the other side had been willing to make. Then, when the case went to arbitration, it would not be prejudiced for or against either side because of the points already yielded in mediation. Neither side could use as a lever the concessions already made by the other.<sup>51</sup>

Something of the difficulty of operating the law can be gathered from the testimony of Commissioner Neill. This testimony also shows what a tremendous strain the mediators were laboring under in the negotiations:

I have sat for 14 days, beginning before 10 o'clock every morning and never concluding the last conference until after midnight any day, including both Sundays, and on more than one night not getting through until 3 or 4 o'clock the following morning. I have sat through one conference beginning at 9 o'clock in the morning and eating sandwiches during the conferences, and adjourning at 4 o'clock in the morning, and that at the end of a 10-day siege of it. Not only is there the physical strain, but in many cases \* \* \* and I remember one case particularly in which, for four successive days, some representative of the organizations was sitting in a room across the hall from mine in the hotel with a strike order written on a telegram and signed by the head of the organization calling a strike, with the instruction that the moment he received notice that the negotiations had failed the strike was to be put on the wire.<sup>52</sup>

The testimony of Judge Knapp is to the same effect:

\* \* \* But on more than one occasion it has been a nerve-racking experience for days and nights—day after day and long into the night; and I have sat around the table with a committee of men, discussing the question for days, when I feared that within the next 60 minutes every railroad in a large area would be tied up. No one who has not had that nerve-racking experience and felt the tremendous responsibility, because the public interests are greatly involved, can realize the satisfaction which comes when a settlement is reached, a settlement with good feelings on both sides and which restores a more friendly relation between the two parties than before existed for a long time.<sup>53</sup>

A valid objection to this kind of settlement is that it is based on what seems to be the easier plan rather than on the merits of the controversy; expediency rather than justice is the ultimate standard or basis for settlement. Judge Knapp was conscious of this weakness in the administration of the law. But he was so deeply concerned to protect the public interests in jeopardy that he considered it defensible to inflict a little of hardship in some instances if this became necessary. In other words, the individual should be willing to suffer for the common good in a measurable degree.<sup>54</sup>

<sup>51</sup> U. S. Bureau of Labor Bul. No. 98, pp. 13, 14.

<sup>52</sup> U. S. Congress, House of Representatives, Committee on Interstate and Foreign Commerce, Hearings on \* \* \* H. R. 22012, pp. 22, 23 (1912).

<sup>53</sup> *Idem*, p. 15.

<sup>54</sup> "The most that we can do is to aim at a fair adjustment and in protection of the large interests of the public bring the parties together on the best terms possible, which will end the controversy without delay. The commanding interest which we have in the controversy is that it shall be settled and ended. The dangers attendant upon controversy are more serious as affecting public interests than the abstract rights of the contending parties. When large public interests are involved, good citizens may properly be called upon for concessions of their purely private rights in the public interests." (Judge Knapp, in Proceedings of Twentieth Annual Convention of National Association of Railway Commissioners, p. 39. 1908).

But whatever may have been the objections to the action of Messrs. Knapp and Neill, they succeeded in preventing many strikes that otherwise would have come. In no case did a strike ever follow a dispute in which they had intervened.<sup>55</sup> And there was no instance in which the disappointed party to an arbitration award failed to comply with the decision of the board for the period agreed upon.<sup>56</sup>

In the arbitrations under the act the most difficult part was the selection of the neutral arbitrators. Although the law provided that the two representatives of the contestants should select the third member of the board within a period of five days from their own appointment, Commissioner Neill said there had been no case in which the mediators had not been called upon to select this third arbitrator. The two parties could not agree upon the neutral arbitrator within the five-day period prescribed by law.<sup>57</sup> It was very difficult for the mediators to select this third arbitrator. Dr. Neill said he had traveled over the country and had spent weeks in the effort to find a satisfactory man.<sup>58</sup>

Perhaps the greatest improvement made in the Erdman law as compared with the statute of 1888 was the provision made for the permanent commission of mediation and conciliation. In the law of 1888 the only commission provided for was that of the special investigating board which was temporary and ceased to exist upon the filing of its report in the particular controversy investigated by it.

In the Erdman act, however, Commissioner Neill and Judge Knapp were able to make use of their experience in one controversy in the settlement of subsequent ones. In this way they acquired a high degree of skill and technique in the handling of labor disputes. They were easily able to separate the wheat from the chaff in the demands made by each of the parties to a controversy, to know just how much each side would concede and what was demanded for the purpose of bargaining and higgling with a view to getting something by compromise.

The members of the railroad brotherhood organizations frequently expressed their confidence in the members of the commission.<sup>59</sup> The

<sup>55</sup> Statement by Judge Knapp, in *Mediation, conciliation, and arbitration in controversies between railway employers and their employees*, S. Rept. No. 72, 63d Cong., 1st sess., p. 36.

<sup>56</sup> *Idem*, p. 30.

<sup>57</sup> U. S. Congress. House of Representatives. Committee on Interstate and Foreign Commerce. Hearings on \* \* \* H. R. 22012, p. 13 (1912).

<sup>58</sup> "I have traveled from one end of the country to the other two or three times and probably interviewed five or six men, to be turned down by each one of them. I have spent six weeks in trying to select arbitrators and nearly four-fifths of that time I was trying to get a third arbitrator and was unable to find a man." (*Idem*, p. 20.)

<sup>59</sup> Mr. Garretson, president of the Order of Railway Conductors, said, in 1913:

"The success or failure of any act of this character will always depend upon the personality of the men who administer it, and unless these men develop the qualities that are necessary for successfully acting the part of mediators the act is not worth the ink that it took to print it."

"My own connection with the men who have acted as administrators has grown up under the application of this act, and it is the personal qualities of those men that have contributed so largely, first, to successful settlement, where the mediator is able to make a successful settlement on account of the peaceful qualities that invoke confidence—absolute—on both parties, because mediation is absolutely founded on good faith and confidence, and no other features will ever make it a success." (Hearings on S. 2517, S. Rept. No. 72, 63d Cong., 1st sess., pp. 43, 44.)

Mr. Stone, president of the Brotherhood of Locomotive Engineers, offered his testimony: "If we could always be assured that Judge Knapp and Dr. Neill would be the two men who meditate and pass on these cases, I would not care where you put it [the office of mediation]." (*Idem*, p. 76.)

managers of the railroads also indicated gratification at the administration of the law by Messrs. Knapp and Neill.<sup>60</sup>

#### DEFECTS OF THE LAW.

So far all the discussion in this paper would indicate that the Erdman law was an unqualified success. That, though, would be putting the case too strongly. From time to time many suggestions were made for the improvement of the law. The number of arbitrators under the law, it was said, was too small. Questions of such moment should not be intrusted to the decision of one neutral arbitrator. It was held that the public should have a representation on the board that was larger than that of either party to the dispute. Objections were made to the provision for a court review of the award of the arbitration boards. It was suggested that the mediation and conciliation commission should be composed of men who could devote their entire time and energy to the problem. The mediators, it was said, should be authorized to take the initiative in the work of mediation, and not have to wait supinely until called into the controversy, etc. All these proposed changes and modifications will be discussed in the following chapter in connection with the legislative developments from the time of the passage of the Erdman law until the enactment of the Newlands law, which superseded it.

#### CONCERTED MOVEMENTS.

Before leaving the discussion of the Erdman Act, however, some consideration should be given the new development in the method of handling the labor situation by the railway labor brotherhoods. This device, because of the number of employees and the extent of the railway mileage involved, came to be known as the "concerted movement." The employees had learned through experience that they had a better chance of winning if they grouped themselves together on a number of roads and presented their demands as a unit to the managers. The first of the concerted movements which the United States Mediation and Conciliation Board had to handle was that of the conductors and trainmen in the western territory. This case involved 42,500 employees and 101,500 miles of railroad. On March 28, 1907, the railroad companies applied to the Mediation Board for mediation. The conference began in Chicago on March 30, and on August 4 a settlement was effected by the Government officials.<sup>61</sup>

Not until 1909 was there another important concerted movement by the railway employees. As a result of a controversy between the railways of the West and the firemen and enginemen, the railways appealed to the board for intervention, with a view to a settlement of the difficulty. Here 26,000 men and 110,000 miles of road were affected. On March 17 the board began proceedings in Chicago, and on March 23, after mediation and a settlement of some of the con-

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<sup>60</sup> Vice President Atterbury, of the Pennsylvania Railroad, said:

"The Erdman Act has been successful for the last five or six years, but it is due to the personal equation of Messrs. Knapp and Neill. Their handling of all the contentions that have been submitted to them has been of such an impartial and fair character that they have gained the respect not only of the railroads, but of the employees of the railroads." (*Idem*, p. 53.)

<sup>61</sup> Commissioner Neill, in Bureau of Labor Bul. No. 98, case 4, pp. 44, 45.

troversy by mediation and the rest of it by arbitration, the settlement was made.<sup>62</sup>

The men were so much pleased with the result of this movement that the conductors and trainmen of the East decided to launch a concerted movement in the hope of attaining a like result. The railroad managers, however, refused to join the concerted action and meet the men as a body. Thereupon the men decided to center their efforts on one road at a time, in this manner covering the entire territory ultimately. The Baltimore & Ohio Railroad was selected as the road on which to make a beginning.<sup>63</sup> The railroad asked the mediation board to intervene. On March 11 a settlement was effected through mediation.<sup>64</sup> The New Haven and the Boston & Maine Railroads settled on the basis agreed upon with the Baltimore & Ohio.<sup>65</sup> The next case involved the New York Central. This road made three propositions to the men: That the Federal mediators decide the controversy; that it be referred to the chairman of the chambers of commerce in the cities through which the road passed; that it be submitted to the Public Service Commission of New York State. The men refused to accept any one of these three proposals. Finally it was arranged that the whole matter should be referred to Mr. E. E. Clark, chairman of the Interstate Commerce Commission, and Mr. P. H. Morrissey.<sup>66</sup> The road accepted this plan as the only means for warding off what to the railroad would have been a less desirable situation.

In the meantime the Lackawanna, the Delaware & Hudson, the Erie, and other railroads had agreed to abide by the decision rendered in the New York Central case. The result of this settlement was to standardize and to give to the men concerned practically the award that had been rendered in the Baltimore & Ohio case.<sup>67</sup> Thus the employees finally secured by action with the separate roads what they had planned to get by dealing with all the roads of the section as a unit.

Another concerted movement was undertaken by the engineers of the western roads in 1910, 24,000 engineers and 115,000 miles of track being involved in this controversy. The railroads applied for mediation, and on December 17 negotiations were begun in Chicago. This resulted in a settlement by mediation on December 24.<sup>68</sup>

Probably the most interesting of the concerted movements of the period was the one begun by the Brotherhood of Locomotive Engineers on the 52 railroads of the East in the spring of 1912. The parties concerned agreed to submit the dispute to a new type of arbitration board. This board was to consist of seven members, two of whom should represent the respective interests to the controversy. These two were to choose five neutral arbitrators. Should they fail within 15 days from the time of their appointment to agree upon the neutral members, these five were to be appointed by the Chief Justice of the Federal Supreme Court, the presiding judge of the Com-

<sup>62</sup> Commissioner Neill, in Bureau of Labor Bul. No. 98, case 29, pp. 50, 51.

<sup>63</sup> Locomotive Engineers' Arbitration, by W. J. Cunningham, in *Quarterly Journal of Economics*, Vol. XXVII, pp. 274-276 (Feb., 1913).

<sup>64</sup> Commissioner Neill, in Bureau of Labor Bul. No. 98, case 28, pp. 50, 51.

<sup>65</sup> Locomotive Engineers' Arbitration, by W. J. Cunningham, in *Quarterly Journal of Economics*, Vol. XXVII, p. 276.

<sup>66</sup> *Idem*, pp. 276, 277.

<sup>67</sup> *Idem*, p. 277.

<sup>68</sup> Commissioner Neill, in Bureau of Labor Bul. No. 98, case 40, pp. 54, 55.

merce Court, and the United States Commissioner of Labor. In fact, they were appointed in the latter manner.

This arbitration was the first one in which the public had received such a large representation on the board. Because of its report and the novel recommendations contained therein this was one of the most important arbitrations of railway labor disputes in the history of the country. Some of the recommendations and conclusions of the board will be considered in the following chapter. The award was rendered on November 2, 1912.

Early in 1912 the firemen and enginemen of the East made demands on the railroads. The roads were the same ones as those on which arbitration was had with the engineers. In all there were 67,000 miles of track, on which was hauled approximately 40 per cent of all the traffic of the country. The roads proposed that they arbitrate the matter in the manner in which the engineers had done. To this the men objected on the ground that the neutral arbitrators knew nothing about the technical side of railroading. The employees insisted upon arbitration under the Erdman law. The managers objected that this method gave too much power to the one neutral arbitrator. When it looked as though a strike would be inevitable the roads yielded and agreed to arbitration under the Erdman law.<sup>69</sup> The roads appointed W. W. Atterbury, of Philadelphia, as their representative, and the employees selected Albert Phillips, of Sacramento.<sup>70</sup> The proceedings began on March 10, in New York City, and lasted until April 5. On April 23 the arbitrators handed down an award<sup>71</sup> which was in the nature of a compromise.

This was the last of the arbitrations effected under the Erdman Act. The series of arbitrations has been given in some detail to show that the scope of the act was wide and that some significant results were reached through its operation. In another connection some of these arbitrations will be discussed to show how sentiment had changed with reference to arbitration and the kind of arbitration desired. This, however, belongs to the next chapter.

In studying the operation of the Erdman Act one can not escape the conclusion that it marked a great step forward in the evolution of a sane method for the settlement of railway labor troubles in the United States. That it was a perfect piece of legislation was not believed even by its most ardent advocates. In fact, the law adapted to one period would not, perhaps, have suited a later period in which the conditions had changed radically. But for the period in which this law was on the statute books it probably met the needs of the time as well as any sort of legislation that might have been enacted at that time could have done. True, an act of this kind may not be adequate any longer to adjust the controversies on the railroads. But it has helped greatly in marking out the way that was to follow its operation, and there are suggestions in the act which can well serve as a guide in shaping legislation in the future.

NOTE.—The report of the United States Board of Mediation and Conciliation (S. Doc. No. 493, 64th Cong., 2d sess. (1916)), contains a brief history and a description of the arbitrations under the Erdman law.

<sup>69</sup> L. W. Hatch, in *American Yearbook*, 1913, p. 415.

<sup>70</sup> Proceedings, Arbitration Between the Eastern Railroads and the Brotherhood of Locomotive Firemen and Enginemen, Vol. I, p. 3 (1913).

<sup>71</sup> *Idem*, Vol. V.

## CHAPTER IV.—THIRD STAGE: THE NEWLANDS ACT.

### DEVELOPMENT OF LEGISLATIVE CONSIDERATION AND VIEWS HELD AFTER PASSAGE OF LAW.

The third stage in the development of Federal power in the settlement of railway labor disputes was reached in the passage of the Newlands law on July 15, 1913.<sup>1</sup> Before going into a discussion of this law as such it will be well to note what consideration had been given to this question since the passage of the Erdman Act. Both in Congress and in the world at large a great deal of discussion preceded the passage of the law of 1913.

As early as December 6, 1899, a bill concerning carriers engaged in interstate commerce and their employees was introduced in the Senate.<sup>2</sup> This bill, however, did not get any consideration in the Senate, having died in the committee to which it was referred.

In 1900 several evidences pointed to the popularity of the idea of arbitration. The platform of the Democratic Party for that year contained a plank in which arbitration of railway labor disputes was advocated. And it was proposed that this arbitration be effected through legislative enactment.<sup>3</sup>

The same view was expressed by Mr. E. E. Clark, grand chief conductor of the Order of Railway Conductors, in a speech which he made to the Chicago Conference on Conciliation in 1900. He said that the experience of the men was such that they favored this plan for the settlement of their disputes.<sup>4</sup> Grand Master Sargent of the Brotherhood of Locomotive Engineers expressed his approval of arbitration as a means of adjusting these troubles.<sup>5</sup>

The final report of the Industrial Commission in 1902 also commented on the settlement of railway labor troubles. It was recommended in this report that the Erdman Act be made more specific and that some penalty be imposed on any party calling a strike or lockout before having submitted the controversy to a board of arbitration, or in the event of a refusal to arbitrate when arbitration was offered.<sup>6</sup>

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<sup>1</sup> 38 U. S. Stat., 63d Cong., ch. 6.

<sup>2</sup> Congressional Record, Vol. XXXIII, p. 90.

<sup>3</sup> "We are in favor of arbitration of differences between employers engaged in interstate commerce and their employees, and recommend such legislation as is necessary to carry out this principle." (National Democratic Campaign Handbook, presidential election of 1900, p. 12.)

<sup>4</sup> "We have submitted a good many cases and disputed points to arbitration and our experience has been such as to commend the employment of that agency in settling such disputes." (National Conference on Industrial Conciliation, under the auspices of the National Civic Federation (December, 1901). Papers read at the Chicago conference of 1900, p. 222.)

<sup>5</sup> "If each party to the controversy believes that its position is fair, neither should object to the matter being presented to a disinterested party or parties to determine the merits of the case and to make the award.

<sup>6</sup> "To-day 175,000 railway employees stand pledged to arbitration, and in all questions affecting their wages or hours of labor, stand ready at any time, when unable to reach a satisfactory conclusion with their employers through the medium of committees of the employees, to submit any and all questions to arbitration." (Brotherhood of Locomotive Firemen and Enginemen's Magazine, Vol. XXX, pp. 96, 97, January, 1901.)

<sup>7</sup> U. S. Industrial Commission. Final report, Vol. XIX, pp. 952, 953.

In the House of Representatives on June 18, 1902, a bill (H. R. 15157) to authorize the appointment of boards of arbitration and investigation was introduced. The Committee on Labor made a favorable report on the proposed bill.<sup>7</sup> This measure was to secure the appointment of investigation committees such as were authorized by the law of 1888—a provision which had been omitted in the Erdman Act. The committee making the report insisted that the force of public opinion would operate to prevent a strike or a lockout pending investigation under the auspices of the Government. However, no action was taken by Congress on this proposal.

In 1903 the report of the Anthracite Coal Strike Commission, a commission appointed by President Roosevelt to investigate and to recommend legislation to remedy the coal-strike situation, contained a recommendation similar to the one in the bill referred to above.<sup>8</sup> Credit was given Mr. Charles F. Adams for the conception of this plan. The man making this report advocated compulsory investigation.

However, this plan did not contemplate the outlawing of strikes prior to an investigation by the Government officials. The authors of the report thought that the mere existence of this machinery would operate to prevent strikes; the force of public opinion would be so strong that no party could defy it in calling a strike or lockout. Mr. John Mitchell recognized the tremendous force of public opinion to accomplish such an end. He stated to the commission that no organization could oppose with any degree of success a well-informed public sentiment, either as to a particular controversy or as to the methods of conducting a fight.<sup>9</sup>

In 1904 several bills were introduced for this kind of settlement (H. R. 9491, H. R. 11513, and S. 3259). A subcommittee of the Committee on Labor of the House of Representatives held hearings on House bill 9491.<sup>10</sup> According to the terms of this bill a national arbitration tribunal, consisting of the Secretary of Commerce and Labor and of five other members to be appointed by the President of the United States, by and with the consent of the Senate, was to offer to investigate any controversy that threatened to interfere with the movement of interstate commerce. Although the railroad employees were not the only ones to come under the operation of this law, their controversies would have constituted a large part of those with which the tribunal would have had to deal.

<sup>7</sup> H. Rept. No. 2722, 57th Cong., 1st sess.

<sup>8</sup> U. S. Anthracite Coal Strike Commission. Report. S. Doc. No. 6, 58th Cong., special session.

The committee said: "We do believe, however, that the State and Federal Governments should provide the machinery for what may be called compulsory investigation of controversies when they arise. The State can do this, whatever the nature of the controversy. The Federal Government can resort to some such measure when difficulties arise by reason of which the transportation of the United States mails, the operation, civil or military, of the Government of the United States, or the free and regular movement of commerce among the several States, and with foreign nations, are interrupted or directly affected, or are threatened with being interrupted or affected." (Idem, p. 85.)

"\* \* \* the public has the right, when controversies like that of last year cause it serious loss and suffering, to know all the facts and to be able to fix the responsibility. In order to do this power must be given the authorized representatives of the people to act for them by conducting a thorough investigation into all the matters involved in the controversy." (Idem, p. 87.)

<sup>9</sup> In statement by Dr. Neill: U. S. Congress. House of Representatives. Committee on Interstate and Foreign Commerce. Hearings \* \* \* on H. R. 10840, p. 71 (December, 1906-January, 1907).

<sup>10</sup> U. S. Congress. House of Representatives. Committee on Labor. Hearings on national arbitration bill, H. R. 9491 (1904).

President Gompers, of the American Federation of Labor, opposed the passage of the bill, because, he said, it would simply be an entering wedge for the enactment of a compulsory arbitration law.<sup>11</sup> On the other hand, many of the labor leaders of the country advocated the passage of the law.<sup>12</sup> But the gravity of the situation did not impress Congress sufficiently to bring about the enactment of the law.

Although there was no congressional action of these bills, similar ones were introduced from time to time for the next few years. Thus on January 12, 1906, Representative Foss, of Illinois, proposed House bill 11649. On February 5 of the same year Representative McDermott, of New Jersey, introduced House bill 14003. On June 13 Representative Beall, of Texas, proposed House bill 20180. In 1907 the following bills were introduced: House bill 4857, House bill 9172, and House bill 6246. No one of these bills received any report from the committees to which they had been referred.

But during this period one bill did receive the careful consideration of the Committee on Interstate and Foreign Commerce. Hearings were held on House bill 10840 on December 14, 1906, and on January 22, 1907.<sup>13</sup> The bill was practically a repetition of the one drawn in accordance with the ideas of Mr. Charles F. Adams, a plan calling for compulsory investigation.

Many prominent men, including United States Commissioner of Labor Neill, appeared before the committee in advocacy of the bill. Commissioner Neill emphasized the desirability of getting publicity for the issues of the controversy. However, he did not want to deny to the men the right to strike pending the report of the investigating commission.<sup>14</sup> Representative Townsend, of Michigan, for the committee, reported the measure favorably to the House on February 25, 1907.<sup>15</sup> But no action was taken on this report.

Mr. Townsend did not despair of having his ideas incorporated in legislation by Congress. On January 28, 1908, he introduced another bill (H. R. 15447), which was substantially the same as the one which Congress had failed to consider previously. The committee reported the bill favorably on February 3. Mr. Townsend said:

It is believed that in every strike or lockout one or the other of the parties is at fault, and probably both are in a degree wrong. In these contests the public has no voice, and owing to its ignorance of the causes and conditions it can not exert the sentiment which would be controlling in controversies if it could be exerted.<sup>16</sup>

Incidentally, it is interesting to note that Representative W. C. Adamson, of Georgia, author of the Adamson law of 1916, in a minority report opposed the passage of this bill. He declared that the law would result practically in compulsory arbitration.

In the debate in the House on December 10 Mr. Townsend insisted that the bill did not provide for compulsory arbitration, but only for the investigation and the publication of the facts. He added, however:

<sup>11</sup> U. S. Congress. House of Representatives. Committee on Labor. Hearings on national arbitration bill, H. R. 9491 (1904), p. 63.

<sup>12</sup> *Idem*, pp. 17-30.

<sup>13</sup> U. S. Congress. House of Representatives. Committee on Interstate and Foreign Commerce. Hearings on \* \* \* H. R. 10840.

<sup>14</sup> *Idem*, pp. 56, 67.

<sup>15</sup> H. Rept. No. 8077, 59th Cong., 2d sess.

<sup>16</sup> H. Rept. No. 621, 60th Cong., 1st sess., p. 1.



\* \* \* whatever may be the effect upon the employers and employees, it is our duty to legislate for the people. Special interests, however powerful, must, if needs be, give way to the public good. Neither capital nor labor would be safe under a Government controlled by any other principle. \* \* \* We simply ask by this bill for a fair, just, and impartial publicity of the causes which bring disaster to the people whom we serve.<sup>17</sup>

The debate was somewhat spirited, but in the main centered around the question as to whether this would constitute compulsory arbitration.<sup>18</sup> A letter from Mr. Gompers to a Member of Congress condemned the bill. A similar letter was sent by the representatives of the railway brotherhoods. On December 12, 1908, the House by a close vote refused to consider the Townsend bill.<sup>19</sup>

Both President Roosevelt and the Republican Party were favorable to the passage of a law similar to the ones which had been introduced in Congress. On December 5, 1905, President Roosevelt in his message to Congress said that every labor trouble involving interstate commerce should be investigated by a Government commission and that the facts in the case should be reported to the public.<sup>20</sup> In his message of December 4, 1906, he asked Congress to enact a law such as had been considered already. He gave his reasons as follows:

In this age of great corporate and labor combinations, neither employers nor employees should be left completely at the mercy of the stronger party to a dispute, regardless of the righteousness of their respective claims. The proposed measure would be in the line of securing recognition of the fact that in many strikes the public has itself an interest which can not wisely be disregarded; an interest not merely of general convenience, for the question of a just and proper public policy must also be considered. In all legislation of this kind it is well to advance cautiously, testing each step by the actual results; the step proposed can surely be safely taken, for the decisions of the commission would not bind the parties in legal fashion, and yet would give a chance for public opinion to crystallize and thus to exert its full force for the right.<sup>21</sup>

Again, in his message of December 3, 1907, Mr. Roosevelt commented upon the provision for the settlement of railway labor controversies.<sup>22</sup> He thought that the Erdman Act had been a success and that it should then be amended by legislation for compulsory investigation in those cases in which mediation and conciliation had failed.

The framers of the platform of the Republican Party in 1908 called the Erdman Act "one of the most commendable accomplishments of the present administration."<sup>23</sup>

The failure of Congress to consider favorably the measures proposed served only to increase the zeal with which Mr. Townsend fought for the enactment of legislation of this kind. In 1909 he introduced in the House three bills for this purpose.<sup>24</sup> But he again failed to get consideration of his bills. The Congressional Record shows that two similar bills were introduced by other Members of the House in 1909.<sup>25</sup>

In 1910, House bill 22159 and House bill 25506 came before the House, and in 1911 three more bills, all dealing with this same subject, were introduced.<sup>26</sup>

<sup>17</sup> Congressional Record, Vol. XLIII, p. 117.

<sup>18</sup> *Idem*, pp. 114-134.

<sup>19</sup> *Idem*, p. 165.

<sup>20</sup> *Idem*, Vol. XL, p. 94.

<sup>21</sup> *Idem*, Vol. XLI, p. 26.

<sup>22</sup> *Idem*, Vol. XLII, p. 73.

<sup>23</sup> Republican Campaign Text-Book, 1908, p. 463.

<sup>24</sup> 61st Cong.; H. R. 3038; H. R. 12221; H. R. 12376.

<sup>25</sup> *Idem*, H. R. 13905; H. R. 16028.

While no one of the above bills went further than the committees to which they were referred, this was not true of those introduced in 1912. During that year Senate bill 5901, House bill 22012, and House resolution 404 were introduced.

The Committee on Interstate and Foreign Commerce of the House of Representatives held hearings on House bill 22012. The bill had been proposed by Representative Lee, of Pennsylvania. The occasion for its introduction, Mr. Lee said, was the threatened strike of the coal miners in his State.<sup>27</sup> The bill was in reality an amendment to the Erdman Act. This act was to be extended in scope so as to bring within its operation the laborers in coal mines and all railway employees engaged in interstate commerce, whereas the Erdman Act applied only to the railway employees in the train service. The work that had been done by the Commissioner of Labor and by the presiding judge of the Commerce Court was to be transferred to a commissioner of mediation and conciliation. This official, together with two other Government officials, appointed by the President, by and with the advice of the Senate, was to constitute a United States board of mediation and conciliation. The Erdman law had provided for an arbitration board of three members. The amendment was to increase the number to five, three of whom would represent the public.

The court review, as provided in the original law, was to be eliminated.<sup>28</sup> The bill, as presented to Congress, had been framed by Judge Knapp and Commissioner Neill. Both these men appeared before the committee and urged the passage of the measure.<sup>29</sup>

Judge Knapp told the committee why he and Commissioner Neill had proposed the changes to be made in the law:

\* \* \* In proposing the measure to take the place of the Erdman law, so-called, and as a result of our experience, Commissioner Neill and myself have had in mind three principal things:

First. To enlarge the scope of the law so as to afford wider opportunity for its useful application.

Second. To simplify the law by leaving out everything not deemed essential to the accomplishment of its purpose; and this includes some minor changes of procedure, designed to give the law greater flexibility, so that it may be more readily adapted to varying conditions and different controversies.

Third. To provide in place of the present mediators a board of mediation and conciliation, so constituted as to be able to meet this greatly increased demand which must certainly result from the proposed extension of the law.

Judge Knapp insisted that five arbitrators, three of whom represented the public, would be more desirable than the old arrangement with only one neutral member. It seemed to him that such a change would make the law more agreeable to both the managers and to the men. Commissioner Neill thought likewise.

Judge Knapp and Commissioner Neill said that the court review provided for in the Erdman law had been a liability rather than an asset; that there was no place for court action in an arbitration proceeding; and that a law with this clause omitted would be more acceptable to all parties concerned. Commissioner Neill said that the objection of railroad managers to arbitration under the Erdman

<sup>26</sup> 62d Cong.: H. R. 54; H. R. 1238; H. R. 5139.

<sup>27</sup> U. S. Congress. House of Representatives. Committee on Interstate and Foreign Commerce. Hearings \* \* \* H. R. 22012 (1912), p. 3.

<sup>28</sup> *Idem*, p. 12 (statement by Judge Knapp).

<sup>29</sup> *Idem*, pp. 6-36.

law was due largely to the tremendous influence exercised by one neutral arbitrator.

The measure proposed by Messrs. Knapp and Neill was not passed in Congress at the time of the hearings noted. But in the law which was later enacted as the Newlands law many of the provisions proposed here for the first time were incorporated. It is interesting, then, to note the provisions of this measure in some detail, for in it we find the origin of the amendments that later became law. The services of Judge Knapp and Commissioner Neill have been discussed in connection with the application of the Erdman law. Their long experience, an experience that was eminently successful, qualified them to appraise the Erdman Act at its real worth and to suggest the manner in which it should be amended.

Representative Lee, of Pennsylvania, had also proposed another bill in the House. This one (H. R. 25109) contained the same provisions as did House bill 22012. On June 7, 1912, the Committee on Interstate and Foreign Commerce made a favorable report on the bill.<sup>30</sup> It said that the new law was to be only an enlargement of the Erdman Act, so as to include coal miners and all the employees of the roads doing an interstate commerce business. The voluntary feature of the act was to be retained. No court review of the award should be had and the number of arbitrators might be changed, at the option of the contestants, to five. The new commission of mediation and conciliation, as recommended by Messrs. Knapp and Neill, was to take over the work that had been done by these men under the old law. The committee insisted that the proposed changes would operate successfully and they gave the United States mediators the credit for having suggested the changes to be made. But the House took no action on the report of the committee.

On February 15, 1913, Representative Berger, of Wisconsin, proposed House joint resolution 401, to the effect that the Government take over and operate the railroads in the event of a strike.<sup>31</sup> On June 28 the Committee on the Judiciary of the House reported favorably, without comment, a bill to amend the Erdman Act.<sup>32</sup> But the proposition that finally led to action on the part of Congress was a bill (S. 2517, 63d Cong.) introduced by Senator Newlands, of Nevada, on June 13, 1913.

Before giving any analysis of the above bills it will be well to note what consideration the people outside the halls of Congress had been giving to the question of strikes on the railroads and the remedies that had been suggested by them; and also to examine the reasons for the demand that new legislation be enacted.

President F. A. Delano, of the Wabash Railroad, expressed his criticism of the existing system and proposed a new agency.<sup>33</sup> His

<sup>30</sup> H. Rept. No. 853, 62d Cong., 2d sess.

<sup>31</sup> Congressional Record, Vol. XLIX, p. 3222.

<sup>32</sup> H. Rept. No. 30, 63d Cong., 1st sess.

<sup>33</sup> "As a matter of fact the decision of these questions involves a great deal of study. The man or men who should decide them should be largely freed from other responsibilities and chosen for a reasonably long term. A single able man, as has been demonstrated in the case of Canada, giving his whole time and thought to the adjustment of controversies between employers and employees, can do an immense amount of good; and where a law exists such as the Lemieux act of Canada, which provides for mediation and uses the authority of the Government to compel both sides to a dispute to desist from open hostilities until the matter has been fully ventilated and carefully investigated, is an excellent thing." (The Railway Age Gazette, Vol. L, No. 14, pp. 825, 826. Apr. 7, 1911.)

statement was made in 1911 and represented the general attitude of the railway managers. He wanted to have a permanent arbitration court with authority to compel arbitration and to enforce the award. Mr. Delano considered the problem one the nature of which called for the administration of specialists, of men who, through their handling of this kind of problem, had acquired the skill requisite to the realization of the purposes of the law. The experience of Canada in the operation of the Lemieux act seemed to Mr. Delano a safe guide for the United States in the provisions that should be made.

In answer to Mr. Delano, Mr. W. S. Carter, president of the Brotherhood of Locomotive Firemen and Enginemen, admitted the many defects of the Erdman law. However, he objected to the Delano plan even more strenuously than to the Erdman Act, with all the shortcomings which he conceded to be present in the operation of the latter law.<sup>34</sup> Mr. Carter said that nothing could be more objectionable to the laboring man than compulsory arbitration. Such a method of settlement, he said, would mean that the laborer would revert to a condition like that of the serf in the Middle Ages.

Mr. Delano and Mr. Carter can fairly be said to represent, respectively, the attitude of the managers and of the workers. In a referendum taken by the Railway Age Gazette in December, 1912, a large majority of the managers expressed themselves in favor of some plan for the fixation of wages of railway labor by the Government.<sup>35</sup> The majority of those of this opinion wanted to have one and the same authority fix wages and rates for traffic. According to that plan the Interstate Commerce Commission would have had its scope enlarged. But if the work could not be done by the Interstate Commerce Commission, they wished at least to have it done by some agency in cooperation with the Interstate Commerce Commission. They wanted coordination in the regulation of the income and the outgo of the roads—a proposition which made a very effective appeal on the basis of its logical analysis.

Thus, it appears how radically the managers and the men had exchanged positions with reference to the method of settling labor disputes. At the period under observation it was the managers who invoked the assistance of the Government and the employees who opposed Government activity as proposed. The reasons for the change in the attitudes of the managers and the men can be conjectured with some degree of certainty. In the earlier period when the roads were opposing arbitration under the auspices of the Government the railroads had not as yet been subjected to such stringent regulation. In such a condition the roads, should they lose in a contest with the men for higher wages, could increase rates and thereby make up the deficit. Also the railway managers had been the stronger of the contestants in the earlier period. They felt them-

<sup>34</sup> "I know of no proposition which would be so distasteful to working people in any class of employment as compulsory arbitration, even though it could be legally enforced. Without assuming the role of a ghoul and digging from history's graveyard the skeletons of the workmen a century old, it can readily be shown that when the courts dictated the wages and working conditions of the working people they enjoyed but little greater privileges than those of serfs. \* \* \* Summing up the entire matter, it is evident that arbitration is a complex problem; that it has many features to be admired, others that can rightfully be questioned, and some that are justly feared by the working people." (*The Railway Age Gazette*, Vol. L, No. 17, pp. 979, 980. (1911.)

<sup>35</sup> *The Railway Age Gazette*, Vol. LIII, pp. 1247-1255.

selves able to win out in a fight with the men. Since that time the public has not only taken over the control of the rates charged by the roads, but it has become far more exacting in its demands as to the kind of service rendered. On the other hand, the employees formerly felt that they were too weak to secure their demands by the strike and that it was necessary to look to some higher authority in order to secure justice. Therefore, they preferred to risk their case in the hands of a board working under Government supervision. This new device of the concerted movement helped produce this change of view. This is such an effective weapon that the brotherhood leaders, after the discovery of its effects, no longer felt themselves on the defensive. They considered that in a contest on the larger scale they had a decided advantage of the managers. Therefore their reluctance to give up this weapon for their cause.

No explanation of the passage of the Newlands law would be adequate if it failed to take into account two controversies which were fought out in 1912 and in 1913, respectively. These were the controversy between the engineers and the railroads in the East and that of the firemen and enginemen with the roads in the same territory. Both these settlements have been adverted to in the preceding chapter. But it is necessary to discuss them from another point of view in this connection.

Early in 1912 there was a concerted action by the Brotherhood of Locomotive Engineers on 52 railroads in the East.<sup>36</sup> They demanded an increase in wages. When a strike vote was taken more than 93 per cent of the men voted to go out on strike in case the roads refused to grant their demands. Messrs. Knapp and Neill offered their services in an attempt to settle the dispute through mediation. In this they failed to get the desired results. However, they did arrange for a board of arbitration, to consist of seven members. One member should be appointed by each side to the contest and these two members should select the five neutral arbitrators. Should they fail within a period of 15 days from their own appointment to agree upon the neutral members these should be appointed by the Chief Justice of the Federal Supreme Court, the presiding judge of the Commerce Court, and the Commissioner of Labor. As it worked out, they were appointed in the latter manner. The roads appointed Daniel Willard, president of the Baltimore & Ohio Railroad; the men appointed P. H. Morrissey, grand master of the Brotherhood of Railroad Trainmen. The neutral members were Oscar S. Strauss, Dr. Albert Shaw, Otto M. Eidletz, all of New York; President Charles R. Van Hise, of the University of Wisconsin; and Frederick N. Judson, of St. Louis.

This was one of the largest cases ever to arise in this country. In it were involved 52 railroads, aggregating more than 66,000 miles of track. The roads in question had nearly 40 per cent of the aggregate revenues and expenses of all the roads in the United States, and they had 47 per cent of the traffic; they served a population numbering 42 per cent of that of the entire country.

These figures show that the trouble was one the settlement of which was a matter of moment to the country and to the business

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<sup>36</sup> Except where otherwise noted, data for the remainder of this section are from Report of the Board of Arbitration on Eastern Railroads and the Brotherhood of Locomotive Firemen and Enginemen (1912).

interests especially. But the part of the report that is of significance in this study is that containing the recommendations made by the commission, recommendations in their nature *obiter dicta*. In all contests of this kind the commission insisted the interests of the public must be held to be paramount; "it is an intolerable situation when any group of men, whether employees or employers, have the power to decide that a great section of the country, as populous as all of France, shall undergo great loss of life, unspeakable suffering, and loss of property beyond power of description through stoppage of a necessary public service." The report included an appraisal of the Erdman Act, which commended that clause making it unlawful for either side to an arbitration to call a strike or to inaugurate a lockout following the award unless 30 days' notice were given to that effect. But the two great weaknesses, it appeared to the commission, were the one making it obligatory to hand down a decision within 30 days from the appointment of the board of arbitration and the failure to give the public adequate representation on the board.

The remedy proposed by the commission was that the wages of all railway employees be fixed by a Government commission to be appointed for that specific purpose. This would have meant some qualification of the right of free contract, but a modification, it seemed to the members of the commission, justified on the basis of the public necessity involved.

Mr. Morrissey presented a minority report in which he disagreed with many of the findings of the commission. He objected to the statistics used by the board as a basis for the award, to the standard accepted, and to the analogy drawn by the board between the French strike, in which the men were called into Government service and detailed to run the trains, and a strike in this country. The last objection raised by Mr. Morrissey has been subjected to critical analysis. He based his position partly on the ground that the French strike involved all the railway employees, and not simply those in one branch of the service, a condition that could not end otherwise than in a tie-up of the entire transportation system of the country. It has been suggested that the point raised by Mr. Morrissey is irrelevant; that the result is the same in either event, a breakdown of the traffic; that a train can no more run without an engineer than it can run without any employees at all. The primary interest of the public is the movement of trains without interruption.

Mr. Morrissey agreed with the majority that the Erdman law needed amendment; that the number of arbitrators should be increased if the parties so wished; and that the administrators of the law should be given the right, upon their own initiative, to intervene without first having been requested to do so by one of the parties to the dispute. He thought that it might be desirable to have a commission collect data to be used as a basis for the fixing of wages, but he objected to giving such a commission the power to fix wages, a power in effect, he said, to force arbitration on the employees.

In general, it may be said that the award and the report met with the approval of the majority of the railroad managers and of the public at large. The report of Mr. Morrissey probably expressed the attitude of the employees throughout the country, both those engaged

in the operation of trains and those in other lines of employment. President W. G. Lee, of the Brotherhood of Railroad Trainmen, characterized the decision as "one of the most pronounced failures that had ever been experienced in the labor field."<sup>37</sup> The chief objection of the brotherhoods seemed to be that the board went out of its way to make recommendations which did not pertain to this particular controversy. This position of the railway labor organizations resulted in the limitation placed upon the boards of arbitration authorized by the Newlands law, a provision to the effect that the arbitration board must limit its findings to the particular issues involved. It will appear also in the discussion of the Adamson law that the same attitude of the railway labor organizations was responsible for the definite limitation placed upon the scope of activity of the Eight-Hour Commission authorized by that law. This arbitration was significant, however, because it had much to do with the shaping of public opinion in this matter and its influence was felt in framing the Newlands law and also in the legislation that has been proposed in Congress since that time.

The other controversy referred to above was that between the Brotherhood of Locomotive Firemen and Enginemen and the Eastern railroads. Negotiations had begun between the parties in 1912, at the same time that the engineers began the consideration of a strike. The firemen and enginemen, as a result of a failure to make an agreement with the managements, voted by over 96 per cent to go out on strike.<sup>38</sup> The employers proposed arbitration like that accepted by the engineers. The men objected to arbitration except under sanction of the law and proposed arbitration under the Erdman law. But the employers considered the issue of too great importance to be intrusted to the arbitrament of one neutral arbitrator. Finally, in order to prevent the strike, the managers yielded and accepted arbitration under the Erdman law.<sup>39</sup>

In accepting the arbitration as per the plan of the men the railroad managers did not express approval of that method of settlement. It was simply a case of accepting arbitration under the Erdman law or else having upon their hands a strike of large proportions. The roads were not in a position to fight the issue to a successful conclusion, and this was a situation in which discretion proved the better part of valor. The settlement effected was not satisfactory to either of the parties involved. This was shown clearly in the agitation that increased among both the men and the employers for a change in the Erdman law.

## PASSAGE OF THE NEWLANDS ACT.

### IN CONGRESS.

During the arbitration of the firemen's case the conductors and trainmen in the East presented demands to the roads for increased pay and for changes in working conditions. Failing to get assent to their demands, they ordered a strike vote. The result showed that

<sup>37</sup> U. S. Congress. House of Representatives. Committee on Interstate and Foreign Commerce. Hearings \* \* \* on H. R. 19730, 64th Cong., 2d sess., p. 46 (1917).

<sup>38</sup> Proceedings, Arbitration Between the Eastern Railroads and the Brotherhood of Locomotive Firemen and Enginemen, Vol. 1, p. 3 (1913).

<sup>39</sup> L. W. Hatch, in American Yearbook, 1913, p. 415.

nearly all the men favored striking in order to force the acceptance of their demands.<sup>40</sup> In order to prevent a strike that would have been a serious matter for the entire country, President Wilson called a conference of the two parties to meet him in Washington.<sup>41</sup> This was the first of such conferences called by President Wilson, but it was not to be the last one. The representatives of the contestants agreed that if the bill then before Congress (S. 2517) were enacted they would submit the controversy to arbitration under the terms of the new act.<sup>42</sup> This supplied the stimulus that was the immediate cause of the passage of the law known as the Newlands law.

The Senate Committee on Interstate Commerce held public hearings on this bill on June 20.<sup>43</sup> At this meeting Hon. Seth Low, Judge Knapp, and members of the railway brotherhoods testified. All these men, without exception, advocated the adoption of the changes proposed in the Erdman law. These changes are the ones that have already been suggested, namely: An increase in the number of arbitrators that might be used; the creation of a United States commission of mediation and conciliation to take over the work that had been done by Judge Knapp and Commissioner Neill; authorization for the board to take the initiative in settling controversies; provision for the interpretation of the award in the event of a misunderstanding of it; permission to extend the length of time within which the board must reach a decision, etc.

Senator Newlands, of Nevada, on June 23 reported the bill to the Senate, recommending its immediate passage.<sup>44</sup> Several of the Senators, speaking for the adoption of the measure without delay, emphasized the importance of the controversy then being waged and asked that the bill be enacted into law without any needless discussion the following day. The only point on which there seemed to be any real difference of opinion was that of the amount of compensation to be granted the members of the new commission.<sup>45</sup> The bill passed the Senate without amendment on June 26.<sup>46</sup>

On July 15 the House of Representatives began consideration of the bill that had passed the Senate. The speakers to the proposition were unanimous as to the advisability of passing the bill presented. Some members expressed regret that there was not time in which to incorporate into the law an amendment giving the public a larger representation on boards of arbitration. Since the bill in its then form had already passed the Senate and the approval of those to be affected had been secured, and since the speedy enactment was desired to avert the impending strike, the House passed the measure.<sup>47</sup> The President approved the bill on the same day.<sup>48</sup>

#### PROVISIONS OF THE LAW.

The law as enacted should in reality not be regarded as a piece of new legislation. It is the old Erdman Act amended and amplified.

<sup>40</sup> L. W. Hatch, in *American Yearbook*, 1913, p. 416.

<sup>41</sup> *Idem*.

<sup>42</sup> U. S. Commissioner of Mediation and Conciliation. *First Annual Report*. H. Doc. No. 1423, 63d Cong., 3d sess., pp. 5, 6. 1914.

<sup>43</sup> S. Rept. No. 72, 63d Cong., 1st sess. (1913).

<sup>44</sup> *Congressional Record*, Vol. L, pp. 2133-2135.

<sup>45</sup> *Idem*, pp. 2178-2182 (June 26, 1913).

<sup>46</sup> *Idem*, p. 2182.

<sup>47</sup> *Idem*, pp. 2430-2442.

<sup>48</sup> *Idem*, p. 2471 (July 18, 1913).



As a result of the recommendations made in the engineers' award and the disappointment of the labor interests thereat the new law provided that the board of arbitration should limit its decision to the issues involved and not make any excursions into obiter dicta. Congress did not adopt the amendment which had been recommended by the administrators of the Erdman Act involving the removal of the provision calling for a review of the decision of the arbitration board by a court. Enough has already been said in connection with the discussion of the bills as they came up for the consideration of Congress to make it unnecessary to state in detail the terms of the new law. For its provisions the reader is referred to the appendix of this monograph.

#### EXPRESSIONS OF OPINION EVOKED BY PASSAGE.

There does not seem to have been any very unfavorable criticism of the Newlands law when it was enacted. To say that it met the needs of the situation adequately would be to state the case too strongly, however. Probably as clear an expression of the growing public sentiment as can be found is given in an editorial of the *Review of Reviews* for August, 1913 (p. 146):

It will be necessary some time to put the railway service in a position where the concerted strike will be impossible. Railroads are just as essentially a public character as are forces of policemen and firemen or the postal clerks and carriers. The strike is not a proper weapon to be used by men in such employments. A concerted railroad strike would necessitate the operation of the railroads by military power, in order to supply the people of the cities with food and other necessities. Since, however, the strike is not morally permissible under these circumstances, there is the more reason why the public should see that railroad servants have exceptionally good treatment as regards wages and all conditions of employment and service. On reasonable terms and at proper intervals they should have opportunity to secure arbitration of all well-formulated claims and demands.

#### PERSONNEL OF THE BOARD OF MEDIATION AND CONCILIATION.

The members of the Board of Mediation and Conciliation appointed by President Wilson were Judge Martin A. Knapp, who, with Commissioner Neill, had administered the Erdman law, and Judge William L. Chambers, who had been the chairman of the arbitration board in the controversy between the railways and the firemen and enginemen of the East. Mr. G. W. W. Hanger was to be assistant commissioner of mediation and conciliation, Judge Chambers having been designated as the commissioner.<sup>49</sup>

#### OPERATION OF THE NEWLANDS ACT.

There is nothing novel in the procedure under the Newlands law. Already, in the administration of the Erdman Act, Judge Knapp and Dr. Neill had formulated a plan by which they proceeded in the adjustment of disputes. This method has, in the main, been followed in the administration of the Newlands law. The presence of Judge

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<sup>49</sup> U. S. Commissioner of Mediation and Conciliation. First Annual Report. H. Doc. No. 1423, 63d Cong., 3d sess., p. 2. 1914.

Knapp on the board made it possible to profit by the experience in the operation of the earlier law.

The case which occasioned the passage of the law was adjusted under its terms. Immediately upon the appointment of the new board its services were offered to the contestants. The effort to settle the dispute by mediation failed, but as the parties to the controversy had promised to do in the event of the enactment of the law, they agreed to arbitrate under its terms. This agreement, however, was carried out only with great difficulty. The railroad managers presented counterclaims, which they insisted should be arbitrated along with the demands of the men. To this the men objected, and the managers finally yielded and agreed to arbitrate only the demands made by the men and which were the immediate cause of the controversy. The neutral arbitrators in this case were Hon. Seth Low, of the National Civic Federation, and President John H. Finley, of the City College of New York. The award of the board was rendered on November 10, 1913, and went into effect immediately.<sup>50</sup>

But this arbitration did not prove altogether satisfactory to the men. Mr. Sheppard, who served on the board as the representative of the men, said that the arbitration was a failure. He admitted that the men serving as neutral arbitrators were of the highest character. However, not being trained in the technique of railroading, they were unable to write a decision which was not subject to the wrong interpretation by the managers. Mr. Sheppard said that the men had never been able to get a satisfactory award except when their representatives sat face to face with the representatives of the managers and told them exactly what each proposition meant.<sup>51</sup> Mr. Garretson, in 1916, said that the men objected to arbitration because the interpretation of the award was always left to the employer. And this, according to Mr. Garretson, was equivalent to a denial of the real benefits contemplated for the men in the award.<sup>52</sup>

Experience has shown that in the operation of the Newlands law, just as in that of the Erdman Act, mediation has been of more importance than arbitration. In the 4-year period ending June 30, 1917, the board served in 71 controversies. Fifty-two of these were settled wholly by mediation, six by mediation and arbitration, three by the contestants without the aid of the mediators, one by act of Congress, and one at the time of making the report was yet unsettled.<sup>53</sup> It will be seen, therefore, that the board had succeeded in getting adjustments in 58 of the 70 cases settled up to June 30, 1917.

<sup>50</sup> U. S. Commissioner of Mediation and Conciliation First Annual Report. H. Doc. No. 1423, 63d Cong., 3d sess., pp. 5, 6. 1914.

<sup>51</sup> "The two gentlemen, well known and well versed in most of the sciences and ideas of the day, found themselves completely at sea, and so admitted, in regard to the technique and details of the railway problem. They wrote in very choice English, if you please, rules that they thought would serve the purpose."

But, Mr. Sheppard went on to say, the railroad managers placed the wrong interpretations on these rules.

"The only time the brotherhoods have been able to get a satisfactory settlement of any question which we have had up has been when the brotherhoods' representatives have sat face to face with the managers and said to them: 'This rule means so and so, it should be agreed in such and such a way.' The railroad managers have finally said, 'Yes.' Even then we have difficulty in having their memory serve them properly."

(U. S. Congress. House of Representatives. Committee on Interstate and Foreign Commerce. Hearings on H. R. 19730, 64th Cong., 2d sess., p. 162. (January, 1917.)

<sup>52</sup> S. Doc. No. 549, 64th Cong., 1st sess., p. 32.

<sup>53</sup> U. S. Board of Mediation and Conciliation. Report for 1913-1917, p. 3 (1918).

The report submitted to the President by the commissioner of mediation and conciliation on December 1, 1919, presents the following tabulated summary of the results of its activities:<sup>54</sup>

NUMBER OF CASES, AND OF RAILROADS AND EMPLOYEES INVOLVED THEREIN, CONSIDERED BY THE UNITED STATES BOARD OF MEDIATION AND CONCILIATION, 1913 TO 1919.

Item.	Number of cases.	Railroads involved.	Employees involved.
Services of board requested by—			
Railroads.....	29	392	477,667
Employees.....	74	85	23,211
Jointly.....	27	50	21,401
The public.....	2	2	135
Services of board tendered to railroads and employees jointly in the absence of any request.....	16	57	98,396
Total.....	148	586	620,810

The same report gives the disposition of the cases:

Settled by—		
Mediation alone.....	70	
Mediation and arbitration.....	21	
		91
The parties before mediation began.....	11	
The parties after mediation began.....	8	
		19
Congressional action (Adamson law).....		1
		111
Mediation suspended or discontinued.....	3	
No action taken by board because existing controversy did not come within provisions of Newlands law.....	11	
Controversy abandoned by employees.....	2	
Agreements on some points reached in mediation and mediation discontinued because of the roads being taken under Federal control.....	2	
Removed from jurisdiction of board before mediation began because of roads being taken under Federal control.....	14	
Services of board declined by—		
Railroads.....	2	
Employees.....	1	
		3
		35
Cases pending.....		2
Total number of cases.....		148

A comparison of the board's figures as given for June 30, 1917, and for June 30, 1919, shows that the settlements by mediation had increased by the addition of 18 cases and those by mediation and arbitration by the addition of 15 cases. These additions represent, therefore, the work of the board for a period of two years. It should be noted, however, that the settlements through the agency of the board in the years 1918 and 1919 did not, as a rule, involve large numbers of employees. The maximum number of employees in any single case in which the aid of the board was invoked in the year 1918 was 2,939.<sup>55</sup> From this maximum the number ranged to a minimum of six.<sup>56</sup> The controversy in which the 2,939 employees were

<sup>54</sup> U. S. Board of Mediation and Conciliation. Report on Operations, 1913-1919, pp. 24, 25.

<sup>55</sup> Idem, p. 50.

<sup>56</sup> Idem, p. 51.

involved, however, was not settled by the mediation board, the road having been taken under Federal control before any settlement was made. The largest number of employees reported in any controversy in 1918 in which the board actually succeeded in getting a settlement was 393, a controversy between the telegraphers and the Denver & Rio Grande.<sup>57</sup>

The figures for the first half of 1919 show only two cases settled by mediation of the board, the total number of employees being only 158.<sup>58</sup> Only one arbitration under the law was held in 1918 and no case is reported for 1919.<sup>59</sup> During these two years, however, machinery was set up by the Railroad Administration to deal with the specific problems of adjustment arising during the war period and this machinery was quite extensively utilized.

These figures show that the Newlands law has been called into operation more frequently than the Erdman Act was ever used throughout its entire history. This can be explained, however, by reason of the fact that the Newlands law happened to be on the statute books at a time when contestants to disputes of the kind dealt with under the law were willing to try this method of settlement. It will be recalled that the Erdman Act was not used at all for more than eight years after its passage. But after its first use in 1906 it was invoked with increasing frequency. The report of the Board of Mediation and Arbitration for 1914 says that from 1901 to 1905 there were 329 strikes affecting railway employees.<sup>60</sup> It should be remembered, however, that of these 329 strikes not all were called by men in the train service, the only railway employees coming within the scope of the operation of the Erdman law. Yardmen and employees of the roads other than those actually engaged in the operation of trains were not affected by the law. Further, it should be noted that in the period in which these strikes occurred the parties to railway labor controversies had not as yet accustomed themselves to the use of governmental machinery in the settlement of their disputes.

Because of its direct bearing on the opinions of the several interests to railway labor controversies something should be said of one arbitration in particular, that between the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen and the railroads of the West.<sup>61</sup> This controversy involved 98 roads. In October, 1913, the railway labor organizations requested an improvement in working conditions and an increase in wages. The United States Board of Mediation and Conciliation failed to get the contestants to settle through mediation, but did succeed in having them agree to arbitrate under the Newlands law. The appointment of the neutral arbitrators was made by the Mediation Commission. It selected Judge Pritchard, of North Carolina, and Hon. Charles Nagel, of St. Louis. Mr. Nagel had been Secretary of Commerce and Labor in a former administration. The proceedings began on November 30, 1914, in Chicago. The agreement

<sup>57</sup> U. S. Board of Mediation and Conciliation. Report on Operations, 1913-1919, p. 50.

<sup>58</sup> *Idem*, p. 53.

<sup>59</sup> *Idem*, p. 60.

<sup>60</sup> U. S. Commissioner of Mediation and Conciliation. First Annual Report. H. Doc. No. 1423, 63d Cong., 3d sess., p. 11.

<sup>61</sup> The following account of this arbitration is based upon: Award, Arbitration between the Western Railroads and the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen, p. 3 (1915).

called for an award within 90 days from the beginning of the proceedings. But two subsequent agreements were made whereby the time was extended to April 30, 1915. The award was signed by the two members representing the roads and by the two neutral arbitrators. However, Judge Pritchard submitted a supplementary report in which he said that he did not think the men had secured all that they should have been given, and that he had signed the report only after having become convinced that this was the best that could be had at the time. The representatives of the railways also submitted a supplementary statement in which they contended that the award had been too favorable to the men; that they had signed the award solely for the purpose of being able to get some agreement.

But the most interesting part of the board report from the point of view of this study was that rendered by the minority members, representatives of the brotherhoods. They objected to the use by the board of the statistics which had been used by the board in the East, statistics of the Interstate Commerce Commission which, they said, the eastern roads had admitted to be inaccurate and which they had professed to have used solely for the reason that there were no other figures available:

The very best thing that can be said of such an award is that it settles nothing, but simply postpones any further action on the questions involved for a period of 12 months.

A great opportunity to bring about industrial peace and the hearty cooperation of the employers and the employees has been lost by the failure of the board to equitably and justly settle the questions involved. We believe the public is greatly interested in the safe and proper operation of the railroads, and we had hoped that, by this award, the questions of wages and working conditions would be settled and allowed to rest for several years; but to expect such a condition when the finding of the board becomes public, is hopeless.

This arbitration, like one other to which reference has already been made, was insisted upon by President Wilson, and was finally agreed upon as a result of his influence.<sup>62</sup> The result was far from satisfactory from the point of view of the employees. During the proceedings, the representatives of the brotherhoods made vigorous protest to the board of Mediation and Conciliation because Mr. Nagel, one of the neutral arbitrators, was interested in some of the railroads involved in the controversy, in that he was a trustee of an estate owning some railroad bonds, the market value of which might be affected by the arbitration award. The board decided, however, that Mr. Nagel was competent as a neutral member of the arbitration board.<sup>63</sup> In the early period of the discussion the employees were bitter in the expressions of their objections to this board and their disappointment at having to submit their case to a board one of the members of which was an interested party although posing as a neutral member.<sup>64</sup>

<sup>62</sup> Brotherhood of Locomotive Firemen and Enginemen's Magazine, Vol. LVII, p. 345 (1914).

<sup>63</sup> *Idem*, Vol. LVIII, pp. 695, 696 (June, 1915).

<sup>64</sup> An editorial said: " \* \* \* But candor compels us to state that we feel that we have been grossly deceived in being compelled to submit our case to a jury upon which sat not only two railroad officials, but also one alleged neutral arbitrator, who has shown by his conduct and demeanor throughout the whole hearing that he was a violent partisan of the railroads." (Brotherhood of Locomotive Firemen and Enginemen's Magazine, Vol. LVIII, p. 696.)

A joint meeting of the organizations affected by the award, at a meeting in Chicago, passed a resolution demanding a congressional investigation into the appointment of Mr. Nagel. (*Idem*, p. 697.)

Their contention was that a man in the position of Mr. Nagel would be unconsciously influenced by the circumstances surrounding him. The brotherhood magazines published criticisms and the members assembled in conventions passed resolutions condemning and disproving the entire proceedings.

Mr. Lee, president of the Brotherhood of Railroad Trainmen, said:

\* \* \* A board of arbitration, regardless of how fair-minded its members may be, naturally reaches the point, when its own interests are affected, of arbitrating its own case rather than that of the employees affected. This is said without any reflection on the personnel of the arbitration boards. The results of arbitration fully justify the position now taken by the railway employees against the like happenings in the future.<sup>65</sup>

A similar view was expressed by Mr. Carter, president of the Locomotive Firemen and Enginemen:

After years of experience under arbitration, I reached the conclusion: That the labor question is not arbitrable if the workmen hope to secure justice in the results. I have discovered that anything that pertains to workmen's wages or working conditions is purely a class question, a question on which there is an alignment hard and fast. \* \* \*

The fact of the matter is, gentlemen of the committee, that arbitrators are necessarily selected from the master class, which either takes its profits from the labor of others or else is employed by corporations in the capacity of officer or attorney. I have said you may as well select Mr. Gompers as a neutral arbitrator as select people usually selected as arbitrators. Mr. Gompers could honorably, and would honorably, grant us the 8-hour day, just as the men who are selected would honorably refuse it. It is purely a class question, and these questions are not arbitrable. (S. Doc. No. 549, 64th Cong., 1st sess., pp. 143, 145.)

Whatever may have been the merits or the weaknesses of the contentions made by the men in this respect, they indicate that the Newlands law had outgrown its usefulness, and that no great loss would have been sustained had it been removed from the statute books. Certainly this is true with reference to the arbitration provisions. The men working on the railroads have felt this way about it for some time.<sup>66</sup> As to the Nagel controversy, the management holds that the railway employees were disappointed at the outcome of the award and therefore gave this basis in justification of their opposition to arbitration in general.

The employees realized that in a fight to the finish they had the greater strength, and they were, therefore, unwilling to have the intervention of any third party to make a decision for them which they could, perhaps, make for themselves with more gain. This is

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Another expression of the employees' point of view is as follows: "The appointment of a man to such a position on the board of arbitration in the present controversy having predilections such as Mr. Nagel seems to have, judging from his part in the deliberations of the board and the award itself was a grave mistake, and at best a shameful injustice to the employees whose interests were at stake." (Idem, p. 673.)

<sup>65</sup> U. S. Congress, House of Representatives, Committee on Interstate and Foreign Commerce, Hearings on H. R. 19730, 64th Cong., 2d sess., p. 49.

<sup>66</sup> In 1917 Mr. Lee, president of the Brotherhood of Railroad Trainmen, when asked what action the Government should take in the settlement of railway labor disputes, said: "First, to abolish the Newlands Act \* \* \* I mean by that the mediation and conciliation now in effect, because it is absolutely useless as it is to-day, and all of these organizations have gone on record as being opposed to it as it is now handled." (Committee on Interstate and Foreign Commerce, Hearings on H. R. 19730, 64th Cong., 2d sess., p. 54.)

Prof. W. Z. Ripley, of Harvard University, said of the law: "But it has failed utterly to meet the needs of the case. Its impartial members were initiated into the technique of railroading, entirely inexperienced, and disqualified for renewed service as soon as the record was once established. Piecemeal adjustment—an unsatisfactory compromise—rather than a fundamental determination of the merits of the dispute resulted. By asking for about twice what they expected to get, the men usually on the split-even got what they wanted." (Review of Reviews, Vol. LIV, p. 392. 1916.)

another illustration of the point already made—arbitration is likely to find favor with the weaker rather than with the stronger party to a dispute. It shows a radical turn-about-face on the part of the railway managers to favor arbitration. In the early days, when they had nothing to fear from the men, when the employees had not yet made use of the concerted movements, the managers did not want any Government intervention. The employee at that time wished to place himself under the protecting wing of the Federal Government. Now the conditions have been reversed, and with this reversal of conditions has come a change in the attitude of the two contending parties.

No one has questioned the absolute dependence of a voluntary arbitration law upon its acceptability to those to whom it is designed to apply. The degree of success with which this kind of law meets will be measured directly by the regard in which it is held by the employers and the employees, and it is doubtless true that the usefulness of the Newlands law had passed even before the enactment of the transportation act of 1920 put it practically out of commission. It did not work during the railway labor troubles of 1916 (discussed in the following chapter), and the figures presented in the report of the Commissioner of Mediation and Conciliation on December 1, 1919, show clearly that during the recent years of its operation the results have been disappointing.<sup>67</sup>

Mr. Doak, of the Brotherhood of Railroad Trainmen, in his testimony of July 25, 1919, advocated the retention of the Board of Mediation and Conciliation.<sup>68</sup> He thought there might be occasions when both sides desired to have mediation, and in such cases the Mediation Board would work with success. He did not mention arbitration in this connection. A conference committee of the managers and of the men was to be the main force in the settlement of disputes according to his plan. One should not infer from this testimony that the railway labor men attach a great deal of importance to the Newlands law. Mr. Doak was speaking at a time when Congress was considering the passage of a law to prevent strikes, and in such a situation possibly he preferred to retain this law rather than to fly to "ills they know not of." Be that as it may, the significant fact is that no other railway labor leader at this prolonged hearing spoke in favor of the Board of Mediation and Conciliation.

A plan for the settlement of railway labor disputes closely related to that of the Newlands law has been suggested by Messrs. Barnett and McCabe.<sup>69</sup> They propose that a national mediation commission be appointed for the purpose of settling any controversy that may be submitted to it. The services of the commission are to be had whenever a controversy threatening an interference with interstate commerce arises and when either party to the dispute requests mediation. Both parties must agree before anything can be done under this plan. Practically, it is a recommendation of the plan contemplated in the Erdman and the Newlands laws with the addition of the power of

<sup>67</sup> See p. 51.

<sup>68</sup> U. S. Congress. House of Representatives. Committee on Interstate and Foreign Commerce. Hearings \* \* \* H. R. 4378, 66th Cong., 1st sess., p. 306 (1919).

<sup>69</sup> Barnett and McCabe: Mediation, Investigation, and Arbitration in Industrial Disputes (1916).

investigation by the board. But there is to be, also, an industrial council which meets periodically. This council is to be composed of representatives of 10 labor organizations and of 10 organizations of employers to be designated by the President of the United States. From time to time the council is to recommend legislation and is to advise the mediation board. So far as arbitration is concerned, there is no fundamental difference between this plan and that tried by the Newlands law. It follows that the objections that lie against the latter apply also to the Barnett and McCabe proposition.

NOTE.—The report of the United States Mediation and Conciliation Board for 1916 gives a history of the arbitration under the Erdman and the Newlands laws. (S. Doc. No. 493, 64th Cong., 1st sess.)



## CHAPTER V.—FOURTH STAGE: THE ADAMSON LAW.

### PRELIMINARIES TO NEW LEGISLATION.

During the period in which the Newlands law was pending in Congress other measures looking to the same end were being considered in one or the other branch of Congress. Seven such bills were introduced into the Fifty-third Congress. On April 8, 1913, Senator Townsend, of Michigan, had introduced a bill (S. 395). In the House of Representatives, Representative Esch, of Wisconsin, had proposed House bill 2481 on April 14. And on June 17 Representative Clayton, of Alabama, introduced a similar bill (H. R. 6141). No one of these bills, with the exception of the last one mentioned, received any congressional consideration. This one, however, was acted on favorably by the committee to which it had been referred.<sup>1</sup> The report did not go into any elaborate details but recommended that the bill be passed. After the passage of the Newlands law only one other piece of legislation of that kind was suggested in 1913. On July 22, Representative Dyer, of Missouri, introduced House bill 7034. In 1914 the Congressional Record shows that Senate bill 4306, House bill 13002, and House bill 18085 were proposed. In 1915 in the Fifty-fourth Congress, House bill 119 and House bill 3625 were suggested. This ends the list of bills proposed prior to the passage of the Adamson law. Enough has already been said in connection with the operation of the Newlands law to show that the results of its application left something to be desired. The law had failed to meet the expectations of the people who had united in bringing about its enactment. In fact, the railway employees, as said before, had modified their position with reference to the settlement of disputes through the agency of a Government commission. This modification was shown by the new movement that was to absorb the attention of the interested parties in the summer of 1916.

President Wilson's part in the settlement of railway labor disputes has already been alluded to. He was again called upon in the summer of 1914 to use the prestige of his office to prevent the tie-up of the transportation system of the country.<sup>2</sup> In this instance 55,000 locomotive engineers and firemen in the East asked for an increase in wages. Among the grounds upon which this increase was asked was the novel one of the productive efficiency of new railroad equipment. Both sides were willing to refer the controversy to the United States Board of Mediation and Conciliation, but they could not agree upon the issues that were to be submitted to that board. The railroads proposed to present counter demands, but the men objected to this and insisted that the arbitration should be limited to the de-

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<sup>1</sup> Congressional Record, Vol. L, p. 2215 (June 26, 1913).

<sup>2</sup> John B. Andrews, in *American Yearbook*, 1914, p. 420.

mands which caused the controversy. President Wilson advised the managers to comply with the wishes of the men in this particular. And the managers, responding to an appeal to their patriotism in a time of threatening war, agreed to do so. It was evident from the beginning that any settlement reached on such a basis could, in the nature of the case, be only temporary.

A prediction of the things that might follow this adjustment was made in one of the magazines of the period:

The public may think that because it is so often threatened with general railway strikes which do not come, there is no serious danger that any ever will come. But that is the way the people of Europe regarded the incessant talk of a great European war, and the great European war has come. And unless legislation is passed forbidding strikes and lockouts, at least until after there has been an arbitration and the findings of the board have been made public, there will be a railroad strike in this country one of these days whose consequences will be more terrific than the public can now imagine.<sup>3</sup>

Those people who followed the bitter controversy in the summer of 1916, culminating in the passage of the Adamson law, will admit that the public had no guaranty that it was safe from an interruption of traffic on the railroads.

Mr. J. Kruttschnitt, chairman of the Southern Pacific Railway Co. and president of the American Railway Association, in January, 1914, proposed a radical change in the method of settling railroad labor disputes.<sup>4</sup> He said that the Government should adopt a plan similar to that used in Canada, the so-called Lemieux Act, or the industrial disputes act of 1907. He wanted the Newlands Act amended in five respects: (1) Let the law apply to all employees engaged in interstate commerce, not solely to those engaged in the train service; (2) coordinate the work of the United States Mediation and Conciliation Board with that of the Interstate Commerce Commission so that wages and rates could be adjusted to each other in some rational manner; (3) make a strike illegal until its cause should have been investigated by a Government commission and its findings published; (4) have the two neutral arbitrators, as representatives of the public, appointed by the Interstate Commerce Commission; (5) declare a lockout or a strike illegal until after investigation and enforce this provision by appropriate penalties.

The plan of Mr. Kruttschnitt is typical of the views of railroad officials in general. It also expressed the attitude of a part of the public, the third party to any railroad strike. The theory upon which it was thought this series of changes in the law would operate well is that the pressure of public opinion is adequate to force the acceptance of the findings of the disinterested Government commission. But this was not agreeable to the railway labor organization.<sup>5</sup>

All the controversies adverted to and the findings of the respective interests with reference to settlements effected showed that ultimately a situation would arise that would call for a kind of procedure not theretofore practiced. That occasion presented itself in the summer of 1916, when events led to the passage of the Adamson law.

<sup>3</sup> The Railway Age Gazette, Vol. LVII, p. 252 (Aug. 7, 1914).

<sup>4</sup> Idem, Vol. LVI, p. 8.

<sup>5</sup> See pp. 76, 77.

## NEW SITUATION TO BE MET.

## ISSUES BETWEEN THE PARTIES.

Timothy Shea, assistant president of the Brotherhood of Locomotive Firemen and Enginemen, had announced in December, 1915, that the brotherhoods were planning the adoption of the eight-hour day, and that they would not arbitrate the question.<sup>6</sup> As a result of the plans made in 1915 the officers of the railway brotherhoods, on January 10, 1916, presented to the members of the organizations for their approval or rejection the question of demanding the 8-hour day with 10 hours' pay. The proposal was approved by the members of each of the organizations, and on March 29 the demands were presented to the managers with a request that an answer be given on or before April 29. It was requested that the roads join in a collective movement for the consideration of the demands made. The managers prepared counterdemands. On May 18 the railroads organized the National Conference Committee of Railways. On June 1 the representatives of the men and of the roads met in New York City. The railway officials announced their unwillingness to accept the demands of the men and proposed that the entire affair, including the counterdemands made by the roads, be submitted for arbitration, either before the Interstate Commerce Commission or in accordance with the Newlands Act. The men rejected both these alternatives and took a strike vote, which resulted in an overwhelming majority in favor of striking to secure their demands.

On August 9 the railroad officials asked the men to join with them in a request for the intervention of the United States Board of Mediation and Conciliation. The men refused to do this, their contention being that direct negotiation between the parties was preferable to dealing through an intermediary.<sup>7</sup> The managers then asked the intervention of the mediation board. The United States Board of Mediation and Conciliation, as a result of its failure to settle the dispute, gave out in August the following statement:

After repeated efforts to bring about arbitration in the pending controversy between the railroads and their employees in train and yard service, the United States Board of Mediation and Conciliation was to-day advised by representatives of the employees that they would not submit the matters in dispute to arbitration in any form. The employees further stated to the board that they would not arbitrate their own demands even if the contingent demands of the railroads were withdrawn, and also declined to suggest any other plan for a peaceful settlement of the controversy.<sup>8</sup>

President Wilson invited both sides to meet him for a conference in Washington. At that time he proposed to the representatives of the two sides that the 8-hour principle be accepted and that a commission be appointed by him to investigate the demand for time and half for overtime, the second of the two principal demands made by the men. The employees accepted this suggestion, but the railroad officials objected to giving the 8-hour day before an investigation was made.<sup>9</sup>

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<sup>6</sup> The Railway Age Gazette, Vol. LIX, p. 1163.

<sup>7</sup> For above facts, see Report of the U. S. Eight-Hour Commission, pp. 7-9.

<sup>8</sup> S. Doc. No. 549, 64th Cong., 1st sess., p. 97.

<sup>9</sup> Congressional Record, Vol. LIII, pp. 13335-13337 (Aug. 29, 1916). (In address by the President of the United States.)

While the negotiations with the President were in progress the brotherhood leaders declared a nation-wide strike to begin on September 4.<sup>10</sup> The men, however, promised the President that if Congress should enact a law giving them the 8-hour day as the President had proposed, they would call off the strike.

#### MESSAGE OF PRESIDENT WILSON.

Accordingly, on August 29 President Wilson appeared before Congress and asked the immediate passage of a law to prevent the threatened strike.<sup>9</sup> In justification of his proposal of the 8-hour day the President said:

It seemed to me, in considering the subject matter of the controversy, that the whole spirit of the time and the preponderant evidence of recent economic experience spoke for the 8-hour day.

The legislation asked for by the President covered five points: (1) An increase in the number of members of the Interstate Commerce Commission so that it could deal adequately with the business placed upon it; (2) the establishment of the 8-hour day for the train operatives; (3) authority for the President to appoint a commission to observe the operation of the 8-hour day and to make a report thereon, without recommendations; (4) approval by Congress of an increase in rates by the Interstate Commerce Commission should the operation of the new law make it necessary; (5) an amendment to the Newlands law making it illegal to call a strike or a lockout pending an investigation of the controversy by a Government commission.

#### PASSAGE OF THE LAW.

In the House of Representatives on August 31, Representative Adamson, of Georgia, reported a bill (H. R. 17700) to establish an 8-hour day for all train operatives working on trains doing an interstate business and to authorize the President to appoint a commission to investigate the operation of this law.<sup>11</sup> This bill, as will be seen, contained only two of the five recommendations made by President Wilson. The Committee on Interstate and Foreign Commerce of the House, on September 1, reported the bill favorably. This bill as recommended by the committee, was identical with the original which Mr. Adamson had drawn, excepting for the change of a few words that did not affect the principle involved.<sup>12</sup> Immediately upon the filing of the report of the committee a debate upon the measure was precipitated.

Representative Sterling, of Illinois, proposed to amend the bill so that, in the event of failure to effect a settlement through the mediation board, the President should appoint a commission consisting of four representatives from each side and of three neutrals to investigate the cause and to make a report of the controversy. A strike was to be declared illegal pending the filing of the report of the commission.<sup>13</sup>

<sup>9</sup> Congressional Record, Vol. LIII, pp. 13335-13337 (Aug. 29, 1916). (In address by the President of the United States.)

<sup>10</sup> John B. Andrews, in *American Yearbook*, 1916, p. 434.

<sup>11</sup> Congressional Record, Vol. LIII, p. 13540.

<sup>12</sup> *Idem*, p. 13609 (Sept. 1, 1916).

<sup>13</sup> *Idem*, p. 13603.

The speeches made on the proposed measure ranged all the way from approval to a violent attack upon the President for having yielded to the railway brotherhoods. Representative Harrison, of Mississippi, expressed the former view:

This strike must be averted! \* \* \* If we pass this rule and the bill, the consideration of which it calls for, which is, after all, legislation to meet an impending emergency, I believe that this strike will be averted and the interests of the American people safeguarded and protected.<sup>14</sup>

Representative Gillett, of Massachusetts, represented the other view:

One hour, of Grover Cleveland or Theodore Roosevelt would have settled it. We needed a President of courage and resolution, who would listen to the voice of justice rather than of expediency, whose eye would look to permanent results and not to the coming election. \* \* \* I believe this is preeminently a case for arbitration, and I am not willing, under threats, to sanction a settlement whose justice this House is not allowed time to investigate.<sup>15</sup>

These two illustrations are representative of the opposite positions taken by the Members of the House. The bill, however, on September 1, the day it was reported, passed the House by a vote of 239 to 56.<sup>16</sup>

On August 31 the Senate Committee on Interstate Commerce held hearings on a number of bills in connection with the threatened strike.<sup>17</sup> In the main the discussion in the Senate centered on the recommendations the President had made to Congress. The railway brotherhoods, the managers, and the general public had opportunity to be heard on the measures. Each of the brotherhood chiefs indicated a desire to have the Adamson bill passed by the Congress.<sup>18</sup> All the representatives of labor objected to the suggestion that a strike should be postponed until after the commission had investigated the controversy. Mr. Gompers said that such a provision would serve only to give the managers time in which to prepare for the strike by the employment of strike breakers, thus defeating the men.<sup>19</sup>

For the railways, among others, Mr. R. S. Lovett, chairman of the executive committee of the Union Pacific Railway, testified. He defended the action of the managers in their negotiations, emphasizing the responsibility of the roads to the public, to the stockholders, and to the unorganized railway labor. If the law were enacted he insisted that a provision be incorporated making a strike unlawful after the promulgation of a finding and decree by a Government commission which has investigated the controversy:

Leave the men free, to quit whenever they like—all the individual freedom of action they have to-day. But put upon these four men, sitting in this room, some sense of responsibility to the public, by providing that after such commission has made its determination, no man shall issue a strike order or advise other men to quit.<sup>20</sup>

As a result of the hearings, Senator Newlands, of Nevada, for the committee, on September 1 introduced a bill (S. 6981, 64th Cong.), which later in the day was favorably reported, to establish the

<sup>14</sup> Congressional Record, Vol. LIII, p. 13580.

<sup>15</sup> Idem, pp. 13587, 13588.

<sup>16</sup> Idem, p. 13608.

<sup>17</sup> Idem, p. 13608.

<sup>18</sup> S. Doc. No. 549, 64th Cong., 1st sess., p. 5-15.

<sup>19</sup> Idem, p. 25.

<sup>20</sup> Idem, pp. 61, 62.

<sup>21</sup> Idem, p. 77.

8-hour standard workday in interstate transportation. This was practically the same as House bill 17700, referred to above, excepting that in this bill it was made a misdemeanor for any person to obstruct the movement of trains, and the Interstate Commerce Commission was empowered to fix the wages of railway employees. The latter clause was the Underwood amendment.

But, in the meantime, the bill that had passed the House was introduced in the Senate. The debate in the Senate was spirited throughout September 1 and 2, the arguments in the main being along the lines as those of the House, to which reference has already been made. However, in the Senate there was debate upon the amendment which would have given the Interstate Commerce Commission power to fix wages for the railway employees. On September 2 the bill was adopted by the Senate with a vote of 43 against 28. It was passed in the form in which the House had already adopted it.<sup>21</sup> With the approval of the President on September 3 the law, known as the Adamson law, was enacted.<sup>22</sup>

#### PUBLIC OPINION ON THE LAW.

As was to have been expected, the passage of the Adamson law was injected into the political campaign that followed its passage. The statements made with reference to the act are so hopelessly involved in the political feelings of the men who spoke on it that an analysis of them would be of little value even if a satisfactory one could be made. The magazines of the time were divided in the attitudes which they maintained toward the law. One can generalize, however, to the extent of saying that in most quarters the brotherhoods were severely condemned for "forcing the law upon Congress." The Nation regarded the enactment of the law under the conditions surrounding its passage a hold-up of Congress and expressed the feeling that the averting of the strike was probably secured at too high a price.<sup>23</sup>

The Independent contended that there was no divine right on the part of the employees to organize and advance their own interests without regard to the effect on the other members of society. The right of the public, so it said, far outweighed the right of any particular group of people. And it was suggested that the people should force every contentious group to recognize the paramountcy of the general good.<sup>24</sup>

The Railway Age Gazette characterized the passage of the Adamson law as the "triumph of mobocracy." It compared the Brother-

<sup>21</sup> Congressional Record, Vol. LIII, p. 13655.

<sup>22</sup> Idem, p. 14158 (Sept. 8, 1916).

<sup>23</sup> "The whole country will know that Congress has been the submissive victim of a hold-up \* \* \*. Whether the averting of the strike was worth such a sacrifice of the Nation's rights, is a question upon which we leave it to patriotic Americans to pass their own judgment." (The Nation, Vol. CIII, p. 213, Sept. 7, 1916.)

<sup>24</sup> "There is no divine or moral or natural right to organize, or to control the lives of men, or to do business, or to further the interests of a class in defiance of the general will of the people organized as a sovereign State."

"Whenever any body of men, in overweening confidence, asserts a right and proceeds by violent or other unlawful methods to carry out its purposes, the duty of good citizens is absolutely clear. The right of the public to enjoy civilized order, as Chairman Straus of the Public Service Commission admirably put it the other day, is the supreme right. At all costs it must be maintained, by overwhelming force, if necessary." (The Independent, Vol. LXXXVIII, p. 6 (Oct. 2, 1916).)

hood leaders to the leaders of the French Revolution and pictured them as imposing their wills upon the whole American people.<sup>25</sup>

A referendum taken by the Chamber of Commerce of the United States in June, 1916, showed the feeling of the business interests of the country toward the impending strike. In that referendum the vote was more than 97 per cent in favor of an investigation of the railway labor situation by the Interstate Commerce Commission.<sup>26</sup> Later, in a referendum vote taken in February, 1917, more than 98 per cent voted in favor of requiring Government investigation before the ordering of a strike or a lockout on a railroad. More than 95 per cent voted to give the public, as having paramount interest, a majority representation on any investigation commission. It was also voted to recommend to Congress the establishment of a statistical division of the Interstate Commerce Commission to study and to compile statistics as to wages and as to conditions of service on the railroads. These statistics were to be made available for the use of the investigation commissions.<sup>27</sup>

#### RESPONSIBILITY FOR PASSAGE OF THE LAW.

As to the responsibility of the labor organization for the passage of the Adamson law, Mr. W. S. Carter, president of the Brotherhood of Locomotive Firemen and Enginemen, testifying before a committee of Congress in January, 1917, said:

I want to say that at no time during the negotiations with the managers committee, at no time when we were before the President of the United States or before Congress, did we invite legislation, but we did not hesitate, and I do not hesitate to say here that when we were asked if the Adamson law were enacted if it would prevent a strike we said "Yes."<sup>28</sup>

Mr. Warren S. Stone, president of the Brotherhood of Locomotive Engineers, in his testimony of September 23, 1919, at a Senate hearing, insisted that the railway labor men did not ask the passage of the Adamson law; they only consented to its passage. He said:

But it was not our law; we did not have anything to do with the framing of it; we did not want it, and it was simply choked down our throats as a settlement of the case \* \* \* and it never tasted good, and it does not taste good yet. I want to make that clear.<sup>29</sup>

Similar statements have been made from time to time by the other leaders of the railway brotherhoods as they had occasion to express themselves on the Adamson law.

President W. G. Lee, of the Brotherhood of Railroad Trainmen, in answer to a question as to whether he had ordered a strike prior to the passage of the law, replied:

Absolutely; and now I wish to God that, regardless of the Adamson law, I had never recalled it.<sup>30</sup>

<sup>25</sup> The Railway Age Gazette, Vol. LXI, p. 394 (Sept. 8, 1916).

<sup>26</sup> Chamber of Commerce of the United States. Special Bulletin, June 16, 1916.

<sup>27</sup> Idem, Special Bulletin, Feb. 12, 1917.

<sup>28</sup> U. S. Congress. House of Representatives. Committee on Interstate and Foreign Commerce. Hearings on \* \* \* H. R. 19730, 64th Cong., 2d sess., p. 107.

<sup>29</sup> U. S. Senate, 66th Cong. Committee on Interstate Commerce. Hearings on S. 2906, The Prevention of Strikes, pp. 47, 51.

<sup>30</sup> U. S. Congress. House of Representatives. Committee on Interstate and Foreign Commerce. Hearings on \* \* \* H. R. 19730, 64th Cong., 2d sess., p. 71.

### WHY THE BROTHERHOODS REFUSED ARBITRATION.

Mr. Carter, in January, 1917, prepared what is, perhaps, the most complete statement of the position of the men as to why they had refused to accept arbitration with the managers.<sup>31</sup> He gave six reasons for the position taken: (1) The roads had manufactured a public opinion that would have been hostile to the men; (2) the standard of the United States Board of Mediation and Conciliation for the selection of neutral arbitrators had proved in the Nagel case to be unfair and partial; (3) the statistical evidence presented by the roads, although partisan and not scientific, would have overwhelmed the neutral arbitrators; (4) the influence of precedent would have operated against the men; (5) "the railroads, while proposing arbitration, refused to permit about 75 of the smaller roads to participate in the arbitration. Where these roads believed that the small number of employees made it possible for them to win a strike they refused to delegate authority to the railroads' committee to include them in the arbitration. The employees were not willing to arbitrate for only the larger roads. Furthermore, the railroads refused to permit the locomotive hostlers of about 18 roads to participate in the proposed arbitration. Also, the railroads refused to include in their proposed arbitration white foremen, brakemen, and hostlers on many railroads and no colored employees. No Negro employee was to benefit by the arbitration"; (6) the award would have been administered by the managers in accordance with their own interpretation of its meaning.

Most of these objections have been alluded to already in other connections. The objections stated in No. 5 have been given in Mr. Carter's own words, because they should be examined with more care. First, as to the failure of the railroads to include the smaller roads in the arbitration. Mr. Elisha Lee, for the conference committee of the railroads, said that some of these roads had been unwilling to enter the arbitration; the employees on some of them had not wished to enter; and on many of them the managers had agreed that, in the settlement with their own employees, they would abide by the result of the arbitration. Mr. Lee said that the conditions were quite different on the smaller roads from those on the larger roads and this in itself justified the course that had been followed by the managers.<sup>32</sup>

The altruism of Mr. Carter's objection that the managers did not include certain classes in the proposed arbitration, prominent among which was the Negro, has been questioned in view of the fact that none of the four leading railway brotherhoods at the time this claim was made would admit Negroes to membership in their ranks.<sup>33</sup>

Considering the question from all aspects, it seems that the railroad officials recognized that a nation-wide concerted movement stood every chance to defeat the managers if a strike were called. For that reason they were anxious to have the trouble arbitrated. On the other hand, the men recognized the powerful economic weapon they had in the concerted movement, and they were unwilling to exchange this

<sup>31</sup> Bul. No. 1, Publicity Dept. Brotherhood of Locomotive Firemen and Enginemen, in *Locomotive Firemen and Enginemen's Magazine*, Vol. LXII, p. 14 (Jan. 15, 1917).

<sup>32</sup> S. Doc. No. 549, 64th Cong., 1st sess., pp. 81, 82.

<sup>33</sup> U. S. Industrial Commission, Report, Vol. IV, p. 118 (1900).



for a method which had not given them all they wanted in the past. Both sides, after having reached a conclusion as to what would best serve their purposes, readily found reasons which they presented to the public in justification of the positions assumed by them. This is not to impugn the motives or the integrity of the men on either side. But, serving in the capacity of counsel to themselves, they presented their respective cases in the light that would best serve the purpose they had in mind, i. e., winning out in the contest. It appears that this was not an instance in which the conclusion was reached as a result of weighing the evidence in the scales of justice, but rather in the practical scales of expediency.

#### VIEWS OF UNORGANIZED RAILWAY EMPLOYEES.

The railway laborers who were not members of the brotherhoods did not favor the passage of the Adamson law. In July a petition was started by these employees as a protest against an increase in wages for the members of the brotherhoods unless wages for the unorganized employees were also increased. They wanted to share in the good fortune that was to come to their fellow workers. This petition was presented to President Wilson with nearly 100,000 signatures. The petition said:

We should not be made to suffer for the purpose of obtaining an increase of pay (for that is the sum and substance of the demands) of that 16 per cent already receiving wages far in excess of the average received by us, the 84 per cent. We appeal to the sense of justice of the American people, of whom we are and with whom we rest our case, shall this injustice be permitted.<sup>34</sup>

On December 5, 1916, a petition from the so-called 80 per cent was sent to Senator Newlands.<sup>35</sup> The petition asked: (1) That a Government commission make a thorough investigation of hours of service and the wages paid to all railway employees; (2) that this commission be empowered to fix the wages paid railway men; (3) that in order to prevent strikes the law should provide compulsory arbitration. Similar petitions were presented from others who claimed to represent the 80 per cent.<sup>36</sup>

Representatives of organized employees contended that these petitions had been signed by the unorganized employees at the direction of the managers and through fear that they would lose their positions if they refused to sign,<sup>37</sup> but no proof was offered in support of this statement.

#### BROTHERHOODS AND THE RIGHTS OF THE PUBLIC.

The report of the Straus commission which arbitrated the controversy in the East in 1912 had, as indicated, given a great deal of consideration to the interests of the third party, the public, in controversies between the roads and their employees. In the earlier period the leaders of the brotherhoods were ready to admit the priority of the public interest in such controversies. As recently as 1913 Mr. A. B. Garretson, president of the Order of Railway Conductors,

<sup>34</sup> The Railway Age Gazette, Vol. LXI, pp. 251, 252, 338.

<sup>35</sup> Congressional Record, Vol. LIV, p. 37 (Dec. 6, 1916).

<sup>36</sup> Idem, pp. 38, 137 (Dec. 6, 8, 1916).

<sup>37</sup> S. Doc. No. 549, 64th Cong., 1st sess., p. 29.

said that the public had an interest.<sup>38</sup> He went so far as to agree that the interests of the public, where threatened by a strike, were as great as those of the men and of the managers, and that the public should have representation on the boards of arbitration. But, Mr. Garretson held, the public did not have a right in the case unless there was some danger to the public. This would seem to have been an admission of the public to a right in all strikes, because a strike without the possibility of inconvenience to the public and of interruption of traffic would be no strike worth calling.

Whatever may have been the position of the railway employees in the early days of labor difficulties, some of the labor leaders have since affirmed that the public had nothing to do with a proposition of this nature in which it was not involved as one of the parties directly connected with the dispute.<sup>39</sup>

#### SETTLEMENT THROUGH THE COUNCIL OF NATIONAL DEFENSE.

According to its provisions the Adamson law was to become effective on January 1, 1917. When a lower court declared the law unconstitutional the men again threatened to go out on strike to secure the demands made originally.<sup>40</sup> The strike was to begin March 17 at 7 p. m. President Wilson appointed a committee representing the Council of National Defense to settle the trouble. The committee consisted of Franklin K. Lane, Secretary of the Interior; William B. Wilson, Secretary of Labor; Daniel Willard, president of the Baltimore & Ohio Railroad; and Samuel Gompers, president of the American Federation of Labor. The committee secured a postponement of the strike until March 19. On that day a settlement was reached. The terms of the agreement gave the men what the Adamson law had provided for them. This law was still in the courts. Thus, the men finally secured the eight-hour day without getting it through legislation. But the passage of the Adamson law probably made it easier to force the managers to accede to this solution. However that may be, it remains true that this trouble was settled by mediation, a mediation proceeding greatly influenced by the fact that the European War made it absolutely necessary to get together on some working basis. But this settlement was in no manner affected by the United States Board of Mediation and Conciliation established by the Newlands law.

#### ADAMSON LAW IN THE COURTS.

In the latter part of 1916 the railroads began many suits in the courts for the purpose of testing the validity of the Adamson law.

<sup>38</sup> "The public has an interest, bear in mind. We all recognize that the public has an interest whenever the public interest is threatened. As long as the public interest is not threatened, then it is a private war between employer and employees, but the minute that the private war threatens the public, the public comes into exactly the same relation to it as we do, and their rights are as great as ours; and we say that they are entitled to just the same representation on this board that the other interests are." (S. Rept. No. 72, 63d Cong., 1st sess., pp. 44, 45.)

<sup>39</sup> The Railroad Trainman said: " \* \* \* It seems unnecessary to say that the Trainman does not agree with the notion that the public has a right to be represented in a presentation of a case before a board of arbitration between the railroad companies and their employees any more than it has a right to such representation on any board of arbitration with the business of which it has nothing to do." (The Railroad Trainman, Vol. XXXIII, p. 91 (January, 1916).)

<sup>40</sup> Report of the Eight-Hour Commission, p. 10 (1918).

The Attorney General of the United States made an agreement with the railroads whereby one of these was to be a test case before the Federal Supreme Court. The managers agreed to keep their books in such manner that the men could be paid their back wages from January 1, 1917, should the law be upheld by the court.<sup>40</sup>

#### WILSON v. NEW.

The case selected to test the law was *Wilson v. New*.<sup>41</sup> Arguments in this case were heard on January 9 and 10, and on March 19, the day upon which the controversy had been settled by the Council of National Defense, the Supreme Court of the United States handed down its decision upholding the validity of the Adamson law.

Mr. Chief Justice White, in giving the decision of the court, upheld the law as an emergency measure. The question which the Chief Justice asked as a basis for the decision was:

\* \* \* Did it [Congress] have the power in order to prevent the interruption of interstate commerce to exert its will to supply the absence of a wage scale resulting from the disagreement as to wages between the employers and employees and to make its will on that subject controlling for the limited period provided for?

Mr. Chief Justice White said that he would pass over the question of the authority of Congress to establish an 8-hour day. That was so clearly sustained, he said, as to make it indisputable.

We are of opinion that the reasons stated conclusively establish that from the point of view of inherent power the act which is before us is clearly within the legislative power of Congress to adopt, and that in substance and effect it amounted to an exertion of its authority to compulsorily arbitrate the dispute between the parties by establishing as the subject matter of that dispute a legislative standard of wages operating and binding as a matter of law upon the parties \* \* \*, a power none the less efficaciously exerted by direct legislative act instead of by the enactment of other and appropriate means providing for the bringing about of such result.

The capacity to exercise the private right free from legislative interference affords no ground for saying that legislative power does not exist to protect the public interest from injury resulting from a failure to exercise that private right.

In this particular instance, the Chief Justice said, there was no abuse of the power such as to constitute a denial of the equal protection of the laws, or a violation of the due process clause of the Constitution.

Mr. Justice Day, in his dissenting opinion, agreed that Congress could fix the wages of railroad employees doing an interstate traffic, but he considered the fixing done in the Adamson law, without any investigation, a denial of the due process clause and thus a violation of the fifth amendment of the Constitution. He was not prepared, he said, to admit that Congress could compel arbitration, as held in the majority opinion of the court.

Justices Pitney and VanDevanter dissented on the ground that the legislation had no substantial relation to interstate commerce and was therefore invalid. Mr. Justice McReynolds also said that this did not constitute a regulation of commerce.

<sup>40</sup> Report of the Eight-Hour Commission, p. 10 (1918).

<sup>41</sup> 243 U. S. 332.

## ATTITUDE OF INTERESTS AFFECTED.

The railroad interests were pleased by the decision of the court. Some of them regarded this as the entering wedge for the enactment of a compulsory arbitration law. The *Railway Age Gazette*, on March 23, commended the decision but expressed doubt as to whether the Members of Congress would have the courage to meet the needs of the time.<sup>42</sup>

But the joy of the managers was matched by the keen disappointment of the railway employees. Mr. Gompers, for the workers, expressed his disappointment at this turn of affairs. So bitter was his regret that he advocated curbing the power of the Supreme Court, which, he considered, had played into the hands of the employing class.<sup>43</sup>

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<sup>42</sup> "The important question now is, will our politics-ridden Congress have the patriotism and the courage to enact the legislation for the passage of which the Supreme Court has opened the way, and which the brotherhoods have so conclusively demonstrated is vitally necessary for the protection of the public?" (*The Railway Age Gazette*, Vol. LXII, p. 612.)

<sup>43</sup> "The court's decision came as an anticlimax too long delayed to be helpful in the purpose for which the law was enacted. Has the court permanently abandoned the field of justice, to play into the hands of the employing class, the wealth producers of our country, by taking away from the working people the only effective power they possess to compel a decent regard for their rights, their freedom, the American standard of life?"

"Would it not be well for the Nation to consider the necessity of curbing the assumption of power of the Supreme Court rather than to supinely permit the court to 'curb' the freedom of the masses \* \* \* the workers?" (*American Federationist*, Vol. XXIV, p. 291 (April, 1917).)

## CHAPTER VI.—PERIOD OF WAR ADMINISTRATION OF RAILROADS.

The entrance of the United States into the European war brought with it peculiar problems in the railway labor field. An examination of the period discloses a commendable zeal and a marked degree of success in the conception and in the application of devices to remove all possible friction between the railroad officials and the employees. This was, accurately speaking, not so much a period in which disputes were settled as one in which difficulties were prevented from coming into existence.

An act of Congress approved August 29, 1916,<sup>1</sup> had authorized the President of the United States to take over the transportation system of the country and operate it in the event of war. Acting by virtue of the authority so conferred upon him, President Wilson, on December 26, 1917, issued a proclamation that he would take possession of the railroads of the country on December 31.<sup>2</sup> At the same time he announced the appointment of Secretary McAdoo, of the Treasury, as Director General of Railroads.

### WAGE DETERMINATION.

Immediately prior to this proclamation of the President there had been a movement for increases in wages of the railroad employees. On December 11, 1917, the conductors and trainmen demanded an increase and requested that they be given an answer within 30 days.<sup>3</sup> Before the expiration of the 30 days and, consequently, before an answer had been given to the workers, the Government took over the operation of the railroads as a war emergency. Subsequently other employees of the railroads asked increased pay.<sup>4</sup>

In General Order No. 1, given out December 29, 1917,<sup>5</sup> Director General McAdoo had asked that all the officers and the employees continue in the performance of their duties just as though there had been no change in the control of operation of the roads. One of the earliest acts of the newly appointed Director General was the promise given the railway labor leaders that their demands for increased pay would be investigated and that any increase allowed should be retroactive to January 1.<sup>6</sup> He announced his plan of procedure in the wage matter in General Order No. 5, given out January 18, 1918.<sup>7</sup> In this

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<sup>1</sup> Pub. Law No. 242, 64th Cong.

<sup>2</sup> U. S. Railroad Administration. Bul. No. 4 revised, pp. 6-9.

<sup>3</sup> The Railroad Trainman, Vol. XXXV, p. 205 (Mar., 1918).

<sup>4</sup> Idem, p. 205.

<sup>5</sup> U. S. Railroad Administration. Bul. No. 4 revised, pp. 145, 146.

<sup>6</sup> Brotherhood of Locomotive Firemen and Enginemen's Magazine, Vol. LXIV, No. 2, p. 11 (Jan. 15, 1918).

<sup>7</sup> U. S. Railroad Administration. Bul. No. 4 revised, p. 148.

order he announced the appointment of a commission of four men whose duty it was to make a thorough investigation into the question of wages and to make recommendations for the guidance of the Director General. The personnel of this board was such as to command the respect and the confidence of all the parties concerned. The members were Franklin K. Lane, Secretary of the Interior; Charles C. McChord, member of the Interstate Commerce Commission; J. Harry Covington, Chief Justice of the Supreme Court of the District of Columbia; and William R. Willcox, of New York.

This action by Mr. McAdoo met with the hearty approval of the representatives of the railway brotherhoods. In March, before any decision had been handed down, the Brotherhood of Locomotive Engineers' Journal said:

\* \* \* The Wage Commission, it seems to us, is an excellent one, and we look for as much increase in wages as the real needs require and in harmony with the increased cost of a decent living condition.

We believe that the President and the Director General desire to be fair, and that the Wage Commission will bring a liberal report on needed increases in wages, and the future of the workingman has an agreeable look.<sup>8</sup>

The other magazines published by the railway brotherhoods commented in like manner upon the new agency.

The Wage Commission, after a painstaking and careful investigation covering a period of about four months, made its report to the director general.<sup>9</sup> Thereupon Mr. McAdoo, on May 25, 1918, issued General Order No. 27.<sup>10</sup> A substantial increase in wages was granted. The year ending December 31, 1915, had been taken by the Wage Commission as the base year upon which the increases were computed. And the increases were relatively larger for the employees getting the lower rates of pay.

The Director General carried out the recommendations of the Wage Commission with very few changes. In the preamble to General Order No. 27, putting these wage recommendations into effect, he mentioned specifically, however, the issue as to the number of hours constituting a day. The Commission had expressed the judgment that, in view of the war emergency, the hours of service on the roads should not be at that time changed. Mr. McAdoo further stated that—

I am convinced that no further inquiry is needed to demonstrate that the principle of the basic 8-hour day is reasonable and just and that all further contentions about it should be set at rest by a recognition of that principle as a part of the decision.

Recognition of the principle of the basic 8-hour day in railroad service is, therefore, hereby made.<sup>11</sup>

The railroad employees were much pleased at the outcome of the investigation by the Wage Commission. One aspect of the report, however, was a disappointment to some of them. The selection of December, 1915, as the basic date upon which to calculate the increases meant that the commission had disregarded the standardization of wages which had come from the concerted movements of the employees during the years 1916 and 1917.<sup>12</sup>

<sup>8</sup> Brotherhood of Locomotive Engineers' Journal, Vol. LII, No. 3, pp. 239, 240.

<sup>9</sup> U. S. Railroad Administration. Report of the Railroad Wage Commission, Apr. 30, 1918.

<sup>10</sup> U. S. Railroad Administration. Bul. No. 4 revised, p. 198.

<sup>11</sup> Idem, p. 199.

<sup>12</sup> U. S. Railroad Administration. Annual report, 1918-1919, Division of Labor, pp. 7, 8.

The Director General commented upon the intricacy of the problem of doing justice to the 2,000,000 railway employees. The numerous supplements, addenda, recommendations, and interpretations to General Order No. 27<sup>13</sup> indicate the difficulty the Railroad Administration experienced in adjusting inequalities in the wage scale.

In order to have the machinery to settle the many wage questions that might arise thereafter the director general in this general order announced the creation of a Board of Railroad Wages and Working Conditions. Recommendations of this new board were submitted to the Director General for approval before they could be put into effect.

In circular No. 31, June 1, 1918, Mr. McAdoo outlined the duties of this board as follows:

It shall be the duty of the board to hear and investigate matters presented by railroad employees or their representatives affecting—

(1) Inequalities as to wages and working conditions, whether as to individual employees or classes of employees.

(2) Conditions arising from competition with employees in other industries.

(3) Rules and working conditions for the several classes of employees, either for the country as a whole or for the different parts of the country.

The board shall hear and investigate other matters affecting wages and condition of employment referred to it by the Director General.<sup>14</sup>

The last of the supplements to General Order No. 27 granting an increase in wages was issued in the early months of 1919. The director general at that time announced that this action completed the "war cycle" of wage increases and that any further increases would "have to be considered in the light of the new conditions."<sup>15</sup>

Early in 1919, and especially in the month of August of that year, there was a series of unauthorized strikes on the roads. President Wilson, through the Director General, refused to order advances in wages until facts were available on which to determine whether or not the then price level was a permanent one. Some modifications, however, were made in the way of removing inequalities.<sup>16</sup> Mr. Carter, in charge of the division of labor, attributed these unauthorized strikes to the fact that the men did not realize that their controversies could be handled through his office in such a way as to get justice.<sup>17</sup> His division did succeed in settling many of the troubles.

It should be remembered that even these unauthorized strikes came after the signing of the armistice and when the urge of patriotism no longer acted as a controlling force.

Director General Hines has insisted that there has been "a great deal of misconception" as to the amount of wage increases resulting from the machinery put in operation by the Railroad Administration.<sup>18</sup> According to Mr. Hines the average increase over the 1913 and 1914 level of wages was approximately 100 per cent, whereas that for the workers in the iron and steel industry for the corresponding period was 120 per cent. He explained the few abnormal cases,

<sup>13</sup> U. S. Railroad Administration. General Order No. 27, with supplements, addenda, amendments, and interpretations (1919).

<sup>14</sup> U. S. Railroad Administration. Bul. No. 4 revised, p. 372.

<sup>15</sup> Report to the President by W. D. Hines, Director General of Railroads, for 14 months ending Mar. 1, 1920, revised ed., p. 18.

<sup>17</sup> Annual Report of W. D. Hines, Director General of Railroads, 1919, Division of Labor, p. 81.

<sup>18</sup> Report to the President by W. D. Hines, Director General of Railroads, for 14 months ending Mar. 1, 1920, revised ed., p. 19.

both of high wages and of low wages, as a result of the application of general rules to the different lines of work, a part of which work had not been standardized.

The analysis and the figures presented by Mr. Hines are of interest in connection with the assertion, frequently made, that the Government purchased peace on the roads by giving unwarranted increases in wages. Mr. Hines's conclusions indicate that the comparative freedom from labor disturbances during the war period can not be explained by the payment of unreasonable wages.

His statement has been verified by the following statement, which appeared on July 20, 1920, in the decision of the United States Railroad Labor Board, created by the transportation act of 1920:

It has been found by this board generally that the scale of wages paid railroad employees is substantially below that paid for similar work in outside industry, that the increase in living cost since the effective date of General Order No. 27 and its supplements has thrown wages below the prewar standard of living of these employees, and that justice, as well as the maintenance of an essential industry in an efficient condition, require a substantial increase to practically all classes.<sup>19</sup>

A statistical presentation showing the wages paid prior to the period of Federal control, those allowed during that period, and those granted by the Railroad Labor Board,<sup>20</sup> further bears out the contention of Mr. Hines.

#### RELATIONS WITH ORGANIZED LABOR.

From time to time the Director General of Railroads made new regulations and issued new orders setting forth the policy of the administration. General Order No. 8, issued February 21, 1918, was one of the most important of the kind under discussion.<sup>21</sup> This order was issued in part to correct wrong impressions given in the earlier ones concerning the question of a change in wages, etc. But by far the most significant part of the new order was section 5. Here the Director General declared that no discrimination of any kind should be made against a worker because of his membership or non-membership in a labor organization. This, it will be recalled, was the essence of section 10 of the Erdman law, the section declared unconstitutional by the Supreme Court in the case of *Adair v. U. S.*<sup>22</sup> The brotherhoods approved such a ruling and the result was to confirm them in their belief that the Railroad Administration would give them a square deal.

Mr. Carter, the director of the Division of Labor, said that this resulted in the addition to the ranks of union labor of many railway employees who had not theretofore been permitted to affiliate with organized labor.<sup>23</sup>

General Order No. 8 also directed that, where possible, excessive hours of work be avoided and that proper safety appliances be used on the railroads.

<sup>19</sup> U. S. Railroad Labor Board. Decision No. 2, p. 7.

<sup>20</sup> U. S. Railroad Labor Board. Wage Series, Report No. 1 (August, 1920).

<sup>21</sup> U. S. Railroad Administration. Bul. No. 4 revised, p. 167.

<sup>22</sup> See pp. 28, 29.

<sup>23</sup> U. S. Railroad Administration. Annual report, 1918-1919, Division of Labor, p. 7.



## RAILWAY ADJUSTMENT BOARDS.

A great deal of the dissatisfaction of the railway workers in the past has arisen from the interpretation of the awards made by arbitration boards and of the agreements entered into by the contesting parties. One of the objections to arbitration which the brotherhood leaders had urged was that the employer alone assumed the rôle of the interpreter. In Order No. 13 Mr. McAdoo approved machinery which was designed to handle matters of interpretation and the adjustment of personal differences.<sup>24</sup> He indorsed an agreement entered into by the regional directors and the representatives of the four brotherhoods. The adjustment board was to consist of eight men, four to be selected by and paid by the railroads and four to be selected by and paid by the employees.

This board was to assume the functions formerly vested in the committee of eight in disputes arising from the interpretation of the 8-hour law; to decide controversies growing out of the interpretation of wage agreements (excepting those passed upon by the Railroad Wage Commission); to adjust all personal differences and disputes arising between the men and the roads if they had failed to adjust these through the usual conference committees of employers and employees. The disputants could not refer a matter to the Railway Adjustment Board until they had exhausted all their own resources in an attempt to arrive at an agreement. If they were unable to agree it then became obligatory upon them to refer the difficulty to the adjustment board through the medium of the Division of Labor of the Railroad Administration. A decision upon any matter within its jurisdiction could be rendered by a majority of the board. In case there was no majority any four of the members could refer the controversy to the Director General of Railroads for final settlement.

General Order No. 29, issued May 31, 1918,<sup>25</sup> authorized a similar board for disputes arising between the managers and the machinists, boiler makers, and other like classes of railway-shop labor where organized in unions. Finally, on November 13, 1918, General Order No. 53<sup>26</sup> created, in like manner, a railway adjustment board to handle the cases of the telegraphers, switchmen, clerks, and maintenance-of-way employees.

These bipartisan boards were created through agreement between the managers and the men. Director General Hines was warranted in calling this a recognition of the principle of collective bargaining. A plan like this one had been suggested by the labor leaders in 1917.<sup>27</sup> In this case the suggestion came from the settlement by the Council of National Defense in 1917. The railroads and the men then agreed to set up a commission of eight, four from each side, to pass upon controversies growing out of the application of the award.<sup>28</sup>

There seems to have been no doubt as to the successful operation of the adjustment boards. Mr. Doak, of the Brotherhood of Rail-

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<sup>24</sup> U. S. Railroad Administration. Bul. No. 4 revised, p. 178.

<sup>25</sup> *Idem*, p. 300.

<sup>26</sup> *Idem*, p. 340.

<sup>27</sup> U. S. Congress. House of Representatives. Committee on Interstate and Foreign Commerce. Hearings on H. R. 19730, 64th Cong., 2d sess., pp. 54, 55.

<sup>28</sup> U. S. Railroad Administration. Annual Report, 1918-1919, Division of Labor, p. 12. Also Senate hearings on S. 2906, 66th Cong., 1st sess., p. 80.

road Trainmen, in his testimony to a Senate committee on September 24, 1919, said that there had never been a deadlock in a decision of Adjustment Board No. 1 and that there had never been a minority report.<sup>29</sup> Mr. Doak was a member of this board. Mr. Hines called the work of the boards "eminently satisfactory."<sup>30</sup> He reported that there had been agreement in practically every instance and that on many of the largest roads all the disagreements had been settled by conference without having to bring them to the attention of the adjustment boards at all. He recommended that, following the period of Federal control, this plan of the bipartisan boards be continued.<sup>31</sup>

Mr. Carter was, if possible, even more enthusiastic in his report concerning the work of these boards. He wrote:

The work of these boards demonstrates not only the advisability of the creation of such boards, but the necessity of their continuance, either under Federal control of railroads or thereafter. The fact that boards are bipartisan without any "umpire" or "neutral member" and all of which members are experts in railroad agreement matters have led both officials and employees to have confidence not only in the fairness of decisions reached but as to the technical ability of the members of the boards to pass intelligently upon all controversies submitted for decision.<sup>32</sup>

### THE DIVISION OF LABOR.

In the early part of the administration, on February 9, 1918, Mr. McAdoo created the Division of Labor, with a director of labor at its head, as one of the five departments of his administration.<sup>33</sup> In charge of this division he placed Mr. W. S. Carter, president of the Brotherhood of Locomotive Firemen and Enginemen. It was to be his duty to advise the Director General in all matters concerning labor and to exert his influence to bring about harmonious relations between the employer and the employees of the railroads. The former connection of Mr. Carter with labor movements gave him a decided advantage in this field. His long experience with railway labor and the confidence reposed in him by the employees augured well for his success.

In addition to his work as general supervisor of all labor matters, Mr. Carter had certain specific duties. It has already been shown that he acted as an intermediary in bringing disputes from the conference committees to the railway adjustment boards in those cases in which the conferees had not been able to reach an agreement.

One important duty of the director of the Division of Labor was that of acting for those employees who were not represented by any railroad adjustment board. And for some time only the members of the four brotherhoods were so represented. Even at the end of the period of Government control there were some employees who were not represented on the adjustment boards. Whenever controversies arose between the unorganized employees and the roads on which they worked they were instructed that they were to try to reach an

<sup>29</sup> U. S. Congress. Senate. Committee on Interstate Commerce. Hearings on S. 2906, 66th Cong., 1st sess., p. 78.

<sup>30</sup> Report of W. D. Hines, Director General of Railroads, to the President for the 14 months ending Mar. 1, 1920, p. 15.

<sup>31</sup> *Idem*, pp. 39, 40.

<sup>32</sup> Annual Report of W. D. Hines, Director General of Railroads, 1919, Division of Labor, p. 50.

<sup>33</sup> U. S. Railroad Administration. Bul. No. 4 revised, p. 357.

agreement with the management. Failing to reach such an agreement, the matter was to be referred to the director of the Division of Labor. The latter would appoint a representative of his office to try to bring about an adjustment. As a last resort the matter was to be referred again to the director of the Division of Labor. Personal grievances were to be handled in the same way.<sup>34</sup>

Special agents were sent out to make investigations into complaints made by employees; to make arrangements for conferences between the opposing interests; and to advise the railroad employees on strike as to how they could present their grievances to the proper agencies. In many instances this work was done so effectively that the anticipated strikes did not materialize.<sup>35</sup> This work was considered highly important in that it brought the Railroad Administration into close personal contact with the men and served to show them that their welfare was properly safeguarded and that the value of their services was fully appreciated by the authorities.

Some of the railroad executives are of the opinion that organized labor was humored to an unnecessary extent during the period of the war. Mr. Howard Elliott, chairman of the Northern Pacific Railway Co., in his testimony to a Senate committee on May 25, 1921, quoted with approval an excerpt from an article by ex-President Taft. In this article Mr. Taft criticized the administration for the passage of the Adamson law and also for the negotiation of the national agreements with the railway employees. He insisted that the controversies should have been adjusted on the railroads separately.<sup>36</sup> Mr. Elliott attributes much of the controversy of the present time to the work done during the period of Federal control.

Mr. Elliott subscribed heartily to the position taken by Mr. Taft in this respect.

But whether labor was pampered or whether the workers received only fair play, the fact remains that during the Federal control of the railroads labor difficulties on the roads were at the minimum, and this spirit of cooperation undoubtedly promoted the successful prosecution of the war.

<sup>34</sup> Annual Report of W. D. Hines, Director General of Railroads, 1919, Division of Labor, pp. 11-13. See also Railroad Administration Bul. No. 11, pp. 303, 304.

<sup>35</sup> Annual Report of W. D. Hines, Director General of Railroads, 1919, Division of Labor, p. 36.

<sup>36</sup> "The present administration, by forcing the Adamson law through, and by its subsequent administration of the railways, enthroned the national leaders of the railway labor organizations in power. The framing, execution, and construction of labor provisions and regulations in the railroad administration were largely intrusted to labor leaders, and there was no active interest really adverse to that of the labor organizations in the Government operation. During the war such a condition had to be endured, but now the situation is different. The railroad executives, restored to possession of the properties and responsible for their efficient and economic management, are seeking a readjustment and a basis for operating the properties in which much-needed discipline and a fairly proportionate rate of wages may be restored and maintained. They propose that each company shall be permitted to deal collectively with the men in its employ and shall not be required to deal in the first instance with the national heads of labor organizations. This is a real collective bargaining. The principle is that the employer and a body of his employees shall come as near together as possible in their conferences, so that looking into each other's eyes and hearing each other's voices, so to speak, they may have a clear understanding, each of the other's position and condition. The primary unit of action is the shop or railroad system in which the dispute arises. This has never been denied until now by either side.

"Experience has shown that with full liberty to deal with their respective employees by themselves, many railway executives can fully and satisfactorily adjust working conditions, and wages, too. In such matters, local self-government is the essence of collective bargaining and not a straw should be put in the way of it." (Hearings on S. Res. 23, by Senate Committee on Interstate Commerce, 67th Cong., 1st sess., p. 410, 1921.)

## CHAPTER VII.—TRANSPORTATION ACT OF 1920: ESCH-CUMMINS LAW.

### CONGRESSIONAL CONSIDERATION FROM PASSAGE OF ADAMSON LAW TO ENACTMENT OF LAW OF 1920.

Congress, it will be recalled, had put into the Adamson law only two of the five recommendations made by President Wilson in his message of August 29, 1916. In his address to Congress he recommended and urged the passage of a provision which would prevent the calling of a strike prior to an investigation of the merits of the case by a Government commission. On December 5 of that year the President again addressed Congress on the subject:

I can see nothing in that proposition but the justifiable safeguarding by society of the necessary process of its very life. There is nothing arbitrary or unjust in it unless it be arbitrarily and unjustly done. It can and should be done with a full and scrupulous regard for the interests and liberties of all concerned as well as for the permanent interests of society itself.<sup>1</sup>

Following the address of the President a number of bills were introduced in the Sixty-fourth Congress for the purpose of amending the Adamson law and the Newlands law. On December 5 Senator Underwood, of Alabama, proposed a bill (S. 7031) to give the Interstate Commerce Commission power to fix hours and wages for railway employees. Senator Townsend, of Michigan, introduced a bill (S. 7066) to provide for the investigation of controversies affecting interstate commerce. On December 8 Senator Hardwick, of Georgia, proposed (S. 7239) that the Adamson law be amended. Senator Sherman, of Illinois, on December 13 submitted an amendment to the bill proposed by Mr. Townsend.<sup>2</sup> On December 14 Senator Sterling, of South Dakota, introduced a bill (H. R. 18906) as an amendment to the Newlands law.

The Committee on Interstate Commerce of the Senate on January 2, 1917, began hearings on tentative bills to amend the Newlands law.<sup>3</sup> Representatives of labor appeared before the committee and opposed legislation along the line of compulsory investigation of disputes before a strike could be called. They also opposed the Underwood amendment to give the Interstate Commerce Commission the power to fix wages for railway employees and to establish the hours of work for them. Mr. Doak, vice president and legislative representative of the Brotherhood of Railroad Trainmen, said that the result of such an amendment would be to enslave the workmen and to deprive them of their only effective weapon.<sup>4</sup> He said that

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<sup>1</sup> Congressional Record, Vol. LIV, pp. 16, 17.

<sup>2</sup> *Idem*, p. 253.

<sup>3</sup> U. S. Congress. Senate. Committee on Interstate Commerce. Government Investigation of Railway Labor Disputes. Hearings on Tentative Bills to Amend \* \* \* (1917), 64th Cong., 2d sess.

<sup>4</sup> "If this law goes into effect you have tied us and enslaved us, to the detriment of these employees, and simply taken away from us, in the interests of society, the only weapon that we have to defend ourselves with, without giving us a recourse, possibly, in the end." (*Idem*, p. 186.)

the Underwood amendment would be the equivalent to slavery for the men.<sup>5</sup> Mr. Gompers objected to any legislative action and insisted that the men be permitted to use their economic power in the settlement of their differences with the managers.<sup>6</sup>

The Committee on Interstate and Foreign Commerce of the House of Representatives also held hearings on the proposed measures.<sup>7</sup> The representatives of labor here again objected to any legislation by Congress. Finally, when asked what he would do about the matter, Mr. Lee said that he would abolish the Newlands law as it was no longer of any value:

Then institute instead of it a clearing house or commission consisting of, say, four men on one side that are practical men, men out of the service, conductors, brakemen, engineers, or something of that kind, four gentlemen who are practical operating officers, who ought to know when they sit across the table just what is meant when something is asked, who can pick up any schedule now in effect upon any railroad and in a moment, aside from their personal feelings, either for the organizations or for the railroad companies, give a fair interpretation of it. Something of that kind, in my opinion, will do away with practically all of the threatened strikes, even of the transportation employees, and still leave it in the hands of practical men.<sup>8</sup>

Mr. Sheppard, for the conductors, and Mr. Stone, for the engineers, both subscribed to the views expressed by Mr. Lee.<sup>9</sup> None of the men wanted anything done by Congress, but said that if something had to be done, then the action taken should be what Mr. Lee had suggested.

Mr. Sheppard did, however, propose other action on the part of Congress. He suggested that the roads be allowed to charge what they wished for the hauling of freight, etc., but that everything made in excess of 6 per cent on the investment should be divided equally between the public and the employees. Government ownership, Mr. Sheppard said, would probably force this kind of solution ultimately. This suggestion of Mr. Sheppard is of interest in its bearing upon the later movement of the railway laborers for the Plumb plan and especially with reference to the principle for the adjustment of disputes contemplated by that plan.

On February 10, 1917, Mr. Newlands, for the committee, reported favorably Senate bill 8201, which he had introduced the preceding day.<sup>10</sup> This bill provided that in those cases in which the United States Board of Mediation and Conciliation failed to effect a settlement, the President should appoint two additional members—representing the railway employees and the railway officials, respectively—and the board thus enlarged should investigate and make a report on the controversies. The right to strike pending the investigation and the rendering of the report was not to be taken from the men, although Mr. Newlands said that he, personally, was in favor of such a limitation.

A similar bill (H. R. 20752) was introduced in the House by Mr. Adamson on February 5. The committee reported this bill on the

<sup>5</sup> "My objections and our objections to this are that it is absolute slavery and that it discriminates." (*Idem*, p. 209.)

<sup>6</sup> U. S. Congress. Senate. Committee on Interstate Commerce. Government Investigation of Railway Labor Disputes. Hearings on Tentative Bills to Amend \* \* \* (1917), 64th Cong., 2d sess., pp. 239-285.

<sup>7</sup> U. S. Congress. House of Representatives. Committee on Interstate and Foreign Commerce. Hearings on H. R. 19730 (1917), 64th Cong., 2d sess.

<sup>8</sup> *Idem*, pp. 54, 55.

<sup>9</sup> *Idem*, pp. 169, 205.

<sup>10</sup> Congressional Record, Vol. LIV, pp. 2980-2982.

following day.<sup>11</sup> No action was taken on these bills in either branch of Congress. Two other bills (H. R. 20844 and H. R. 20907) met a similar fate. The failure to secure legislation until after the war was due, in part at least, to the amount of business with which Congress had to deal as a result of the war with Germany, business that left little time to be devoted to the legislation to prevent railway labor controversies. Then, too, it was decided to handle the railroad problems through the Railroad Administration during the war period.

The Sixty-fifth Congress did pass a law, however, which seems to apply to strikes on railroads.<sup>12</sup> This was the enactment of Senate bill 2356. This law made it a misdemeanor to obstruct the movement of any train in interstate commerce during the war. Certainly a strike by a group of railway laborers does constitute an interference with the movement of such trains. Senator Newlands, in answer to a criticism that this law would, if enacted, interfere with the right of the men to strike, replied that the legislation was not so designed and that the Committee on Interstate Commerce did not desire to take up the question of strike legislation at that session of the Congress.<sup>13</sup>

#### PASSAGE OF ESCH-CUMMINS LAW.

In the early part of 1919 Congress began to consider the future status of the railroads and to devise some plan for their operation after the anticipated peace with Germany and the automatic termination of Federal control of the roads which would follow the declaration of peace. It is not necessary for the purpose of this study to enter into a detailed discussion of all the bills introduced with this end in view. Mr. McAdoo, together with other proponents of Government operation, urged Congress to continue the Government control for a period of five years.<sup>14</sup>

Representative Sims, of Tennessee, on January 7, 1919, introduced a bill (H. R. 13707) to authorize the extension of Federal control until 1924. Had this measure passed, the machinery for settlement of railway labor disputes would probably have continued as under the period of Government administration of the roads.

#### THE HOUSE BILL.

But Congress took no action on this important issue before having given it lengthy and detailed consideration in its committees. The bill which served as the basis for the hearings by the Committee on Interstate and Foreign Commerce of the House of Representatives was the Esch-Pomerene bill (H. R. 4378), introduced on June 2.<sup>15</sup> A bill embodying the so-called Plumb plan for the operation and control of the railroads was also discussed in the hearings. This was the bill introduced by request by Mr. Sims (H. R. 8157, 66th Cong.). The section of the latter bill applying to the settlement of railway labor dis-

<sup>11</sup> Congressional Record, Vol. LIV, p. 2726 (Feb. 6, 1917).

<sup>12</sup> Pub. Law No. 39, 65th Cong.

<sup>13</sup> Congressional Record, Vol. LV, pp. 3151, 3152, 3341 (June 1, 8, 1917).

<sup>14</sup> In pamphlet, "Extending Period of Control of Railroads," printed for the use of the Committee on Interstate and Foreign Commerce, H. R. 13707, 65th Cong., 3d sess. (1919).

<sup>15</sup> H. Rept. No. 456, 66th Cong., 1st sess., p. 1.

putes provided that wages should be fixed by the directors, composed of representatives of the managers and of the men. In the event that any dispute arose it was to be adjusted by a conference committee of the managers and the men. If these were unable to adjust the difference an appeal was to be taken to the directors. The Plumb plan, it will be recalled, was the one approved by the members of the railway brotherhoods. In their testimony to the House committee they reiterated their adherence to this plan. Various other plans were also considered by the committee.

The hearings began on July 15 and continued until September 27. Testimony to the extent of more than 3,000 words was taken from experts and from those especially interested in the proposed legislation.<sup>16</sup> A considerable part of the testimony concerned the question of the adjustment of labor controversies when the railways should have reverted to private management.

An analysis of the different proposals made to the committee would require too lengthy a discussion for the purpose of this paper. An examination of the testimony taken shows that all kinds of plans, ranging from a policy of *laissez faire* to one in which the Government should fix the wages and determine working conditions, were brought forward by individuals and by groups of individuals. Compulsory arbitration was again defended by its adherents and was attacked by the labor leaders.

After giving consideration to all the testimony taken and deliberating at length the committee, through Mr. Esch, presented House bill 10453 and submitted a report to accompany it.<sup>17</sup> In this report the committee analyzed the bill and presented the reasons for its passage.

Title III was termed "Disputes between carriers and their employees." The committee reported that it did not deem it advisable to present a recommendation for an antistrike provision. It asked the establishment of two boards, a railway adjustment board and a railway labor board of appeals.

The Railway Adjustment Board was to consist of representatives of the employers and representatives of the employees. These members were to be selected by and paid by the interests which they represented, respectively. If any group of employers or of employees failed, within a given time, to name a representative to this board the President of the United States was to make the appointment. It was thought that such a board would consist of approximately 30 members. In the event of a dispute between the employer and the employee the board was to refer the matter to a conference committee representing the contesting sides. The conference committee was to report the findings to the Board of Labor Appeals, to the contestants, and to the President of the United States. Full publicity was to be given the report.

The Railway Board of Labor Appeals was to consist of nine members—three representing the employers, three the workers, and three the public. The employee members were to be appointed by the President, one from each of three groups of six names suggested by the employee members of the Adjustment Board. The employer members were to be appointed in a like manner from a list of names

<sup>16</sup> U. S. Congress. House of Representatives. Committee on Interstate and Foreign Commerce. Hearings \* \* \* on H. R. 4378, 66th Cong., 1st sess.

<sup>17</sup> H. Rept. No. 456, 66th Cong., 1st sess.

suggested by the employer members of the Adjustment Board. In appointing the third group the President was to be instructed to give due consideration to the agricultural, to the commercial, and to the unorganized employee interests. The last three members were to be named directly by the President. No man could hold membership in the Board of Labor Appeals and on the Adjustment Board at the same time. Members, after the initial appointees, were to hold office for a period of six years, thus securing a continuity of policy in the board.

Although all the nine members of the Board of Labor Appeals were to take part in the hearings and the discussion of any dispute presented to them, only the members representing the employers and the employees were to have the right to vote on a question. Five of these six votes were to be necessary to a decision. Publicity was to be given the decisions reached. The board was also to make investigations of a general nature into the relations of the railroads to the employees and was to publish information thereon from time to time. Certain records and documents were to be turned over to the Labor Board by the United States Board of Mediation and Conciliation created under the Newlands law.

Any railroad employer breaking a contract based upon the decision of the board and any union counseling such a breach of contract were to be liable to damages in a manner prescribed.

The bill provided no means of enforcement. In this respect the voluntary cooperation of the roads and of the men was to be relied upon exclusively. As will appear in the discussion of the Senate proposal, this was in marked contrast with the proposal favored by the latter body. The penalty for the breaking of contracts, as provided in the House bill referred to above, was to apply only in those cases in which the contestants had agreed to submit the controversy to the Adjustment Board. In this respect it was analogous to the provision for a court review incorporated in the Erdman law in 1898.

#### THE SENATE BILL.

While the House of Representatives was engaged in an attempt to provide for the return of the railroads to private management, similar action was being considered in the Senate. Senate bill 2906 had been introduced by Senator Cummins, of Iowa, on September 2, 1919. A subcommittee of the Committee on Interstate Commerce held hearings on this bill from September 23 to October 23.<sup>18</sup> At these hearings representatives of the railway brotherhoods were given an opportunity to present their views. These men centered their attack mainly upon section 29 of the bill, the section making a strike unlawful. Mr. Stone, of the Brotherhood of Locomotive Engineers, indicated the attitude of the employees in his testimony:

This legislation, speaking of Senate bill No. 2906, is, in my opinion, by all odds the most reactionary that has been proposed in Congress in connection with the railroad question. \* \* \*

<sup>18</sup> U. S. Congress. Senate. Committee on Interstate Commerce. Prevention of Strikes. Hearings on S. 2906, 66th Cong., 1st sess. (1919).



It is wholly, solely, and entirely in the interests of capital and can never be supported by any intelligent group of informed public opinion.<sup>19</sup>

Mr. Doak, of the Brotherhood of Railroad Trainmen, protested vigorously against the antistrike clause, insisting that the enactment of this legislation would do more than anything else to destroy the power of the more conservative elements in the labor world, the destruction of which would bring on strikes against the law; that this would force the laboring men into the ranks of the radicals in self-defense.<sup>20</sup> Without a single exception the labor leaders at the hearings expressed similar views.

The subcommittee concluded its hearings, and on November 10 Mr. Cummins presented a report and Senate bill 3288.<sup>21</sup> Sections 25, 26, 27, and 28 of the new bill applied to the railway labor problem. In spite of the opposition expressed by labor leaders the bill included an antistrike provision. It was made unlawful to "aid, abet, counsel, command, induce, or procure the commission or performance of any act" which would interfere with interstate commerce. Senator La Follette, of Wisconsin, in his minority report, held that the scope of this bill was so broad as to make it unlawful to give assistance to the famishing members of the family of a man on strike.<sup>22</sup>

The bill provided for three regional boards of adjustment and for one committee on wages and working conditions. These boards were to have jurisdiction over all controversies between the roads and the men which were incapable of settlement by conference. Each of the four boards was to be composed of an equal number of representatives of the men and of the managers, being nominated by these interests, respectively. The adjustment boards were to have jurisdiction over all disputes other than those involving wages and working conditions. The latter were to be under the special jurisdiction of the board established for that purpose. But no decision was to be final until approved by the transportation board, a new board the members of which were to be appointed by the President. This board was to take over a great deal of the administrative work theretofore done by the Interstate Commerce Commission.

One can see the analogy between the Senate plan and that applied during the Government administration of the railroads. The three agencies correspond roughly to the Railway Adjustment Boards, the Board of Railroad Wages and Working Conditions, and the Director General of Railroads, respectively. Disputes that could not be settled otherwise were to be appealed to the transportation board just as they had been appealed to the Director General of Railroads. And, likewise, the approval of the transportation board was necessary to make effective any decision arrived at by the subordinate agencies as the approval of the Director General had been necessary under Federal control.

Senator La Follette probably expressed the feeling of the many people opposed to this bill when he said:

I submit that this bill which they have prepared and reported to the Senate contains every vice which is supposed to inhere in Government ownership and

<sup>19</sup> U. S. Congress, Senate, Committee on Interstate Commerce. *Prevention of Strikes*. Hearings on S. 2906, 66th Cong., 1st sess. (1919), p. 47.

<sup>20</sup> *Idem*, p. 105.

<sup>21</sup> S. Rept. No. 304, 66th Cong., 1st sess.

<sup>22</sup> *Idem*, Part II, p. 10.

none of its virtues. It has every weakness which attaches to private ownership, but none of the advantages commonly claimed for that system.<sup>22</sup>

He objected vigorously to having authority to pass finally upon wages reposed in the transportation board, in the selection of the members of which labor had no voice.

It is not necessary to follow out the discussion of the House bill and of the Senate bill in the two branches of Congress. The different members expressed views which paralleled those already brought forward in the hearings which had been held at length.

The analysis of these two measures has been given in some detail because of their close connection with the law that was enacted by Congress as the transportation act of 1920. A consideration of the different proposals shows clearly that Congress had given a great deal of consideration to the railway labor problem and that the law enacted was the result of months of unceasing work in the preparation of the bill.

#### UNITED STATES COMMISSIONER OF MEDIATION AND CONCILIATION ON COMPULSORY ARBITRATION.

In connection with the new law to be enacted for the adjustment of railway labor disputes it is of interest to note the recommendations made by Judge Chambers, the Commissioner of Mediation and Conciliation. On December 1, 1919, while this whole problem was in process of solution, the commissioner made his report to the President. He mentioned the apparently growing sentiment for compulsory arbitration of railway labor controversies and expressed himself in opposition to such a measure. However, in the event that Congress was determined to pass a compulsory arbitration law he suggested the terms of the kind of law which he would consider the least undesirable.<sup>23</sup>

His recommendation, briefly stated, provided that every effort be made to get the controversy adjusted by mediation and conciliation, as under the provisions of the Newlands law. In the event of failure the board should so report to the President. The President should be authorized, if he saw fit to do so, to appoint a given number of arbitrators from a group of 10 men nominated by the contestants and also from a number of outsiders to represent the public. If both sides accepted the award of the board the case should end there. But if either side failed to agree to the conclusions of the board, the award was to apply for a period of three months regardless of such objection.

During the three months' period the application of the award was to be studied by a commission appointed by the arbitration board from names suggested by the contesting parties. The application committee was to be allowed to call the board together at any time within this period in order to get an interpretation on the points of the award. At the expiration of the three months, or before if requested by the application committee, the board was to reconvene to hear a report from the application committee. The award was to be binding. Even after rendering the award by a majority of the board, how-

<sup>22</sup> S. Rept. No. 304, 66th Cong., 1st sess., Part II, p. 10.

<sup>23</sup> U. S. Commissioner of Mediation and Conciliation. Report \* \* \* 1913-1919, pp. 15-17.

ever, either side to the controversy might reject the award. But it should be binding for a period of 30 days following the receipt by the board of a written notice of the rejection and a statement of the reasons for such refusal to accept the award.

The experience of the Commissioner of Mediation and Conciliation should justify careful consideration of his recommendations. This, it will be seen, is compulsory arbitration with qualifications. It compels for a period only, and before the expiration of that period public opinion would have had ample time within which to reinforce the decision of the board if it seemed to the public that the award were just. But this Congress was not to pass a measure so drastic as that.

#### THE CONFERENCE BILL.

The law which finally passed both Houses of Congress as the transportation act of 1920<sup>24</sup> was that recommended by a conference committee of the Senate and the House. The conference report was arrived at only after the conferees had given eight days to the work of harmonizing the bills of the Senate and the House. Mr. Cummins said that he had submitted with reluctance to the elimination of the antistrike provision; that he had done so only after it became evident that the House would not approve such a measure. He realized that some bill must be passed if Congress was to prevent what would otherwise be chaos in the railroad field.<sup>25</sup>

The new bill combined many features presented in the two bills discussed above and eliminated some of those which had provoked the keenest opposition in the hearings and in the debates. One section, Title III, is called "Disputes between carriers and their employees and subordinate officials." Its principal provisions are:

Both the employers and the employees are to exert every reasonable effort by means of conference and otherwise to adjust any dispute that may interrupt interstate commerce. Failing to reach an agreement, they shall refer the controversy to the railroad board of labor adjustment authorized by the act.

Local or regional railroad boards of labor adjustment may be established by voluntary agreement between any carrier or group of carriers and any employees. Such boards are empowered to decide disputes involving grievances not decided by conference as mentioned above. The services of any such board may be invoked by any carrier; by a group of not less than 100 employees; upon the initiative of the board itself; or by request of the Railroad Labor Board in case an interruption of traffic seems imminent.

The Railroad Labor Board is to consist of nine members. Three members are appointed by the President from a group of six names suggested by the employees, three from a group of six names suggested by the carriers, and three members named directly by the President. The President is to fill any vacancies that occur and is to appoint any member representing the employees or the carriers if they fail to suggest names within a given time.

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<sup>24</sup> H. Rept. No. 650, 66th Cong., 2d sess.

<sup>25</sup> Congressional Record, Vol. LIX, p. 3328 (Feb. 23, 1920).

No member of the Railroad Labor Board shall, during his term of office, hold a position in a railway labor organization or be financially interested in such organization. Neither shall he be pecuniarily interested in any carrier coming within the law.

The Railroad Labor Board is to hear any dispute regarding grievances, rules, or working conditions which an adjustment board certifies it has been unable to settle, or which it seems such board will be unable to settle within a reasonable time. The Labor Board can, also, on its own initiative, take any dispute into consideration if it seems necessary to take the question from the adjustment board. In case no adjustment board has been organized the disputes can come before the Railroad Labor Board in one of three ways:

- (1) Upon application of any carrier or any organization of employees;
- (2) Upon written petition from not less than one hundred unorganized employees;
- (3) Upon the board's own motion.

A dispute concerning wages can come before the Railroad Labor Board in any one of three ways as mentioned above. Here the adjustment board has no jurisdiction. The Railroad Labor Board also has the power, within 10 days from the reaching of an agreement, to suspend any settlement which may have been arrived at by conference between the employers and the employees if such an agreement is likely to necessitate an increase in traffic rates of the carriers.

The law states definite criteria for the determination of a "fair wage":

The scale of wages paid for similar kinds of work in other industries;  
 The relation between wages and the cost of living;  
 The hazards of the employment;  
 The training and skill required;  
 The degree of responsibility;  
 The character and the regularity of the employment; and  
 Inequalities or increases in wages or treatment, the results of previous wage orders and adjustments.

Five of the nine votes are necessary to a decision. And if it is a question involving wages at least one of the representatives of the public group must concur in the decision. Full publicity is to be given the decisions of the board. In fact, this is the only means by which it is hoped to secure the acceptance of the awards made. The board is instructed, further, to investigate the relations between the employers and the employees and to publish its conclusions from time to time.

All the necessary machinery is provided for the subpœnaing of witnesses, taking testimony, and for making of rules and regulations for the guidance of the board.

The railroads are not permitted, prior to September 1, 1920, to reduce wages as fixed by the Railroad Administration during the period of Federal control. Such a reduction is made punishable by fine.

The Railroad Labor Board may publish its conclusions in case it considers that the findings of any adjustment board are violated. This shows, again, the reliance that is placed upon the power of an enlightened public opinion to force the acceptance of the awards upon both sides to the controversies.

The powers of the Board of Mediation and Conciliation created by the Newlands law are not to extend to any controversy which "may be received for hearing and decision by any adjustment board or the Railroad Labor Board."

This conference report was accepted by the House of Representatives on February 21 by a vote of 250 to 150.<sup>26</sup> On February 23 the Senate took like action by a vote of 47 to 17.<sup>27</sup>

#### ACT OF 1920 AND THE NEWLANDS LAW.

The language of the transportation act of 1920 is sufficiently clear to call for no extended analysis or for much difference of opinion as to its interpretation. There is one possible exception to this however. The section in which the United States Board of Mediation and Conciliation is mentioned says that the latter board's power shall not extend to any controversy which "may be received by" the newly appointed agencies. Under any ordinary interpretation this would seem to indicate that the work of the United States Board of Mediation and Conciliation had practically come to an end.

It has been suggested, however, that a more liberal interpretation should be placed upon this part of the new law; that it only takes from the jurisdiction of the Mediation Board any controversy in which the dispute shall have come up for the consideration of the Railroad Labor Board, i. e., that just so long as the Railroad Labor Board postpones the consideration of any matter the jurisdiction of the Mediation Board is as formerly. If this be the correct interpretation the Mediation Board might continue to adjust controversies with the results that some of them would never come before the Railroad Labor Board. But this suggestion, it appears from the evidence at hand, is probably a violation of the intention of Congress in the enactment of the new legislation.

In a letter to Chairman Good, of the Appropriations Committee, Judge Chambers, of the Mediation Board, stated that there was still much work for his board to do.<sup>28</sup> The excerpt from his letter does not indicate what he considers the line of demarcation between the work of the two agencies. But the railway brotherhood leaders have been quoted in Congress as saying that the Newlands law no longer applies to their controversies and that, so far as they are concerned, the law might as well be removed from the statute books.<sup>29</sup> Since in the very nature of the case the aid and the assistance of the labor element are necessary to the proper functioning of the Board of Mediation and Conciliation, there seems to be little doubt that this board has been shorn of most of its power and of its responsibilities.

If the section in question is to be interpreted literally, then the powers of the Board of Mediation and Conciliation extend now only to those controversies involving employees of the interurban and electric railways, carriers not included within the scope of the transportation act of 1920. In the event that this interpretation is the correct one, the Newlands board has lost most of its excuse for existence. Mr. Esch, in the debate in the House of Representatives on May 7,

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<sup>26</sup> Congressional Record, Vol. LIX, p. 3316 (Feb. 23, 1920).

<sup>27</sup> Idem, p. 3349.

<sup>28</sup> Idem, p. 6652 (May 6, 1920).

<sup>29</sup> Idem, pp. 6653, 6654 (May 6, 1920).

1920, insisted that the sole reason for the continuance of the Newlands board was for the purpose of having some tribunal through which the disputes on electric and interurban roads could be adjusted.<sup>30</sup> Since Mr. Esch had charge of the bill in the House his testimony seems to be conclusive as to the intent of Congress in the enactment of the labor provisions of the new legislation.

Had the Newlands law been applied with success within the last few years undoubtedly the Members of Congress would have continued it in such a way as to make it a part of the machinery for the settlement of disputes at the present time.

Representative Casey, of Pennsylvania, tried to legislate the Newlands law out of existence on the ground that it had become a useless agency. To this end he proposed an amendment to the appropriations bill in the House on May 6, 1920.<sup>31</sup> The explanation made by Mr. Esch, referred to above, prevented the passage of this amendment.

There still seems to be another way in which the services of the Board of Mediation and Conciliation may be invoked in the settlement of railway labor disputes if the law of 1920 is not interpreted in such manner as to deny the board any power in this field. The 1920 law makes no provision for mediation in railway labor disputes. It provides, however, that the disputants must convince the Railroad Labor Board that they have tried all possible means of adjustment before the Railroad Labor Board will take the controversy under consideration. Should the Railroad Labor Board rule that such agencies as those offered by the Mediation Board come within the means which the disputants should use before appealing the case higher, i. e., should "every reasonable effort" be interpreted to include the invoking of the services of the Mediation Board, the Newlands board might function in the adjustment of controversies which need not go so far as to the Railroad Labor Board. To date the Railroad Labor Board has not indicated that it will make such use of the Mediation Board.

The Labor Board has refrained from making such a ruling, however. On the contrary, it has ruled that, in the event of a disagreement on the interpretation of an award, and a failure to adjust this disagreement by conference committees, the dispute shall again be referred to the Railroad Labor Board for a ruling.<sup>32</sup> It is possible that the board would have been within the law had it ordered that the contending parties should attempt to adjust their controversy by means of the Mediation Board before bringing it back to the Railroad Labor Board for a review and a final decision. While this is a possibility, there is still ground for believing that such a ruling would have been a violation of the intent of Congress in passing the new law.

#### OPERATION OF ESCH-CUMMINS LAW.

It is too early as yet to appraise conclusively and accurately the labor provisions of the Esch-Cummins law. The law provided that prior to September 1, 1920, the period of the guaranty, the carriers

<sup>30</sup> Congressional Record, Vol. LIX, p. 6710.

<sup>31</sup> Idem, p. 6652.

<sup>32</sup> U. S. Railroad Labor Board. Decision No. 2, July 20, 1920.

could not reduce wages below those paid by the Director General of Railroads.

The railway adjustment boards, provided for by the law, have not played an important part to date. Two such boards have been created, one for the western and the other for the southeastern territories. These boards will handle no wage matters, but will handle disputes growing out of personal grievances, or out of the interpretation or application of the schedules, agreements, or practices, which can not be adjusted by direct conference between the representatives of the individual railroads and the employees. Agreements for the creation of such boards in the eastern and southwestern regions have not yet been concluded.

In the early part of 1921 the brotherhood leaders proposed the formation of such adjustment boards. But they were to be based upon the acceptance of the principle of the national agreements, and the carriers refused to cooperate on any basis other than that of the individual agreement.<sup>33</sup> Should the theory of the national agreement be accepted these adjustment boards could relieve the Railroad Labor Board of a great deal of work in the settlement of minor disputes which need not take up the time and the energy of the members of the Railroad Labor Board.

The absence of these adjustment boards has forced the Railroad Labor Board to divide itself into three groups to handle matters that would ordinarily be settled without appeal to it.<sup>34</sup> It seems unfortunate that so much of the time of the members of the Railroad Labor Board should be given to this kind of work, leaving them much less opportunity to devote themselves to the adjustment of the larger issues.

The operation of the law, then, can be examined only in connection with the work of the Railroad Labor Board of nine members as provided by the statute.

That the board has not been idle is attested by the fact that from April 20, 1920, the date of the first decision, to the end of the calendar year 1920, 42 decisions were made. At the time of the present writing (Oct. 1, 1921) the number has passed the 200 mark.

These decisions cover not only the questions relating to wages, but also all the factors which may lead to controversy between the management and the men. In fact, the larger number of decisions have involved matters in which relatively few employees were engaged. The board has passed, among other matters, upon such questions as seniority privileges and rights; the reinstatement of dismissed employees; the proper scale of pay for deadhead service; the refunding of deducted pay; the assignment of work to the proper classes of labor; the amount of pay to be awarded during illness of the men; and many other controversies growing out of equally minor considerations.

The board, in its initial decision<sup>34</sup> established a precedent for its subsequent action. In this case it refused to hear the case of certain employees on the ground that they had not made every reasonable effort, by conference with the management, to adjust the difficulty before bringing it to the Railroad Labor Board. Such action,

<sup>33</sup> *Railway Age*, Vol. LXX, p. 79 (Jan. 7, 1921).

<sup>34</sup> U. S. Railroad Labor Board. Decision No. 1.

the decision held, violated both the provisions of the transportation act and the general orders given out by the Railroad Labor Board. It was shown here in the beginning that the Railroad Labor Board did not propose to enter into the settlement of disputes which might be adjusted without appeal to it.

Several of the decisions of the board have been of a nature such as to show the operation of the law most satisfactorily. A few of the most significant decisions, the ones that stand out and which indicate what may reasonably be anticipated from the new board, will be discussed briefly in this connection.

On July 20, 1920, the Railroad Labor Board handed down Decision No. 2. In March, 1920, the employers and the employees involved had tried to adjust this controversy through conference as required by the transportation act of 1920. Wages, rules, and working conditions were all involved. The board began its hearings in Washington and later continued them in Chicago, its permanent headquarters. According to the board approximately 90 per cent of the railway employees of the country were parties to this dispute.<sup>35</sup> Early in 1919 some of the employees had requested wage advances to meet the increased cost of living. Other groups of employees gradually filed similar claims. On August 25 President Wilson had asked the employees to await a better opportunity to determine whether the high cost of living was to be temporary or permanent. Nothing happened to reduce the costs and in February, 1920, the organizations again demanded increased pay. The Director General of Railroads declined to take any action on the ground that Federal control was nearing an end. The President supported him in this position, but promised that he would use his influence to have Congress enact a law under which the case could be heard and decided. On February 28 the transportation act creating the Railroad Labor Board was passed.

The Railroad Labor Board, when it became apparent that much time would be required to reach a decision, announced on June 12 that the decision would be retroactive to May 1, 1920. It decided, further, to limit this decision to the question of wages, leaving for a later date the questions of rules and working conditions. Such rules and working conditions were not to be changed except by consent of both parties or, if they failed to agree, by a decision of the Railroad Labor Board.

In its decision the Railroad Labor Board held that the increase in prices had driven wages for the railroad employees below the pre-war standard of living and that the wages for the railroad workers had not advanced so much as had the wages for labor of a similar kind in other lines of work.<sup>36</sup> Upon this dual basis a substantial increase was granted. The increase amounted, according to the board, to approximately 22 per cent, or to a total of \$600,000,000 annually.<sup>37</sup>

Article 14 of the decision provided that in the event of disagreement in the interpretation of the award the difference was to be adjusted by conference. And, if this failed, the question was to

<sup>35</sup> U. S. Railroad Labor Board. Announcement, May 19, 1920.

<sup>36</sup> Data for above account are from U. S. Railroad Labor Board. Decision No. 2.

<sup>37</sup> U. S. Railroad Labor Board. Wage Series, Report No. 1 (August, 1920).



be resubmitted to the Railroad Labor Board. As was to have been expected, the board had to issue many supplementary orders and addenda in this connection.

The transportation law provides in section 313 that in case there seems to be a violation of the award of the board, the board can investigate the supposed violation and publish the results of its findings. Late in 1920 the revenues of the Erie Railroad Co. fell off to such an extent that the management held conferences with the train-service employees and succeeded in getting a modification of the wage schedules with them. In January, 1921, without conference with the employees concerned, the road announced a decrease for those who were members of the maintenance of way and of the dispatchers' organizations. There was a question as to whether this reduction, without conference, constituted a violation of decision No. 2. On February 12 the Railroad Labor Board notified the Erie Railroad Co. that no reductions in pay were to be allowed except through the means already suggested, i. e., no reductions unless mutually agreed upon by both sides or authorized by the Railroad Labor Board after the contending parties had failed to reach an agreement. Subsequently the Erie Railroad Co. held negotiations with the men in question, but refused to restore the old wages in the meantime. The employees refused to negotiate on such a basis and appealed to the Railroad Labor Board. The Erie Railroad management contended that conditions had changed since the time of decision No. 2 and that, on this basis, it was warranted in reducing wages.

In decision No. 91 the board found that the Erie Railroad Co. had violated the terms of decision No. 2 and accordingly ordered it to restore the old rates of pay. The road, it held, had no authority to decide when new conditions warranted a change in wages. Such an adjustment was to be made only through the conferences provided for in the statutes or, failing there, by an appeal to the Railroad Labor Board.<sup>38</sup> The Erie Railroad Co. complied with the order of the Railroad Labor Board and restored the old wages.<sup>39</sup>

This decision raises a rather nice point in the interpretation of the 1920 law. The Railroad Labor Board has given its interpretation, but, to date, no court has had occasion to pass upon this interpretation. Until overruled by a court decision or by action of the board itself this means that the management is denied the power to adjust wages to new business conditions without the consent of the employees, pending a decision of the Railroad Labor Board. This seems to be the particular feature of the labor provisions of the law to which the managers are most opposed. Mr. Howard Elliott, chairman of the Northern Pacific Railway Co. has insisted that it would be much better to give the railway management the initiative in the reduction of wages.<sup>40</sup> He suggests that the railway officials should be permitted to make adjustments to new conditions without the necessity of delaying until a decision could be had from the Railroad Labor Board. He would give the board power to review the action of the management and to make its findings conclusive and retroactive.<sup>41</sup> In this

<sup>38</sup> Data are from U. S. Railroad Labor Board. Decision No. 91.

<sup>39</sup> Railway Age, Vol. LXX, p. 709 (Mar. 18, 1921).

<sup>40</sup> U. S. Congress, Senate, Committee on Interstate Commerce. Hearings on S. Res. 23, Railroad Revenues and Expenses \* \* \* 67th Cong., 1st sess., pp. 408, 409 (1921).

<sup>41</sup> "If the management do wrong, overrule it and make it do right, but do not prevent it from acting until the approval and permission of a regulating authority can be obtained." (Idem, p. 408.)

way, according to Mr. Elliott, the worker can be assured that he will get justice and the railroad, at the same time, will be able to take action that may be necessary to prevent insolvency and failure. As it is now, wages can not be reduced until after the board has passed upon the case. And its action may be so long delayed as to cause serious financial loss to the carrier. Obviously, it is not feasible to make the decision retroactive as to wages should the board grant a decrease under the present arrangement. Mr. Elliott probably represents the sentiment of the majority of the executives in this respect.

The Railroad Labor Board has shown that it will act to reduce wages as well as to increase them. The New York Central Railroad Co., on March 19, 1921, filed a petition to have wages on its road reduced. Other roads followed the lead of the New York Central Railroad Co. in this respect and the Railroad Labor Board set a date to hear complaints from all the carriers and the arguments of the employees. On May 17 the board announced that its decision would be given June 1 and would become effective July 1, 1921. The board granted decreases in wages, asserting that business conditions had changed; that there had been a decrease in the cost of living; and that wages for similar work in other fields had decreased.<sup>42</sup> The reductions ranged from 7 to 18 per cent, averaging approximately 12 per cent, and are estimated to save the roads approximately \$400,000,000 annually.<sup>43</sup>

The executives of the 16 recognized railroad labor organizations met in Chicago on July 5, 1921, to adopt a plan for concerted action in connection with the reductions in pay granted by decision No. 147. It was agreed to take a strike vote to determine whether or not the decision should be accepted, in the meantime giving notice that it was accepted under protest. Pending the taking of this vote representatives of the men were appointed to meet with the executives and "clearly place them on record as to whether or not they will request further decreases in rates or compensation, the abolition of schedule rules or regulations or the elimination of time and one-half."<sup>44</sup>

The members of the Federated Shop Crafts announced that they had already taken a strike vote and had decided to reject the award, but that they would await the taking of a vote by the other workers affected before they acted upon this vote.<sup>44</sup>

The conference between the representatives of the brotherhoods and of the railroads was held in August. The workers at this meeting submitted three questions to the management: Would they restore the rates of pay in effect on June 30, 1921? Would they withdraw demands for further reductions in pay? Would they withdraw demands for the discontinuance of time and one-half for overtime and agree not to request a schedule revision for a stated time? The managers declined to give any such assurances to the employees.<sup>45</sup>

The vote by the Brotherhood of Railroad Trainmen showed a majority of approximately 90 per cent favorable to a strike. But President W. G. Lee announced that no action would be taken by his organization pending the vote by the other brotherhoods. He

<sup>42</sup> U. S. Railroad Labor Board. Decision No. 147 (June 1, 1921).

<sup>43</sup> Railway Age, Vol. LXX, p. 1254 (June 3, 1921).

<sup>44</sup> Labor, Vol. II, July 16, 1921.

<sup>45</sup> Labor, Vol. III, Aug. 20, 1921.

sent the chairmen of the local unions home with instructions to confer with the grievance committees and to get their approval or disapproval of a strike.<sup>46</sup> To date (October 1, 1921) the vote by the other brotherhoods has not been counted. It is freely predicted in some quarters that this vote will be favorable to a strike. But it should be remembered that the leaders have it within their power to veto such a strike order if they think this action desirable.

It is recalled that when decision No. 2 was rendered the Railroad Labor Board announced that it would at a later date decide the controversy as to rules and working conditions. The especial contention here centered around the question of the relation of the national agreements which gained such headway during the period of Federal control. The board rendered its decision, No. 119, April 14, 1921, the same to become effective on July 1.

The men contended that national agreements were only reasonable rules and that if they were discontinued the result would be much loss of time in new negotiations and a great deal of added irritation. They also urged that to require local conferences "would be to expose the local organization on the several carriers to the entire power and weight of all the carriers acting through the Association of Railway Executives on the conferring carrier; that such a disparity of force would produce an inequitable result highly provocative of discontent and likely to result in traffic interruptions." The carriers, on the other hand, insisted that the conditions were local and could be handled with better effect locally; that the differences in conditions should have corresponding differences in rules and working conditions.<sup>47</sup>

The board held that there was merit in the contentions of each side; that certain rules were of a general nature and could be regulated by national agreements while others could be decided with better effect locally. It therefore ordered that the national agreements be abrogated. The subject was remanded to the carriers and the employees with instructions that they get together and form new rules to take the place of the old ones. The board reserved the right to discontinue the agreements at an earlier date than July 1 should it appear that the employees were unnecessarily delaying the negotiations; it also reserved the right to continue them later than July 1 should the managers delay negotiations.

In the same decision the board recognized the principle of the 8-hour day, but added that it "should be limited to work requiring practically continuous application during 8 hours" and that "for 8 hours' pay 8 hours' work shall be performed except by train service employees, who are paid on a mileage as well as an hourly basis." The order further gave explicit recognition to the labor unions and to the principle of collective bargaining. To this extent the Railroad Labor Board authorized the continuation of the principle championed by President Wilson and approved by Congress in the passage of the Adamson law, a principle applied as nearly as possible under the Railroad Administration during Federal control.

In this decision the board outlined 16 principles which were to be used by the carriers and the employees in arriving at schedules

<sup>46</sup> New York Times, Sept. 30, 1921, p. 14.

<sup>47</sup> U. S. Railroad Labor Board. Decision No. 119.

to take the place of the abrogated ones. One of the significant principles enunciated was to the effect that neither management nor men should discriminate against employees because of their membership or nonmembership in labor unions—a restatement of the provision of section 10 of the Erdman Act, the section declared unconstitutional by the Federal Supreme Court. Furthermore, the men were to decide who should represent them in negotiations with the management. The board, as did the Railroad Administration during the Federal control period, recognized the right of labor to organize and the principle of collective bargaining.

Thus neither side had secured all that it desired. The Railway Age, commenting on the decision, said that the solution seemed on the whole to be a “sensible one.”<sup>48</sup> The abrogation of national agreements was the part of the decision which appealed to the railroad management and the recognition of the principle of the 8-hour day and of that of collective bargaining did not altogether counteract the favorable attitude toward the decision on their part.

But this was not to be the end of the controversy. The railroads and the brotherhoods placed different interpretations on the decision. The management took it as an abrogation of the schedules with the train service employees, whereas the latter did not so construe it. Several controversies arose over the application of the decision. On June 16 the Railroad Labor Board rendered a decision in favor of the employees.<sup>49</sup> The decision said:

The Labor Board did not, nor could it under the provisions of the transportation act, 1920, include in Decision No. 119 any matter which was not properly before it as a dispute. Decision No. 119 did not, therefore, terminate the existing schedules or agreements of train, engine, and yard employees in the service of the carriers involved. Changes in such schedules or agreements, however, may be made after the required notice either by agreement of the parties or by decision of this board after conference between the parties and proper reference in accordance with the provisions of the transportation act and rules of the board.

In reaching new agreements the labor leaders insisted that the negotiations with the several roads be made by representatives of the unions, not by employees on the roads in controversy. The managers insisted that they be permitted to negotiate directly with their own employees. Consequently they reached an impasse and the Railroad Labor Board issued an order on June 27 postponing the operation of Decision No. 119 in which it had granted the abrogation of national agreements.<sup>50</sup> The Railway Age characterized this decision as a “surprise.” The board gave as its reason for postponing the order the fact that the contesting parties had not yet worked out anything to take the place of the national agreements, therefore:

Under the circumstances, in order that no misunderstanding may exist or unnecessary controversy arise, it appears necessary, purely as a *modus vivendi*, that the Labor Board establish a uniform policy to be pursued with regard to the undecided rules until such time as it is possible to make a decision.<sup>50</sup>

The right of the employees to be represented by their unions became a vital issue in the summer of 1921. The federated shop crafts

<sup>48</sup> Railway Age, Vol. LXX, p. 968 (Apr. 22, 1921).

<sup>49</sup> U. S. Railroad Labor Board. Interpretation No. 2 to decision No. 119.

<sup>50</sup> U. S. Railroad Labor Board. Addendum No. 2 to decision No. 119.

have been a party to most of these contests. Among others, the Texas & Pacific Railway insisted that it had the right to negotiate with the crafts separately. But the Railroad Labor Board, on June 7, 1921,<sup>51</sup> ruled that the conditions of work in the crafts was of such a similar nature that the employees had the right to work as a unit in the negotiations with the railroad, provided their federation represented a majority of the workers in each craft. Since that time the board has reiterated this view in a number of decisions. In decision No. 173 it was even more specific in holding that the employees had a right to insist that the agreement should be made with the labor organization, if the organization represented a majority of the workers. All these decisions were made on the basis of principle 15 of decision No. 119, which declared the right of the men to be represented by a labor organization if they so wished.

The most interesting of the controversies growing out of decision No. 119 was that between the Pennsylvania Railroad and System Federation No. 90 (shop crafts) of the American Federation of Labor.<sup>52</sup> The employees selected their general chairmen, who were authorized to negotiate rules and working conditions with the management. But the management refused to deal with these men on the ground that there was no proof to show that they represented a majority of the workers involved. As an alternative the company proposed to send out a company ballot for the selection of the representatives for the men. System Federation No. 90 officials objected to this on the ground that it would cause needless delay; that it violated the law in that no provision was made for the designation of organizations to represent the men; that it limited the choice of representatives to those actually in the employ of the company; and that it violated the law by having the employees represented regionally rather than as a unit organization.

The workers, in turn, prepared a ballot of their own for the selection of representatives. This ballot provided only for organizations, giving the men no opportunity to vote for individuals. The railroad refused to recognize this ballot as the employees had refused to recognize that of the company.

When the controversy was submitted to the Railroad Labor Board, Judge Seneff, representing the Pennsylvania Railroad, challenged the authority of the board in the perpetuation of the national agreements which had been entered into by the Railroad Administration and the employees, some of them only a short time before the return of the roads to private management. He emphasized the fact that the managements were not parties to these agreements. He also asserted that the prescribing of the 16 principles laid down by the Railroad Labor Board to be used as a guide in reaching new agreements constituted an unconstitutional act, that it amounted to a violation of "property rights which can not be taken away from either in this manner without infringement upon their constitutional rights."<sup>53</sup>

Judge Seneff insisted that the transportation law contemplated the formation of individual agreements between the carriers and the

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<sup>51</sup> U. S. Railroad Labor Board. Decision No. 153.

<sup>52</sup> For facts in this case see U. S. Railroad Labor Board. Decision No. 218.

<sup>53</sup> Pennsylvania Railroad Proceedings Before the U. S. Railroad Labor Board, July 8 and 9, 1921, pp. 64, 65.

employees and that the Railroad Labor Board should have complied with the intent of Congress in this regard. He also objected to the "summary manner" in which the postponing order had been issued without a hearing preceding it. But he expressed a willingness to cooperate with the board, even to the extent of carrying out the 16 principles formulated by the board for use in reaching the new agreements. He did not relent, however, in his insistence that Congress, in the passage of the law of 1920, intended to give the roads the right to bargain individually with the men.

Mr. Whiter, assistant to the vice-president in charge of the personnel of the railroad, testified that a majority of the employees of the road had already agreed upon new rules and working conditions, or were at that time negotiating to such an end.<sup>54</sup>

On July 26, 1921, the Railroad Labor Board handed down its decision in this case,<sup>55</sup> declaring void both the election on the company ballot and that taken on the shop craft ballot. The carrier, it held, was not justified in its refusal to let the men vote for an organization to represent them and the employees were not within their rights in providing that the men vote only for the organization to the exclusion of individuals. The men, according to the board, had as much right to vote for a representative not in the employ of the company as the carrier had to select a representative who was not a director or an officer of the road. The carrier had no more right to control the election of the men than one political party had to control the primary of a rival party. Neither did the carrier act in accordance with the provisions of the law in insisting upon regional representation. Accordingly, the board ordered a new election, the ballots for which were to be sent out by the employees at their own expense and in such manner as was prescribed by the board.

A controversy, in many respects similar to the one outlined above, arose between the Pennsylvania Railroad and the Brotherhood of Railway and Steamship Clerks et al. Here the employees objected to the company ballot. On August 3, 1921, the board gave its decision in this case.<sup>56</sup> This did not differ essentially from Decision No. 218.

The board held, however, that the carrier was right in insisting upon proof that the organization represented a majority of the workers involved; also in the contention that the employees concerned embraced more than one distinct class and hence that separate agreements should be made for each class. The decision contained a statement to the effect that this question did not in any manner involve the problem of the open or the closed shop; that both the union and the nonunion employees should be accorded every right and privilege secured to them by the enactment of the law of 1920. In this controversy, as in the one discussed above, the board ordered a new election in accordance with the regulations prescribed by it.

The Pennsylvania Railroad management, on September 26, 1921, notified the Railroad Labor Board that it would not take any part in the further hearings to be held at the request of the road. President Rea, in his notice of this action, said that the board had limited

<sup>54</sup> Railway Age, Vol. LXXI, p. 116.

<sup>55</sup> U. S. Railroad Labor Board. Decision No. 220.

unfairly the matter that could be presented at such hearing; that the fundamental issue was the right of the employer and the employee to deal with each other directly; and that his road denied the authority of the Labor Board to invade the province of the management of the company.<sup>56</sup> The railroad again asserted, through its management, that it would continue to deal directly with its employees as to the determination of wages and the rules and working conditions on the road. At the time of the present writing (Oct. 1, 1921) there is no indication as to how this controversy will end. In this case, rightly or wrongly, the Pennsylvania has refused to carry out the mandates of the Railroad Labor Board. This will afford, therefore, an opportunity to test the transportation act of 1920 as to its efficacy in the settlement of railway labor disputes. Unfortunately for the purposes of generalization, the industrial depression and conditions of unemployment of the present make this test one which can not be used, probably, as a safe guide to any prediction of what will happen when conditions become normal again.

Simultaneously with the negotiations on the Pennsylvania Railroad the federated shop crafts were conferring with other railways with a view to securing agreement upon new rules and working conditions. When they failed to reach an agreement the controversy was referred to the Railroad Labor Board. A decision was handed down on August 11, 1921.<sup>57</sup> The board approved seven rules and decided that they should apply to all the carriers in this controversy, 137 in number, unless some of the carriers had already agreed with their men upon rules governing these problems. Overtime was to be paid at the rate of time and one-half in certain instances and at the regular rate in other circumstances. Work on Sundays and holidays was to be paid at the rate of time and one-half excepting in specified cases where the work was necessary to certain operations.

The board asserted that the lack of uniformity in the period prior to Federal control made it possible to find precedents for almost any rule:

The board has therefore felt constrained to consider the principles of right and wrong involved in the proposals and counterproposals submitted to it, in the light of present conditions and industrial history.

This decision marks a distinct departure in the policy of the board in that it was the first one in which any member of the board had rendered a public dissenting opinion. Mr. A. O. Wharton, representing the federated shop crafts on the board, wrote a minority report in which he insisted that injustice had been done the men in that they were denied certain things that had been conceded them by the management voluntarily in the past:

It does not appear either just or reasonable that conditions which have been in effect from 10 to 20 years and even longer, established as a result of negotiation and mutual agreement between employers and employees, and not infrequently established where no organization of employees existed, can now be decided as unjust and unreasonable.

While they have not often become enthusiastic over the work of the Railroad Labor Board, both sides have indicated their approval in

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<sup>56</sup> Railway Age, Vol. LXXI, p. 619 (Oct. 1, 1921).

<sup>57</sup> U. S. Railroad Labor Board. Decision No. 222.

general. Mr. F. W. Sargent, solicitor general of the Chicago & North Western Railroad, at a meeting of the board on June 9, 1921, called the Railroad Labor Board the "greatest experiment ever undertaken in a civilized form of government."<sup>58</sup> He promised, for his road, absolute compliance with the orders of the board, even though this might mean insolvency. The labor leaders present expressed a similar desire to cooperate with the board. The accord seemed to be so complete that it was characterized as a "love feast."

But it should not be forgotten that this antedated the order postponing the abrogation of national agreements. Mr. Howard Elliott, of the Northern Pacific, on May 25, 1921, testified it to be his belief that no further legislation should be enacted before the law of 1920 had been given a fair trial under business conditions more nearly normal than those at the present time.<sup>59</sup>

Since the controversy with the Pennsylvania Railroad, and the decision in which Mr. Wharton dissented, both sides have been less optimistic in their view of the work of the Railroad Labor Board. Some of them have gone so far as to challenge the advisability of the compliance with the awards of such an agency. These are illustrations of the criticism which such an agency always encounters as soon as its decisions do not meet with the expectations of the parties affected thereby.

#### ESCH-CUMMINS LAW VERSUS EARLIER LAWS FOR ADJUSTMENT OF RAILWAY LABOR DISPUTES.

The transportation act of 1920 marks a new departure in the means adopted to adjust labor difficulties on the railways. It will be recalled that the law of 1888 provided for voluntary arbitration and for the appointment of Government investigation committees; the Erdman Act provided for mediation and conciliation and for voluntary arbitration; the Newlands law was merely an amplification of the Erdman law. A distinct step was taken in 1916 when, in passing the Adamson law to settle a railroad labor dispute, Congress assumed the responsibility of fixing the hours of service on the railroads by legislative enactment. Further changes were made during Federal control of the railroads when the Director General exercised the power to determine wages and working conditions, consulting and advising with the interested parties, however.

Prior to the period of Federal control the emphasis in all these measures had been placed upon the voluntary nature of the negotiations. The public, it is true, was represented on the investigation commissions to be created by the statute of 1888, as it was on the boards of arbitration to be established by that act and by the Erdman and the Newlands laws. It was also represented on the mediation boards of the latter two acts. But in all these cases the public representation was more in the nature of that of an impartial judge rather than that of an interested party. This public interest became

<sup>58</sup> Railway Age, Vol. LXX, p. 1390.

<sup>59</sup> U. S. Congress. Senate. Committee on Interstate Commerce. Hearings \* \* \* on S. Res. No. 23, 67th Cong., 1st sess., p. 404.



the paramount one in the passage of the Adamsen law and also in the machinery set up by the Director General of Railroads during the Federal control era.

The law of 1920 marks the final stage in the establishment of the primacy of the public interest. It is true that, in this respect, it does no more than was done under Federal control. But Federal control was exercised in a period of war emergency and is not to be considered apart from the extraordinary circumstances which gave rise to it. The 1920 statute, it seems, applies the same theory to the adjustment of controversies in time of peace.

Even now the voluntary cooperation of the contending parties is relied upon to settle these disputes in so far as possible by means of conference committees. But such settlement can be set aside by the Railroad Labor Board if it is of such a nature as to necessitate a change in traffic rates, charged by the railroads. Here, then, is the final capstone placed upon the recognition of the welfare of the general public.

Again, the terms of the law indicate that the enforcement of the awards is to be secured through the cooperation of the disputants. But with the present provisions for the giving of publicity to the awards of the Railroad Labor Board it would, indeed, be a rash contestant who would defy an enlightened public opinion crystallized by the information given out by the Railroad Labor Board.

Practically, then, the Government has taken the step which the logic of the situation demanded. The regulation of the income of the carriers by public authority implies the obligation to regulate the expenses also. Congress has now assumed that responsibility, an assumption, however, which makes use of the force of public opinion to effect a realization of the object had in view. What the ultimate result of such a transition and development is to be, it would be folly to predict. It looks now as if controversies on the railroads will never again be settled as though the contending parties were alone involved. Slowly, step by step, Congress has assumed a position from which the people will not allow it to recede. And it is possible that the legislation of the future will have to go even further in the way of an enforcement of the awards. Whether the end will be that of Government ownership, or a system of rigid and stringent Government regulation such as to minimize the danger of an interruption of interstate commerce, need not matter for the purpose. The problem is by no means a simple one nor can it be said that the final and the best solution has been reached. There is still the possibility that the present arrangement will fail or that it will be subjected to abuse. But enough has been done to indicate the growing feeling on the part of the public that this is a problem for governmental activity. If the present machinery, therefore, proves to be inadequate, new experiments will doubtless be tried.

## APPENDIXES.

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### APPENDIX A.—CONSTITUTIONAL ISSUES INVOLVED IN LEGISLATION TO SETTLE RAILWAY LABOR DISPUTES.

The United States Government has sufficient power to grapple with the problem of disputes and controversies on the railroads. That is, the provisions of the Constitution are such as to make valid any action necessary for the attainment of the end in view. This can be shown by reference to the provisions of the Constitution itself and by reference to the decisions of the Federal Supreme Court in which the powers of the Government in this field have been interpreted. There are several grounds on which action by the Federal Government can be sustained. These are the interstate commerce clause of the Constitution; the power of Congress to establish post offices and post roads; the power to establish military roads; and the police power.

Throughout the discussion of the labor problem on the railroads it has been held that the nature of the railway made this a peculiar field in which action by the Government was warranted. *Munn v. Illinois*<sup>1</sup> (1876) gave explicit recognition to this fact. The State of Illinois enacted a statute for the regulation of public warehouses. Justice Waite, giving the decision of the court, indicated that the public nature of the business regulated was such as to call for special legislation:

When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled for the common good to the extent of the interest he has created. He may withdraw his grant by discontinuing the use; but so long as he maintains the use he must submit to the control.

The above reasoning has been applied to the employee as well as to the one who has invested his capital in an undertaking devoted to the public use. The argument is that the worker upon entering the employ of a public-service corporation has to that extent given the public an interest in his work. Therefore the public, in the interest of self-preservation, should have the power to require an uninterrupted performance of the work contracted for by such worker. No worker, it is contended, is forced to enter the service of the public utilities. And if he goes into it with his eyes open as to his duties and as to his responsibilities he can expect that the public will insist upon some degree of regulation of his work, if such regulation becomes necessary as a means of securing continuity of operation.

#### INTERSTATE COMMERCE.

Under the interstate commerce clause of the Constitution regulation of labor difficulties on railroads can be defended. It is not considered necessary that the Constitution express specifically the right of the Government in this particu-

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<sup>1</sup> 94 U. S. 113.

lar. The decision in *McCulloch v. Maryland*<sup>2</sup> has established firmly the doctrine of implied power. On that basis the Federal Government, admitting the right to regulate interstate commerce, can adopt any means appropriate for the proper safeguarding and protection of that commerce.

The court has defined the things that come within the meaning of the term "interstate commerce." Justice Johnson, one of the justices giving a decision in *Gibbons v. Ogden* (1824), said explicitly that labor legislation came within that power:

Commerce, in its simplest significance, means an exchange of goods; but in the advancement of society, labor, transportation, intelligence, care, and various mediums of exchange, become commodities and enter into commerce; the subject, the vehicle, and their various operations, become the object of commercial legislation.<sup>3</sup>

The decision in *Gilman v. Philadelphia*, although applying especially to commerce on water, defined the power of Congress in such a way as to make it an interesting one in connection with transportation on the railroads. Justice Swayne said:

The power to regulate commerce comprehends the control for that purpose, and to the extent necessary, of all the navigable waters of the United States which are accessible from a State other than those in which they lie. For this purpose they are public property of the Nation, and subject to all the requisite legislation by Congress. This necessarily includes the power to keep them open and free from any obstruction to their navigation, interposed by the States or otherwise; to remove any obstructions when they exist; and to provide, by such sanctions as they may deem proper, against the occurrence of the evil and for the punishment of offenders. For these purposes Congress possesses all the powers which existed in the States before the adoption of the National Constitution, and which have always existed in the Parliament of England.<sup>4</sup>

The contention here is that there is no reason to think that the power of Congress in legislating for the prevention of strikes, or rather of a tie-up of the transportation system of the country, is less than that which it has for keeping open the waterways over which it has jurisdiction.

#### INTERSTATE COMMERCE AND TRANSPORTATION OF MAILS.

Reference to one case will suffice to show to what length the power of Congress extends for the purpose of preventing an interruption of interstate commerce and the carrying of the mails. This case, *In re Debs*,<sup>5</sup> is one of the most interesting, as well as one of the most important, which the Federal Supreme Court has ever decided in the matter of the regulation of the labor end of interstate commerce and the carrying of the mails.

The decision of the court was discussed in Chapter II of this bulletin. Debs and others had been enjoined by a Federal court from combining for the purpose of interfering with the movement of trains in and around Chicago during the Pullman strike of 1894. They failed to obey the injunction and were adjudged guilty of contempt of court. The Federal Supreme Court refused to grant a writ of habeas corpus to the offenders. Mr. Justice Brewer asked whether the relation of the National Government to the movement of interstate commerce and the transportation of the mails authorized the Government in taking whatever means were necessary to prevent an interruption of such commerce and the movement of the mails. He said:

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<sup>2</sup> 4 Wheat. 316.

<sup>3</sup> 9 Wheat. 229, 230.

<sup>4</sup> 3 Wall. 724, 725.

<sup>5</sup> 158 U. S. 564.

As under the Constitution, power over interstate commerce and the transportation of the mails is vested in the National Government, and Congress by virtue of such grant has assumed actual and direct control, it follows that the National Government may prevent any unlawful interference therewith.

The entire strength of the Nation may be used to enforce in any part of the land the full and free exercise of all national powers and the security of all rights intrusted by the Constitution to its care. The strong arm of the National Government may be put forth to brush away all obstructions to the freedom of interstate commerce or the transportation of the mails. If the emergency arises the army of the Nation and all its militia are at the service of the Nation to compel obedience to its laws.

This would appear to be a clear recognition of the powers and of the obligation of the Government to secure the uninterrupted and continuous movement of interstate commerce and of the mails. Measures for the prevention of a tie-up of traffic because of a strike would come within the bounds of this decision.

### THE POLICE POWER.

The police power is another basis upon which legislation for the prevention of railway labor troubles can be supported. A decision apparently adverse to the extension of the power of Congress in legislating for the prevention of railway labor troubles was made in 1908, in *Adair v. U. S.*<sup>6</sup> The case involved the constitutionality of section 10 of the Erdman Act, the section which made it unlawful for a railroad to discharge an employee because of membership or nonmembership in a labor union. Mr. Justice Harlan held that the provision was invalid as an interference with the freedom of contract and a deprivation of property without due process of law:

\* \* \* We hold that there is no such connection between interstate commerce and membership in a labor organization as to authorize Congress to make it a crime against the United States for an agent of an interstate carrier to discharge an employee because of such membership on his part.

In obiter dicta, Mr. Justice Harlan said that in the individual wage contract the employer and the employee were on an equal basis and that no interference in this contract by the Government was justified. In his dissenting opinion, however, Mr. Justice Holmes held that this act was justified under the police power; that the employer and the employee were not of equal power in the individual wage contract:

I confess that I think the right to make contracts at will that has been derived from the word "liberty" in the amendments has been stretched to its extremes by the decisions; but they agree that sometimes the right may be restrained. Where there is, or generally is believed to be, an important ground of public policy for restraint, the court does not forbid it, whether this court agrees or disagrees with the policy pursued. It can not be doubted that to prevent strikes, and in so far as possible, to foster its scheme of arbitration, might be deemed by Congress an important point of policy, and I think it is impossible to say that Congress might not reasonably think that the provision in question would help a good deal to carry its policy along.

Mr. Justice Holmes dissented in the similar case of *Coppage v. Kansas*<sup>7</sup> (1915). A statute of Kansas made it illegal for an employer to declare the employment of a workingman conditional upon his agreement not to join a labor union. The statute was held invalid for the reasons that were said to apply in the *Adair* case. Mr. Justice Holmes said that the former case should be overruled. Mr. Justice Hughes concurred with Mr. Justice Day in a dissenting opinion:

<sup>6</sup> 208 U. S. 161.

<sup>7</sup> 236 U. S. 1.

It is therefore the thoroughly established doctrine of this court that liberty of contract may be circumscribed in the interests of the States and the welfare of the people. Whether a given exercise of such authority transcends the limits of the legislative authority must be determined in each case as it arises. The preservation of the police power of the States, under the authority of which that great mass of legislation has been enacted which has for its purpose the promotion of the health, safety, and welfare of the public, is of the utmost importance.

The constitutionality of two employers' liability acts (1906, 1908) has been before the United States Supreme Court. Both these cases involved the police power of the Federal Government. The first decision<sup>8</sup> (1908) declared the law as enacted by the Federal Government invalid. This was done, however, on the ground that the law applied to employees doing only an intrastate commerce, as well as to those engaged in interstate commerce. But the dissenting opinion of Justice Moody is relevant to the query here. He said:

It would seem, therefore, that when persons are employed in interstate or foreign commerce, as the employment is an essential part of that commerce, its terms and conditions and the rights and duties which grow out of it, are under the control of Congress, subject only to the limits on the exercise of that control prescribed by the Constitution. This has been the view always expressed or implied by this court.

The second employers' liability law was upheld by the Federal Supreme Court<sup>9</sup> (1912). The decision of the court as given by Mr. Justice Van Devanter defined the power of Congress over interstate commerce:

This power over commerce among the States, so conferred upon Congress, is complete in itself, extends incidentally to every instrument and agent by which such commerce is carried on, may be exerted to its utmost extent over every part of such commerce, and is subject to no limitations save such as are prescribed in the Constitution. But, of course, it does not extend to any matter which does not have a real or substantial relation to such commerce.

It would appear that this substantial relationship does exist between interstate commerce and the prevention of an interruption of the movement of such commerce because of strikes on the railroads.

Further evidence of the power of Congress to grapple with the situation is apparent in the decision of the Supreme Court in upholding the Adamson law in 1917.<sup>10</sup> Mr. Chief Justice White said that the establishment of the 8-hour day for railway employees was so evidently within the power of Congress that he would not discuss the matter. The law was upheld strictly as an emergency measure for the prevention of an interruption of interstate commerce. After having given a description of the threatened interruption, Mr. Chief Justice White said:

We are of opinion that the reasons stated establish that from the point of view of inherent power the act which is before us was clearly within the legislative power of Congress to adopt, and that in substance and effect it amounted to an exertion of its authority under the circumstances to compulsorily arbitrate the dispute between the parties by establishing as the subject matter of that dispute a legislative standard of wages operative and binding as a matter of law upon both parties, \* \* \* a power none the less efficaciously exerted by direct legislative act instead of by the enactment of other and appropriate means providing for the bringing about of such result.

The decision of *Adair v. U. S.*, in so far as the right to contract was involved, seems to have been overruled by this later decision:

In other words, considering comprehensively the situation of the employer and the employee in the light of the obligations arising from the public interest

<sup>8</sup> 207 U. S. 463.

<sup>9</sup> 223 U. S. 1.

<sup>10</sup> *Wilson v. New*, 243 U. S. 332 (1917).

and of the work in which they are engaged and the degree of legislation which may be lawfully exerted by Congress as to the business, it must follow that the exercise of the lawful governmental right is controlling. \* \* \* The capacity to exercise the right free from legislative interference affords no ground for saying that legislative power does not exist to protect the public interest from the injury resulting from a failure to exercise the private right.

An examination of the cases cited shows that the power of Congress in legislating for the prevention of railway labor strikes, or for the prevention of an interruption of the movement of interstate commerce for any reason, is ample to meet the situation at the present time in the United States. The only limitation is that placed upon the method of regulation, i. e., that it shall not violate any constitutional provision. Since the question of constitutionality is no barrier to the organization of some preventive agency, it remains for the American people, through Congress, to decide which of the possible methods is, in the long run, the best one and the one calculated to produce the desired results.

## APPENDIX B.—TEXT OF ACTS REGULATING RAILWAY LABOR DISPUTES.

### ACT OF OCTOBER 1, 1888.

[25 Stat. 501.]

SECTION 1. Whenever differences or controversies arise between railroad or other transportation companies engaged in the transportation of property or passengers between two or more States of the United States, between a Territory and State, within the Territories of the United States, or within the District of Columbia, and the employees of said railroad companies, which differences or controversies may hinder, impede, obstruct, interrupt, or affect such transportation of property or passengers, if, upon the written proposition of either party to the controversy to submit their differences to arbitration, the other party shall accept the proposition, then and in such event the railroad company is hereby authorized to select and appoint one person, and such employee or employees, as the case may be, to select and appoint another person, and the two persons thus selected and appointed to select a third person, all three of whom shall be citizens of the United States and wholly impartial and disinterested in respect to such differences or controversies; and the three persons thus selected and appointed shall be, and they are hereby, created and constituted a board of arbitration, with the duties, powers, and privileges hereinafter set forth.

SEC. 2. The board of arbitration provided for in the first section of this act shall possess all the powers and authority in respect to administering oaths, subpoenaing witnesses and compelling their attendance, preserving order during the sittings of the board, and requiring the production of papers and writings relating alone to the subject under investigation now possessed and belonging to the United States commissioners appointed by the circuit court of the United States; but in no case shall any witness be compelled to disclose the secrets or produce the records or proceedings of any labor organization of which he may be an officer or member; and said board of arbitration may appoint a clerk and employ a stenographer, and prescribe all reasonable rules and regulations, not inconsistent with the provisions of this act, looking to the speedy advancement of the differences and controversies submitted to them to a conclusion and determination. Each of said arbitrators shall take an oath to honestly, fairly, and faithfully perform his duties, and that he is not personally interested in the subject matter in controversy, which oath may be administered by any State or Territorial officer authorized to administer oaths. The third person so selected and appointed as aforesaid shall be president of said board; any order, finding, conclusion, or award made by a majority of such arbitrators shall be of the same force and effect as if all three of such arbitrators concurred therein or united in making the same.

SEC. 3. It shall be the duty of the said board of arbitration, immediately upon their selection, to organize at the nearest practicable point to the place of the origin of the difficulty or controversy, and to hear and determine the matters of difference which may be submitted to them in writing by all the parties, giving them full opportunity to be heard on oath, in person and by witnesses, and, also granting them the right to be represented by counsel; and after concluding its investigations said board shall publicly announce its decision, which, with the findings of fact upon which it is based, shall be reduced to writing and signed by the arbitrators concurring therein, and, together with the testimony taken in the case, shall be filed with the Commissioner of Labor of the United States, who shall make such decision public as soon as the same shall have been received by him.

SEC. 4. It shall be the right of any employees engaged in the controversy to appoint, by designation in writing, one or more persons to act for them in the selection of an arbitrator to represent them upon the board of arbitration.

SEC. 5. Each member of said tribunal of arbitration shall receive a compensation of ten dollars a day for the time actually employed. That the clerk appointed by said tribunal of arbitration shall receive the same fees and compensation as clerks of United States circuit courts and district courts receive for like services. The stenographer shall receive as full compensation for his services ten cents for each folio of an hundred words of testimony taken and reduced to writing before said arbitrators. United States marshals or other persons serving the process of said tribunal of arbitration shall receive the same fees and compensation for such services as they would receive for like services upon the process issued by the United States commissioners. Witnesses attending before said tribunal of arbitration shall receive the same fees as witnesses attending before United States commissioners. All of said fees and compensation shall be payable by the United States in like manner as fees and compensation are payable in criminal causes under existing laws: *Provided*, That the said tribunal of arbitration shall have power to limit the number of witnesses in each case where fees shall be paid by the United States: *And provided further*, That the fees and compensation of the arbitrators, clerks, stenographers, marshals, and others for service of process, and witnesses under this act shall be examined and certified by the United States district judge of the district in which the arbitration is held before they are presented to the accounting officers of the Treasury Department for settlement, and shall then be subject to the provisions of section eight hundred and forty-six of the Revised Statutes of the United States; and a sufficient sum of money to pay all expenses under this act and to carry the same into effect is hereby appropriated out of any money in the Treasury not otherwise appropriated. *And provided likewise*, Not more than five thousand dollars shall be expended in defraying the costs of any single investigation by the commission hereinafter provided for.

SEC. 6. The President may select two commissioners, one of whom at least shall be a resident of the State or Territory in which the controversy arises, who, together with the Commissioner of Labor, shall constitute a temporary commission for the purpose of examining the causes of the controversy, the conditions accompanying, and the best means for adjusting it; the result of which examination shall be immediately reported to the President and Congress, and on the rendering of such report the services of the two commissioners shall cease. The services of the commission, to be ordered at the time by the President and constituted as herein provided, may be tendered by the President for the purpose of settling a controversy such as contemplated, either upon his own motion, or upon the application of one of the parties to the controversy, or upon the application of the executive of the State.

SEC. 7. The commissioners provided in the preceding section shall be entitled to receive ten dollars each per day for each day's service rendered, and the expenses absolutely incurred in the performance of their duties; and the expenses of the Commissioner of Labor, acting as one of the commission, shall also be reimbursed to him. Such compensation and expenses shall be paid by the Treasurer of the United States, on proper vouchers, certified to by the Commissioner of Labor and approved by the Secretary of the Interior.

SEC. 8. Upon the direction of the President, as hereinbefore provided, the commission shall visit the locality of the pending dispute, and shall have all the powers and authority given in section 2, to a board of arbitration, and shall make careful inquiry into the cause thereof, hear all persons interested therein who may come before it, advise the respective parties what, if anything, ought to be done or submitted to by either or both to adjust such dispute, and make a written decision thereof. This decision shall at once be made public, shall be recorded upon proper books of record to be kept in the office of the Commissioner of Labor, who shall cause a copy thereof to be filed with the secretary of the State or Territory, or States or Territories, in which the controversy exists.

SEC. 9. In each case the commissioners who may be selected as provided shall, before entering upon their duties, be sworn to the faithful discharge thereof. The Commissioner of Labor shall be chairman ex officio of the commission, and may appoint one or more clerks or stenographers to act in each controversy only, which clerks or stenographers shall be compensated at a rate not exceeding six dollars per day each, and actual expenses incurred shall be reimbursed.



SEC. 10. The Commissioner of Labor shall, as soon as possible after the passage of this act, establish such rules of procedure as shall be approved by the President; but the commission shall permit each party to a controversy to appear in person or by counsel, and to examine and cross-examine witnesses. All its proceedings shall be transacted in public, except when in consultation for the purpose of deciding upon the evidence and arguments laid before it. The chairman of the commission is hereby authorized to administer oaths to witnesses in all investigations conducted by the commission, and such witnesses shall be subpoenaed in the same manner as witnesses are subpoenaed to appear before United States courts and commissioners, and they shall each receive the same fees as witnesses attending before United States commissioners: *Provided*, That said temporary board of commissioners shall have the power to limit the number of witnesses in each case where fees shall be paid by the United States.

SEC. 11. All fees, expenses, and compensation of this commission shall be paid as hereinbefore provided in section five of this act.

### ACT OF JUNE 1, 1898 (ERDMAN ACT).

[30 Stat. 424.]

The provisions of this act shall apply to any common carrier or carriers and their officers, agents, and employees, except masters of vessels and seamen, as defined in section forty-six hundred and twelve, Revised Statutes of the United States, engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water, for a continuous carriage or shipment, from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States.

The term "railroad" as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "transportation" shall include all instrumentalities of shipment or carriage.

The term "employees" as used in this act shall include all persons actually engaged in any capacity in train operation or train service of any description, and notwithstanding that the cars upon or in which they are employed may be held and operated by the carrier under lease or other contract: *Provided, however*, That this act shall not be held to apply to employees of street railroads and shall apply only to employees engaged in railroad train service. In every such case the carrier shall be responsible for the acts and defaults of such employees in the same manner and to the same extent as if said cars were owned by it and said employees directly employed by it, and any provisions to the contrary of any such lease or other contract shall be binding only as between the parties thereto and shall not affect the obligations of said carrier either to the public or to the private parties concerned.

SEC. 2. That whenever a controversy concerning wages, hours of labor, or conditions of employment shall arise between a carrier subject to this act and the employees of such carrier, seriously interrupting or threatening to interrupt the business of said carrier, the chairman of the Interstate Commerce Commission and the Commissioner of Labor shall, upon the request of either party to the controversy, with all practicable expedition, put themselves in communication with the parties to such controversy, and shall use their best efforts, by mediation and conciliation, to amicably settle the same; and if such efforts shall be unsuccessful, shall at once endeavor to bring about an arbitration of said controversy in accordance with the provisions of this act.

SEC. 3. That whenever a controversy shall arise between a carrier subject to this act and the employees of such carrier which can not be settled by mediation and conciliation in the manner provided in the preceding section, said controversy may be submitted to the arbitration of a board of three persons, who shall be chosen in the manner following: One shall be named by the carrier or employer directly interested; the other shall be named by the labor organization to which the employees directly interested belong, or, if they belong to more than one, by that one of them which specially represents employees of the same grade and class and engaged in services of the same nature as said employees so directly interested: *Provided, however*, That when a con-

troverſy involves and affects the interests of two or more claſſes and grades of employees belonging to different labor organizations, ſuch arbitrator ſhall be agreed upon and designated by the concurrent action of all ſuch labor organizations; and in caſes where the majority of ſuch employees are not members of any labor organization, ſaid employees may by a majority vote ſelect a committee of their own number, which committee ſhall have the right to ſelect the arbitrator on behalf of ſaid employees. The two thus choſen ſhall ſelect the third commissioner of arbitration; but, in the event of their failure to name ſuch arbitrator within five days after their firſt meeting, the third arbitrator ſhall be named by the commissioners named in the preceding. A majority of ſaid arbitrators ſhall be competent to make a valid and binding award under the provisions hereof. The ſubmiſſion ſhall be in writing, ſhall be ſigned by the employer and by the labor organization representing the employees, ſhall ſpecify the time and place of meeting of ſaid board of arbitration, ſhall ſtate the queſtions to be decided, and ſhall contain appropriate provisions by which the reſpective parties ſhall ſtipulate, as follows:

First. That the board of arbitration ſhall commence their hearings within ten days from the date of the appointment of the third arbitrator, and ſhall find and file their award, as provided in this ſection, within thirty days from the date of the appointment of the third arbitrator; and that pending the arbitration the ſtatus exiſting immediately prior to the diſpute ſhall not be changed: *Provided*, That no employee ſhall be compelled to render perſonal ſervice without his conſent.

Second. That the award and the papers and proceedings, including the teſtimony relating thereto certified under the hands of the arbitrators and which ſhall have the force and effect of a bill of exceptions, ſhall be filed in the clerk's office of the circuit court of the United States for the diſtrict wherein the controverſy ariſes or the arbitration is entered into, and ſhall be final and concluſive upon both parties, unleſs ſet aſide for error of law apparent on the record.

Third. That the reſpective parties to the award will each faithfully execute the ſame, and that the ſame may be ſpecifically enforced in equity ſo far as the powers of a court of equity permit: *Provided*, That no injunction or other legal proceſs ſhall be iſſued which ſhall compel the performance by any laborer againſt his will of a contract for perſonal labor or ſervice.

Fourth. That employees diſſatisfied with the award ſhall not by reaſon of ſuch diſſatisfaction quit the ſervice of the employer before the expiration of three months from and after the making of ſuch award without giving thirty days' notice in writing of their intention ſo to quit. Nor ſhall the employer diſſatisfied with ſuch award diſmiſs any employee or employees on account of ſuch diſſatisfaction before the expiration of three months from and after the making of ſuch award without giving thirty days' notice in writing of his intention ſo to diſcharge.

Fifth. That ſaid award ſhall continue in force as between the parties thereto for the period of one year after the ſame ſhall go into practical operation, and no new arbitration upon the ſame ſubject between the ſame employer and the ſame claſs of employees ſhall be had until the expiration of ſaid one year if the award is not ſet aſide as provided in ſection four. That as to individual employees not belonging to the labor organization or organizations which ſhall enter into the arbitration, the ſaid arbitration and the award made therein ſhall not be binding, unleſs the ſaid individual employees ſhall give aſſent in writing to become parties to ſaid arbitration.

SEC. 4. That the award being filed in the clerk's office of a circuit court of the United States, as hereinbefore provided, ſhall go into practical operation, and judgment ſhall be entered thereon accordingly at the expiration of ten days from ſuch filing, unleſs within ſuch ten days either party ſhall file exceptions thereto for matter of law apparent upon the record, in which caſe ſaid award ſhall go into practical operation and judgment be entered accordingly when ſuch exceptions ſhall have been finally diſpoſed of either by ſaid circuit court or on appeal therefrom.

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

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

If exceptions to an award are finally sustained, judgment shall be entered setting aside the award. But in such case the parties may agree upon a judgment to be entered disposing of the subject matter of the controversy, which judgment when entered shall have the same force and effect as judgment entered upon an award.

SEC. 5. That for the purposes of this act the arbitrators herein provided for, or either of them, shall have power to administer oaths and affirmations, sign subpoenas, require the attendance and testimony of witnesses, and the production of such books, papers, contracts, agreements, and documents material to a just determination of the matters under investigation as may be ordered by the court; and may invoke the aid of the United States courts to compel witnesses to attend and testify and to produce such books, papers, contracts, agreements, and documents to the same extent and under the same conditions and penalties as is provided for in the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, and the amendments thereto.

SEC. 6. That every agreement of arbitration under this act shall be acknowledged by the parties before a notary public or clerk of a district or circuit court of the United States, and when so acknowledged a copy of the same shall be transmitted to the chairman of the Interstate Commerce Commission, who shall file the same in the office of said commission.

Any agreement of arbitration which shall be entered into conforming to this act, except that it shall be executed by employees individually instead of by a labor organization as their representative, shall, when duly acknowledged as herein provided, be transmitted to the chairman of the Interstate Commerce Commission, who shall cause a notice in writing to be served upon the arbitrators, fixing a time and place for a meeting of said board, which shall be within fifteen days from the execution of said agreement of arbitration: *Provided, however,* That the said chairman of the Interstate Commerce Commission shall decline to call a meeting of arbitrators under such agreement unless it be shown to his satisfaction that the employees signing the submission represent or include a majority of all employees in the service of the same employer and of the same grade and class, and that an award pursuant to said submission can justly be regarded as binding upon all such employees.

SEC. 7. That during the pendency of arbitration under this act it shall not be lawful for the employer, party to such arbitration, to discharge the employees, parties thereto, except for inefficiency, violation of law, or neglect of duty; nor for the organization representing such employees to order, nor for the employees to unite in, aid, or abet, strikes against said employer; nor, during a period of three months after an award under such an arbitration, for such employer to discharge any such employees, except for the causes aforesaid, without giving thirty days' written notice of an intent so to discharge; nor for any of such employees, during a like period, to quit the service of said employer without just cause, without giving to said employer thirty days' written notice of an intent so to do; nor for such organization representing such employees to order, counsel, or advise otherwise. Any violation of this section shall subject the offending party to liability for damages: *Provided,* That nothing herein contained shall be construed to prevent any employer, party to such arbitration, from reducing the number of its or his employees whenever in its or his judgment business necessities require such reduction.

SEC. 8. That in every incorporation under the provisions of chapter five hundred and sixty-seven of the United States Statutes of eighteen hundred and eighty-five and eighteen hundred and eighty-six it must be provided in the articles of incorporation and in the constitution, rules, and by-laws that a member shall cease to be such by participating in or by instigating force or violence against persons or property during strikes, lockouts, or boycotts, or by seeking to prevent others from working through violence, threats, or intimidations. Members of such incorporations shall not be personally liable for the acts, debts, or obligations of the corporations, nor shall such corporations be liable for the acts of members or others in violation of law; and such corporations may appear by designated representatives before the board created by this act, or in any suits or proceedings for or against such corporations or their members in any of the Federal courts.

SEC. 9. That whenever receivers appointed by Federal courts are in the possession and control of railroads, the employees upon such railroads shall have the right to be heard in such courts upon all questions affecting the terms and conditions of their employment, through the officers and representatives of their associations, whether incorporated or unincorporated, and no reduction of wages shall be made by such receivers without the authority of the court therefor upon notice to such employees, said notice to be not less than twenty days before the hearing upon the receivers' petition or application, and to be posted upon all customary bulletin boards along or upon the railway operated by such receiver or receivers.

SEC. 10. That any employer subject to the provisions of this act and any officer, agent, or receiver of such employer who shall require any employee, or any person seeking employment, as a condition of such employment, to enter into an agreement, either written or verbal, not to become or remain a member of any labor corporation, association, or organization; or shall threaten any employee with loss of employment, or shall unjustly discriminate against any employee because of his membership in such a labor corporation, association, or organization; or who shall require any employee or any person seeking employment, as a condition of such employment, to enter into a contract whereby such employee or applicant for employment shall agree to contribute to any fund for charitable, social, or beneficial purposes; to release such employer from legal liability for any personal injury by reason of any benefit received from such fund beyond the proportion of the benefit arising from the employer's contribution to such fund; or who shall, after having discharged an employee, attempt or conspire to prevent such employee from obtaining employment, or who shall, after the quitting of an employee, attempt or conspire to prevent such employee from obtaining employment, is hereby declared to be guilty of a misdemeanor, and, upon conviction thereof in any court of the United States of competent jurisdiction in the district in which such offense was committed, shall be punished for each offense by a fine of not less than one hundred dollars and not more than one thousand dollars.

SEC. 11. That each member of said board of arbitration shall receive a compensation of ten dollars per day for the time he is actually employed, and his traveling and other necessary expenses; and a sum of money sufficient to pay the same, together with the traveling and other necessary and proper expenses of any conciliation or arbitration had hereunder, not to exceed ten thousand dollars in any one year, to be approved by the chairman of the Interstate Commerce Commission and audited by the proper accounting officers of the Treasury, is hereby appropriated for the fiscal years ending June thirtieth, eighteen hundred and ninety-eight, and June thirtieth, eighteen hundred and ninety-nine, out of any money in the Treasury not otherwise appropriated.

SEC. 12. That the act to create boards of arbitration or commission for settling controversies and differences between railroad corporations and other common carriers engaged in interstate or territorial transportation of property or persons and their employees, approved October first, eighteen hundred and eighty-eight, is hereby repealed.

#### ACT OF JULY 15, 1913 (NEWLANDS ACT).

[38 Stat., 63d Cong., ch. 6.]

The provisions of this act shall apply to any common carrier or carriers and their officers, agents, and employees, except masters of vessels and seamen, as defined in section forty-six hundred and twelve, Revised Statutes of the United States, engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water, for a continuous carriage or shipment from one State or Territory of the United States or the District of Columbia to any other State or Territory of the United States or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States.

The term "railroad" as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "transportation" shall include all instrumentalities of shipment or carriage.

The term "employees" as used in this act shall include all persons actually engaged in any capacity in train operation or train service of any description,

and notwithstanding that the cars upon or in which they are employed may be held and operated by the carrier under lease or other contract: *Provided, however,* That this act shall not be held to apply to employees of street railroads and shall apply only to employees engaged in railroad train service. In every such case the carrier shall be responsible for the acts and defaults of such employees in the same manner and to the same extent as if said cars were owned by it and said employees directly employed by it, and any provisions to the contrary of any such lease or other contract shall be binding only as between the parties thereto and shall not affect the obligations of said carrier either to the public or to the private parties concerned.

A common carrier subject to the provisions of this act is hereinafter referred to as an "employer," and the employees of one or more of such carriers are hereinafter referred to as "employees."

SEC. 2. That whenever a controversy concerning wages, hours of labor, or conditions of employment shall arise between an employer or employers and employees subject to this act interrupting or threatening to interrupt the business of said employer or employers to the serious detriment of the public interest, either party to such controversy may apply to the Board of Mediation and Conciliation created by this act and invoke its services for the purpose of bringing about an amicable adjustment of the controversy; and upon the request of either party the said board shall with all practicable expedition put itself in communication with the parties to such controversy and shall use its best efforts, by mediation and conciliation, to bring them to an agreement; and if such efforts to bring about an amicable adjustment through mediation and conciliation shall be unsuccessful, the said board shall at once endeavor to induce the parties to submit their controversy to arbitration in accordance with the provisions of this act.

In any case in which an interruption of traffic is imminent and fraught with serious detriment to the public interest, the Board of Mediation and Conciliation may, if in its judgment such action seem desirable, proffer its services to the respective parties to the controversy.

In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this act either party to the said agreement may apply to the Board of Mediation and Conciliation for an expression of opinion from such board as to the meaning or application of such agreement and the said board shall upon receipt of such request give its opinion as soon as may be practicable.

SEC. 3. That whenever a controversy shall arise between an employer or employers and employees subject to this act, which can not be settled through mediation and conciliation in the manner provided in the preceding section, such controversy may be submitted to the arbitration of a board of six, or, if the parties to the controversy prefer so to stipulate, to a board of three persons, which board shall be chosen in the following manner: In the case of a board of three, the employer or employers and the employees, parties respectively to the agreement to arbitrate, shall each name one arbitrator; and the two arbitrators thus chosen shall select the third arbitrator; but in the event of their failure to name the third arbitrator within five days after their first meeting, such third arbitrator shall be named by the Board of Mediation and Conciliation. In the case of a board of six, the employer or employers and the employees, parties respectively to the agreement to arbitrate, shall each name two arbitrators, and the four arbitrators thus chosen shall, by a majority vote, select the remaining two arbitrators; but in the event of their failure to name the two arbitrators within fifteen days after their first meeting the said two arbitrators, or as many of them as have not been named, shall be named by the Board of Mediation and Conciliation.

In the event that the employees engaged in any given controversy are not members of a labor organization, such employees may select a committee which shall have the right to name the arbitrator, or the arbitrators, who are to be named by the employees as provided above in this section.

SEC. 4. That the agreement to arbitrate—

First. Shall be in writing;

Second. Shall stipulate that the arbitration is had under the provisions of this act;

Third. Shall state whether the board of arbitration is to consist of three or six members;

Fourth. Shall be signed by duly accredited representatives of the employer or employers and of the employees;

Fifth. Shall state specifically the questions to be submitted to the said board for decision;

Sixth. Shall stipulate that a majority of said board shall be competent to make a valid and binding award;

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

Eighth. Shall fix a period from the beginning of the hearings within which the said board shall make and file its award: *Provided*, That this period shall be thirty days unless a different period be agreed to;

Ninth. Shall provide for the date from which the award shall become effective and shall fix the period during which the said award shall continue in force;

Tenth. Shall provide that the respective parties to the award will each faithfully execute the same;

Eleventh. Shall provide that the award and the papers and proceedings, including the testimony relating thereto, certified under the hands of the arbitrators, and which shall have the force and effect of a bill of exceptions, shall be filed in the clerk's office of the district court of the United States for the district wherein the controversy arises or the arbitration is entered into, and shall be final and conclusive upon the parties to the agreement unless set aside for error of law apparent on the record;

Twelfth. May also provide that any difference arising as to the meaning or the application of the provisions of an award made by a board of arbitration shall be referred back to the same board or to a subcommittee of such board for a ruling, which ruling shall have the same force and effect as the original award; and if any member of the original board is unable or unwilling to serve another arbitrator shall be named in the same manner as such original member was named.

SEC. 5. That for the purposes of this act the arbitrators herein provided for, or either of them, shall have power to administer oaths and affirmations, sign subpoenas, require the attendance and testimony of witnesses and the production of such books, papers, contracts, agreements, and documents material to a just determination of the matters under investigation as may be ordered by the court; and may invoke the aid of the United States courts to compel witnesses to attend and testify and to produce such books, papers, contracts, agreements, and documents to the same extent and under the same conditions and penalties as is provided for in the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, and the amendments thereto.

SEC. 6. That every agreement of arbitration under this act shall be acknowledged by the parties thereto before a notary public or a clerk of the district or the circuit court of appeals of the United States, or before a member of the Board of Mediation and Conciliation, the members of which are hereby authorized to take such acknowledgments; and when so acknowledged shall be delivered to a member of said board or transmitted to said board to be filed in its office.

When such agreement of arbitration has been filed with the said board, or one of its members, and when the said board, or a member thereof, has been furnished the names of the arbitrators chosen by the respective parties to the controversy, the board, or a member thereof, shall cause a notice in writing to be served upon the said arbitrators, notifying them of their appointment, requesting them to meet promptly to name the remaining arbitrator or arbitrators necessary to complete the board, and advising them of the period within which, as provided in the agreement of arbitration, they are empowered to name such arbitrator or arbitrators.

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

If the parties to an arbitration desire the reconvening of a board to pass upon any controversy arising over the meaning or application of an award, they shall jointly so notify the Board of Mediation and Conciliation, and shall state in such written notice the question or questions to be submitted to such

reconvened board. The Board of Mediation and Conciliation shall thereupon promptly communicate with the members of the board of arbitration or a subcommittee of such board appointed for such purpose pursuant to the provisions of the agreement of arbitration, and arrange for the reconvening of said board or subcommittee, and shall notify the respective parties to the controversy of the time and place at which the board will meet for hearings upon the matters in controversy to be submitted to it.

SEC. 7. That the board of arbitration shall organize and select its own chairman and make all necessary rules for conducting its hearings; but in its award or awards the said board shall confine itself to findings or recommendations as to the questions specifically submitted to it or matters directly bearing thereon. All testimony before said board shall be given under oath or affirmation, and any member of the board of arbitration shall have the power to administer oaths or affirmations. It may employ such assistants as may be necessary in carrying on its work. It shall, whenever practicable, be supplied with suitable quarters in any Federal building located at its place of meeting or at any place where the board may adjourn for its deliberations. The board of arbitration shall furnish a certified copy of its awards to the respective parties to the controversy, and shall transmit the original, together with the papers and proceedings and a transcript of the testimony taken at the hearings, certified under the hands of the arbitrators, to the clerk of the district court of the United States for the district wherein the controversy arose or the arbitration is entered into, to be filed in said clerk's office as provided in paragraph eleven of section four of this act. And said board shall also furnish a certified copy of its award, and the papers and proceedings, including the testimony relating thereto, to the Board of Mediation and Conciliation, to be filed in its office.

The United States Commerce Court, the Interstate Commerce Commission, and the Bureau of Labor Statistics are hereby authorized to turn over to the Board of Mediation and Conciliation upon its request any papers and documents heretofore filed with them and bearing upon mediation or arbitration proceedings held under the provisions of the act approved June first, eighteen hundred and ninety-eight, providing for mediation and arbitration.

SEC. 8. That the award, being filed in the clerk's office of a district court of the United States as hereinbefore provided, shall go into practical operation, and judgment shall be entered thereon accordingly at the expiration of ten days from such filing, unless within such ten days either party shall file exceptions thereto for matter of law apparent upon the record, in which case said award shall go into practical operation, and judgment be entered accordingly, when such exceptions shall have been finally disposed of either by said district court or on appeal therefrom.

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

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

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

Nothing in this act contained shall be construed to require an employee to render personal service without his consent, and no injunction or other legal process shall be issued which shall compel the performance by any employee against his will of a contract for personal labor or service.

SEC. 9. That whenever receivers appointed by a Federal court are in the possession and control of the business of employers covered by this act the employees of such employers shall have the right to be heard through their representatives in such court upon all questions affecting the terms and conditions of their employment; and no reduction of wages shall be made by such receivers without the authority of the court therefor, after notice to such employees, said notice to be given not less than twenty days before the hearing

upon the receivers' petition or application, and to be posted upon all customary bulletin boards along or upon the railway or in the customary places on the premises of other employers covered by this act.

SEC. 10. That each member of the board of arbitration created under the provisions of this act shall receive such compensation as may be fixed by the Board of Mediation and Conciliation, together with his traveling and other necessary expenses. The sum of \$25,000 or so much thereof as may be necessary, is hereby appropriated, to be immediately available and to continue available until the close of the fiscal year ending June thirtieth, nineteen hundred and fourteen, for the necessary and proper expenses incurred in connection with any arbitration or with the carrying on of the work of mediation and conciliation, including per diem, traveling, and other necessary expenses of members or employees of boards of arbitration and rent in the District of Columbia, furniture, office fixtures and supplies, books, salaries, traveling expenses, and other necessary expenses of members or employees of the Board of Mediation and Conciliation, to be approved by the chairman of said board and audited by the proper accounting officers of the Treasury.

SEC. 11. There shall be a Commissioner of Mediation and Conciliation, who shall be appointed by the President, by and with the advice and consent of the Senate, and whose salary shall be \$7,500 per annum, who shall hold his office for a term of seven years and until a successor qualifies, and who shall be removable by the President only for misconduct in office. The President shall also designate not more than two other officials of the Government who have been appointed by and with the advice and consent of the Senate, and the officials thus designated, together with the Commissioner of Mediation and Conciliation, shall constitute a board to be known as the United States Board of Mediation and Conciliation.

There shall also be an Assistant Commissioner of Mediation and Conciliation, who shall be appointed by the President, by and with the advice and consent of the Senate, and whose salary shall be \$5,000 per annum. In the absence of the Commissioner of Mediation and Conciliation, or when that office shall become vacant, the assistant commissioner shall exercise the functions and perform the duties of that office. Under the direction of the Commissioner of Mediation and Conciliation, the assistant commissioner shall assist in the work of mediation and conciliation and when acting alone in any case he shall have the right to take acknowledgments, receive agreements of arbitration, and cause the notices in writing to be served upon the arbitrators chosen by the respective parties to the controversy, as provided for in section five of this act.

The act of June first, eighteen hundred and ninety-eight, relating to the mediation and arbitration of controversies between railway companies and certain classes of their employees is hereby repealed: *Provided*, That any agreement of arbitration which, at the time of the passage of this act, shall have been executed in accordance with the provisions of said act of June first, eighteen hundred and ninety-eight, shall be governed by the provisions of said act of June first, eighteen hundred and ninety-eight, and the proceedings thereunder shall be conducted in accordance with the provisions of said act.

#### ACT OF SEPTEMBER 3, 5, 1916 (ADAMSON LAW).

[39 Stat., 64th Cong., Part I, ch. 436.]

Beginning January first, nineteen hundred and seventeen, eight hours shall, in contracts for labor and service, be deemed a day's work and the measure or standard of a day's work for the purpose of reckoning the compensation for services of all employees who are now or may hereafter be employed by any common carrier by railroad, except railroads independently owned and operated not exceeding one hundred miles in length, electric street railroads, and electric interurban railroads, which is subject to the provisions of the act of February fourth, eighteen hundred and eighty-seven, entitled "An act to regulate commerce," as amended, and who are now or may hereafter be actually engaged in any capacity in the operation of trains used for the transportation of persons or property on railroads, except railroads independently owned and operated not exceeding one hundred miles in length, electric street railroads, and electric interurban railroads, from any State or Territory of the United States or the District of Columbia, to any other State or Territory of the United States or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States to an adjacent foreign



country, or from any place in the United States through a foreign country to any other place in the United States: *Provided*, That the above exceptions shall not apply to railroads though less than one hundred miles in length whose principal business is leasing or furnishing terminal or transfer facilities to other railroads, or are themselves engaged in transfers of freight between railroads or between railroads and industrial plants.

Sec. 2. That the President shall appoint a commission of three, which shall observe the operation and effects of the institution of the eight-hour standard workday as above defined and the facts and conditions affecting the relations between such common carriers and employees during a period of not less than six months nor more than nine months, in the discretion of the commission, and within thirty days thereafter such commission shall report its findings to the President and Congress; that each member of the commission created under the provisions of this act shall receive such compensation as may be fixed by the President. That the sum of \$25,000, or so much thereof as may be necessary, be, and hereby is, appropriated, out of any money in the United States Treasury not otherwise appropriated, for the necessary and proper expenses incurred in connection with the work of such commission, including salaries, per diem, traveling expenses of members and employees, and rent, furniture, office fixtures and supplies, books, salaries, and other necessary expenses, the same to be approved by the chairman of said commission and audited by the proper accounting officers of the Treasury.

Sec. 3. That pending the report of the commission herein provided for and for a period of thirty days thereafter the compensation of railway employees subject to this act for a standard eight-hour workday shall not be reduced below the present standard day's wage, and for all necessary time in excess of eight hours such employees shall be paid at a rate not less than the pro rata rate for such standard eight-hour workday.

Sec. 4. That any person violating any provision of this act shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$100 and not more than \$1,000, or imprisoned not to exceed one year, or both.

#### TRANSPORTATION ACT, 1920 (ESCH-CUMMINS LAW).

[U. S. Stat., 66th Cong., 2d sess., ch. 91, Title III.]

##### SECTION 300. When used in this title—

(1) The term "carrier" includes any express company, sleeping car company, and any carrier by railroad, subject to the interstate commerce act, except a street, interurban, or suburban electric railway not operating as a part of a general steam railroad system of transportation;

(2) The term "adjustment board" means any railroad board of labor adjustment established under section 302;

(3) The term "Labor Board" means the Railroad Labor Board;

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

(5) The term "subordinate official" includes officials of carriers of such class or rank as the commission shall designate by regulation formulated and issued after such notice and hearing as the commission may prescribe, to the carriers, and employees and subordinate officials of carriers, and organizations thereof, directly to be affected by such regulations.

Sec. 301. It shall be the duty of all carriers and their officers, employees, and agents to exert every reasonable effort and adopt every available means to avoid any interruption to the operation of any carrier growing out of any dispute between the carrier and the employees or subordinate officials thereof. All such disputes shall be considered and, if possible, decided in conference between representatives designated and authorized so to confer by the carriers, or the employees or subordinate officials thereof, directly interested in the dispute. If any dispute is not decided in such conference, it shall be referred by the parties thereto to the board which, under the provisions of this title, is authorized to hear and decide such dispute.

SEC. 302. Railroad boards of labor adjustment may be established by agreement between any carrier, group of carriers, or the carriers as a whole, and any employees or subordinate official of carriers, or organization or group of organizations thereof.

SEC. 303. Each such adjustment board shall, (1) upon the application of the chief executive of any carrier or organization of employees or subordinate officials whose members are directly interested in the dispute, (2) upon the written petition signed by not less than 100 unorganized employees or subordinate officials directly interested in the dispute, (3) upon the adjustment board's own motion, or (4) upon the request of the Labor Board whenever such board is of the opinion that the dispute is likely substantially to interrupt commerce, receive for hearing, and as soon as practicable and with due diligence, decide any dispute involving only grievances, rules, or working conditions, not decided as provided in section 301, between the carrier and its employees or subordinate officials, who are, or any organization thereof which is, in accordance with the provisions of section 302, represented upon any such adjustment board.

SEC. 304. There is hereby established a board to be known as the "Railroad Labor Board" and to be composed of nine members, as follows:

(1) Three members constituting the labor group, representing the employees and subordinate officials of the carriers, to be appointed by the President, by and with the advice and consent of the Senate, from not less than six nominees whose nominations shall be made and offered by such employees in such manner as the commission shall by regulation prescribe;

(2) Three members, constituting the management group, representing the carriers, to be appointed by the President, by and with the advice and consent of the Senate, from not less than six nominees whose nominations shall be made and offered by the carriers in such manner as the commission shall by regulation prescribe; and

(3) Three members, constituting the public group, representing the public, to be appointed directly by the President, by and with the advice and consent of the Senate.

Any vacancy on the Labor Board shall be filled in the same manner as the original appointment.

SEC. 305. If either the employees or the carriers fail to make nominations and offer nominees in accordance with the regulations of the commission, as provided in paragraphs (1) and (2) of section 304, within thirty days after the passage of this act in case of any original appointment to the office of member of the Labor Board, or in case of a vacancy in any such office within fifteen days after such vacancy occurs, the President shall thereupon directly make the appointment, by and with the advice and consent of the Senate. In making any such appointment the President shall, as far as he deems it practicable, select an individual associated in interest with the carriers or employees thereof, whichever he is to represent.

SEC. 306. (a) Any member of the Labor Board who during his term of office is an active member or in the employ of or holds any office in any organization of employees or subordinate officials, or any carrier, or owns any stock or bond thereof, or is pecuniarily interested therein, shall at once become ineligible for further membership upon the Labor Board; but no such member is required to relinquish honorary membership in, or his rights in any insurance or pension or other benefit fund maintained by any organization of employees or subordinate officials or by a carrier.

(b) Of the original members of the Labor Board, one from each group shall be appointed for a term of three years, one for two years, and one for one year. Their successors shall hold office for terms of five years, except that any member appointed to fill a vacancy shall be appointed only for the unexpired term of the member whom he succeeds. Each member shall receive from the United States an annual salary of \$10,000. A member may be removed by the President for neglect of duty or malfeasance in office, but for no other cause.

SEC. 307. (a) The Labor Board shall hear, and as soon as practicable and with due diligence decide, any dispute involving grievances, rules, or working conditions, in respect to which any adjustment board certifies to the Labor Board that in its opinion the adjustment board has failed or will fail to reach a decision within a reasonable time, or in respect to which the Labor Board determines that any adjustment board has so failed or is not using due diligence in its consideration thereof. In case the appropriate adjustment board is not organized under the provisions of section 302, the Labor Board. (1) upon

the application of the chief executive of any carrier or organization of employees or subordinate officials whose members are directly interested in the dispute, (2) upon a written petition signed by not less than 100 unorganized employees or subordinate officials directly interested in the dispute, or (3) upon the Labor Board's own motion if it is of the opinion that the dispute is likely substantially to interrupt commerce, shall receive for hearing, and as soon as practicable and with due diligence decide, any dispute involving grievances, rules, or working conditions which is not decided as provided in section 301 and which such adjustment board would be required to receive for hearing and decision under the provisions of section 303.

(b) The Labor Board, (1) upon the application of the chief executive of any carrier or organization of employees or subordinate officials whose members are directly interested in the dispute, (2) upon a written petition signed by not less than 100 unorganized employees or subordinate officials directly interested in the dispute, or (3) upon the Labor Board's own motion if it is of the opinion that the dispute is likely substantially to interrupt commerce, shall receive for hearing, and as soon as practicable and with due diligence decide, all disputes with respect to the wages or salaries of employees or subordinate officials of carriers, not decided as provided in section 301. The Labor Board may upon its own motion within ten days after the decision, in accordance with the provisions of section 301, of any dispute with respect to wages or salaries of employees or subordinate officials of carriers, suspend the operation of such decision if the Labor Board is of the opinion that the decision involves such an increase in wages or salaries as will be likely to necessitate a substantial readjustment of the rates of any carrier. The Labor Board shall hear any decision so suspended and as soon as practicable and with due diligence decide to affirm or modify such suspended decision.

(c) A decision by the Labor Board under the provisions of paragraphs (a) or (b) of this section shall require the concurrence therein of at least 5 of the 9 members of the Labor Board: *Provided*, That in case of any decision under paragraph (b), at least one of the representatives of the public shall concur in such decision. All decisions of the Labor Board shall be entered upon the records of the board and copies thereof, together with such statement of facts bearing thereon as the board may deem proper, shall be immediately communicated to the parties to the dispute, the President, each adjustment board, and the commission, and shall be given further publicity in such manner as the Labor Board may determine.

(d) All the decisions of the Labor Board in respect to wages or salaries and of the Labor Board or an adjustment board in respect to working conditions of employees or subordinate officials of carriers shall establish rates of wages and salaries and standards of working conditions which in the opinion of the board are just and reasonable. In determining the justness and reasonableness of such wages and salaries or working conditions the board shall, so far as applicable, take into consideration among other relevant circumstances:

- (1) The scales of wages paid for similar kinds of work in other industries;
- (2) The relation between wages and the cost of living;
- (3) The hazards of the employment;
- (4) The training and skill required;
- (5) The degree of responsibility;
- (6) The character and regularity of the employment; and
- (7) Inequalities of increases in wages or of treatment, the result of previous wage orders or adjustments.

SEC. 308. The Labor Board—

- (1) Shall elect a chairman by majority vote of its members;
- (2) Shall maintain central offices in Chicago, Illinois, but the Labor Board may, whenever it deems it necessary, meet at such other place as it may determine;
- (3) Shall investigate and study the relations between carriers and their employees, particularly questions relating to wages, hours of labor, and other conditions of employment and the respective privileges, rights, and duties of carriers and employees, and shall gather, compile, classify, digest, and publish, from time to time, data and information relating to such questions to the end that the Labor Board may be properly equipped to perform its duties under this title and that the members of the adjustment boards and the public may be properly informed;
- (4) May make regulations necessary for the efficient execution of the functions vested in it by this title; and

(5) Shall at least annually collect and publish the decisions and regulations of the Labor Board and the adjustment boards and all court and administrative decisions and regulations of the commission in respect to this title, together with a cumulative index-digest thereof.

SEC. 309. Any party to any dispute to be considered by an adjustment board or by the Labor Board shall be entitled to a hearing either in person or by counsel.

SEC. 310. (a) For the efficient administration of the functions vested in the Labor Board by this title, any member thereof may require, by subpoena issued and signed by himself, the attendance of any witness and the production of any book, paper, document, or other evidence from any place in the United States at any designated place of hearing, and the taking of a deposition before any designated person having power to administer oaths. In the case of a deposition the testimony shall be reduced to writing by the person taking the deposition or under his direction, and shall then be subscribed to by the deponent. Any member of the Labor Board may administer oaths and examine any witness. Any witness summoned before the board and any witness whose deposition is taken shall be paid the same fees and mileage as are paid witnesses in the courts of the United States.

(b) In case of failure to comply with any subpoena or in case of the contumacy of any witness appearing before the Labor Board, the board may invoke the aid of any United States district court. Such court may thereupon order the witness to comply with the requirements of such subpoena, or to give evidence touching the matter in question, as the case may be. Any failure to obey such order may be punished by such court as a contempt thereof.

(c) No person shall be excused from so attending and testifying or deposing, nor from so producing any book, paper, document, or other evidence on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing, as to which in obedience to a subpoena and under oath, he may so testify or produce evidence, documentary or otherwise. But no person shall be exempt from prosecution and punishment for perjury committed in so testifying.

SEC. 311. (a) When necessary to the efficient administration of the functions vested in the Labor Board by this title, any member, officer, employee, or agent thereof, duly authorized in writing by the board, shall at all reasonable times for the purpose of examination have access to and the right to copy any book, account, record, paper, or correspondence relating to any matter which the board is authorized to consider or investigate. Any person who upon demand refuses any duly authorized member, officer, employee, or agent of the Labor Board such right of access or copying, or hinders, obstructs, or resists him in the exercise of such right, shall upon conviction thereof be liable to a penalty of \$500 for each such offense. Each day during any part of which such offense continues shall constitute a separate offense. Such penalty shall be recoverable in a civil suit brought in the name of the United States, and shall be covered into the Treasury of the United States as miscellaneous receipts.

(b) Every officer or employee of the United States, whenever requested by any member of the Labor Board or an adjustment board duly authorized by the board for the purpose, shall supply to such board any data or information pertaining to the administration of the functions vested in it by this title, which may be contained in the records of his office.

(c) The President is authorized to transfer to the Labor Board any books, papers, or documents pertaining to the administration of the functions vested in the board by this title, which are in the possession of any agency, or railway board of adjustment in connection therewith, established for executing the powers granted the President under the Federal control act and which are no longer necessary to the administration of the affairs of such agency.

SEC. 312. Prior to September 1, 1920, each carrier shall pay to each employee or subordinate official thereof wages or salary at a rate not less than that fixed by the decision of any agency, or railway board of adjustment in connection therewith, established for executing the powers granted the President under the Federal control act, in effect in respect to such employee or subordinate official immediately preceding 12.01 a. m. March 1, 1920. Any

carrier acting in violation of any provision of this section shall upon conviction thereof be liable to a penalty of \$100 for each such offense. Each such action with respect to any such employee or subordinate official and each day or portion thereof during which the offense continues shall constitute a separate offense. Such penalty shall be recoverable in a civil suit brought in the name of the United States, and shall be covered into the Treasury of the United States as miscellaneous receipts.

SEC. 313. The Labor Board, in case it has reason to believe that any decision of the Labor Board or of an adjustment board is violated by any carrier, or employee or subordinate official, or organization thereof, may upon its own motion after due notice and hearing to all persons directly interested in such violation, determine whether in its opinion such violation has occurred and make public its decision in such manner as it may determine.

SEC. 314. The Labor Board may (1) appoint a secretary, who shall receive from the United States an annual salary of \$5,000; and (2) subject to the provisions of the civil-service laws, appoint and remove such officers, employees, and agents; and make such expenditures for rent, printing, telegrams, telephone, law books, books of reference, periodicals, furniture, stationery, office equipment, and other supplies and expenses, including salaries, traveling expenses of its members, secretary, officers, employees, and agents, and witness fees, as are necessary for the efficient execution of the functions vested in the board by this title and as may be provided for by Congress from time to time. All of the expenditures of the Labor Board shall be allowed and paid upon the presentation of itemized vouchers therefor approved by the chairman of the Labor Board.

SEC. 315. There is hereby appropriated for the fiscal year ending June 30, 1920, out of any money in the Treasury not otherwise appropriated, the sum of \$50,000, or so much thereof as may be necessary, to be expended by the Labor Board, for defraying the expenses of the maintenance and establishment of the board, including the payment of salaries as provided in this title.

SEC. 316. The powers and duties of the Board of Mediation and Conciliation created by the act approved July 15, 1913, shall not extend to any dispute which may be received for hearing and decision by any adjustment board or the Labor Board.

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