TO AMEND THE RAILWAY LABOR ACT

HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE COMMERCE
UNITED STATES SENATE

SEVENTY-THIRD CONGRESS

SECOND SESSION

ON

S. 3266

A BILL TO AMEND THE RAILWAY LABOR ACT APPROVED MAY 20, 1926, AND TO PROVIDE FOR THE PROMPT DISPOSITION OF DISPUTES BETWEEN CARRIERS AND THEIR EMPLOYEES

APRIL 10, 11, 12, 18, AND 19, 1934

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TO AMEND THE RAILWAY LABOR ACT

TUESDAY, APRIL 10, 1934

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D.C.

The committee met, pursuant to call, at 10:30 a.m., in room 414 of the Senate Office Building, Senator Clarence C. Dill presiding.

Present: Senators Dill, chairman, Wagner, Neely, Dieterich, Lonergan, Brown, Thompson, Hatch, Couzens, Fess, Kean, Hastings, Hatfield, White, and Capper.

The CHAIRMAN. The committee will come to order.

This meeting has been called this morning for hearings on Senate bill 3266, introduced by myself at the request of Mr. Eastman, the Railroad Coordinator.

At this point in the hearings we will print a copy of the bill.

(S. 3266 is here printed in full as follows:)

[S. 3266, 73d Cong., 2d sess.]

A BILL To amend the Railway Labor Act approved May 20, 1926, and to provide for the prompt disposition of disputes between carriers and their employees

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 of the Railway Labor Act is amended to read as follows:

"DEFINITIONS

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

"First. The term 'carrier' includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, any company operating any equipment or facilities or furnishing any service included within the definition of the terms 'railroad' and 'transportation' as defined in the Interstate Commerce Act, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such 'carrier': *Provided, however*, That the term 'carrier' shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of the general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power.

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

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

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

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

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

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

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

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

"GENERAL PURPOSES

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

"GENERAL DUTIES

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

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

"Third. Representatives, for the purpose of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and no carrier, its officers or agents, shall, by interference, influence, or coercion, either directly, or indirectly in any manner prevent or seek to prevent its employees from designating labor organizations or persons who are not employees of the carrier as their representatives.

"Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to members of labor organizations,or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions.

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

"Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *Provided*, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice.

"Seventh. No carrier, its officers or agents shall change the rates of pay, rules, or working conditions of its employees, except in the manner prescribed in section 6 and in other provisions of this Act relating thereto.

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

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

"Tenth. The willful failure or refusal of any carrier, its officers or agents to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than $1,000 nor more than $20,000 or imprisonment for not more than six months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any district attorney of the United States to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States: *Provided*, That nothing in this Act shall be construed to require any employee or any officer of any carrier to render labor or service without his consent or to authorize the issuance of any orders requiring such service or to make illegal the failure or refusal of any employee individually or any number of employees collectively to render labor or service."

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

"NATIONAL BOARD OF ADJUSTMENT—GRIEVANCES—INTERPRETATION OF AGREEMENTS

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

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

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

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

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

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

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

"(g) Each member of the Adjustment Board shall be compensated by the party or parties selecting him, it being intended hereby that the members selected by carriers shall be compensated by the carriers and that the members selected by the national labor organizations of the employees shall be compensated by the organizations. Each arbitrator selected under the provisions of (f) of this section shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, while serving as an arbitrator.

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

"First division: To have jurisdiction over disputes involving train- and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside

hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of ten members, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees.

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

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

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

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

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

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

"(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (i) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as 'referee', to sit with the division as a member thereof and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this Act for the appointment of arbitrators.

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

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

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

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

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

"(r) The several divisions of the Adjustment Board shall maintain headquarters in Chicago, Illinois, meet regularly, and continue in session so long as there is pending before the division any matter within its jurisdiction which has been submitted for its consideration and which has not been disposed of.

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

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

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

"(v) Each division of the Adjustment Board shall annually prepare and submit a report of its activities to the Mediation Board, and the substance of such report shall be included in the annual report of the Mediation Board to the Congress of the United States.

"Second. Nothing in this Act shall be construed to prohibit any carrier or any group of carriers and its or their employees or any class thereof from agreeing upon the settlement of disputes through such machinery of contract and adjustment as they may mutually establish."

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

"NATIONAL MEDIATION BOARD

"SEC. 4. First. The Board of Mediation is hereby abolished, except that the members, secretary, officers, assistants, employees, and agents thereof, in office upon the date of the passage of this Act, shall receive their salaries for a period of thirty days from such date in the same manner as though this Act had not been passed. There is hereby established, as an independent agency in the executive branch of the Government, a board to be known as the 'National Mediation Board', to be composed of three members appointed by the President, by and with the advice and consent of the Senate. The terms of office of the members first appointed shall expire, as designated by the President at the time of nomination, one on February 1, 1935, one on February 1, 1936, and one on February 1,

1937. The terms of office of all successors shall expire three years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. Vacancies in the Board shall not impair the powers nor affect the duties of the Board nor of the remaining members of the Board. Two of the members in office shall constitute a quorum for the transaction of the business of the Board. Each member of the Board shall receive a salary at the rate of $10,000 per annum, together with necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, subject to the provisions of the law applicable thereto, while away from the principal office of the Board on business required by this Act. No person in the employment of or who is pecuniarily or otherwise interested in any organization of employees or any carrier shall enter upon the duties of or continue to be a member of the Board.

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

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

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

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

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

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

"FUNCTIONS OF MEDIATION BOARD

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

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

"(b) Any other dispute not settled or adjusted in conference between the parties or where conferences are refused.

"In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settle-

ment through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 10 of this Act) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this Act.

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

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

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

"(a) On failure of the arbitrators named by the parties to agree on the remaining arbitrator or arbitrators within the time set by section 7 of this Act, it shall be the duty of the Mediation Board to name such remaining arbitrator or arbitrators. It shall be the duty of the Board in naming such arbitrator or arbitrators to appoint only those whom the Board shall deem wholly disinterested in the controversy to be arbitrated and impartial and without bias as between the parties to such arbitration. Should, however, the Board name an arbitrator or arbitrators not so disinterested and impartial, then, upon proper investigation and presentation of the facts, the Board shall promptly remove such arbitrator.

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

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

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

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

"(e) Within sixty days after the approval of this Act every carrier shall file with the Mediation Board a copy of each contract with its employees in effect on the 1st day of April 1934, covering rates of pay, rules, and working conditions.

If no contract with any craft or class of its employees has been entered into, the carrier shall file with the Mediation Board a statement of that fact including also a statement of the rates of pay, rules, and working conditions applicable in dealing with such craft or class. When any new contract is executed or change is made in an existing contract with any class or craft of its employees covering rates of pay, rules, or working conditions, or in those rates of pay, rules, and working conditions of employees not covered by contract, the carrier shall file the same with the Mediation Board within 30 days after such new contract or change in existing contract has been executed or rates of pay, rules, and working conditions have been made effective.

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

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

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

SEC. 7. The Railway Labor Act is amended by striking out the words "Board of Mediation" wherever they appear in sections 7, 8, and 10 of such Act, and inserting in lieu thereof the words "Mediation Board."

The CHAIRMAN. Mr. Eastman has come down this morning to be heard on this measure, and you can go ahead, Mr. Eastman.

STATEMENT OF HON. JOSEPH B. EASTMAN, FEDERAL COORDINATOR OF TRANSPORTATION

Mr. EASTMAN. My name is Joseph B. Eastman, and I am Federal Coordinator of Transportation. I appear in support of this bill, Senate 3266.

Mr. Chairman, I have prepared a rather brief, compact statement, intended to give a birdseye view of the bill, and with your permission I will go ahead with that.

The CHAIRMAN. Go ahead.

Mr. EASTMAN. When the Transportation Act, 1920, was enacted, following the return of the railroads to their private owners after the period of Federal control, an effort was made to provide for the orderly adjustment of labor controversies with the aid of a governmental agency. The Railroad Labor Board was created for that purpose, and the intent was that it should occupy much the same field in the settlement of disputes between the railroads and their employees as the Interstate Commerce Commission occupied in the settlement of disputes between the railroads and their patrons. The Labor Board functioned for a period of about 6 years, but the results were satisfactory neither to the railroads nor to the employees. The trouble was that while it followed the general pattern of the Inter-

state Commerce Commission, and was designed to be an impartial Government tribunal for the settlement of disputes, this Labor Board was given no authority to enforce its decisions, and in that respect differed radically from the Interstate Commerce Commission.

It seemed apparent that one of two things should be done—either the Labor Board should be given real authority, or it should be disbanded and the settlement of disputes left to a procedure of conference and negotiation between the railroads and their employees with the aid of a governmental agency designed solely for mediation purposes. The latter course was followed and resulted in the present Railway Labor Act. That act was worked out in conference between representatives of the railroads and representatives of the employees and was favored by both sides. It was frankly an experiment, dependent largely upon the good faith and good will of the parties, the skill of the Government mediators, and, in the last analysis, the power of public opinion informed in emergencies by a Presidential fact-finding board. The act prescribed a definite procedure for collective bargaining by independent parties freed from interference, influence, or coercion, and set up machinery for mediation, arbitration, and fact finding; but it provided no penalties or other specific means of enforcing the duties which were imposed. The two parties wished to see the experiment tried; they were very hopeful of good results; but neither was sure of the outcome.

This Railway Labor Act has now been tried for a period of nearly 8 years. It has served a very useful purpose and has brought about many good results, but experience has shown that it is in need of improvement. The bill before you, S. 3266, proposes such improvements. It does not depart from the general principles of the present Railway Labor Act, but, instead, is designed to reinforce those principles and provide for their more effective application. It seeks not to overturn but to perfect what has been done.

I am ready to answer any questions as to the details of the bill to the best of my ability, and before I conclude shall present certain amendments which I believe should be made. Doubtless other improvements in language will be found desirable. Before I get to details, however, I wish to indicate to you what are the salient features of the bill.

In the paragraph of section 1 marked "First", there is a change in the present definition of the term "carrier." This change is intended to bring within the scope of the act operations which form an integral part of railroad transportation, but which are performed by companies which are not now subject to the Railway Labor Act. The most important illustration is found in the refrigerator-car companies, which own refrigerator cars operated by the railroads and perform certain functions connected with refrigeration service. Another illustration is found in the companies to which railroads have on occasion contracted out their maintenance work on equipment and even on way and structures. The thought is that concerns which function in this way as an integral part of the railroad transportation system should be subject to the same duties and obligations with respect to labor controversies as the railroads themselves and as the express and sleeping-car companies. This object is attained by including in the definition of "carrier" any company "operating any equipment or facilities or furnishing any service included within the definition of the terms

'railroad' and 'transportation' as defined in the Interstate Commerce Act." Perhaps a better way can be found of accomplishing the desired result, but it was thought that this language would serve the purpose.

I may say that in reading that over last night I am not sure the language does cover all companies to which railroads on occasion have contracted out their maintenance work, and it perhaps should be examined rather carefully from that point of view.

The CHAIRMAN. I am impressed with the fact that instead of defining the terms in this bill you have defined them as defined in some other bill.

Mr. EASTMAN. Yes.

The CHAIRMAN. That is rather poor legislation, isn't it, generally?

Mr. EASTMAN. Well, the definitions in the Interstate Commerce Act are, of course, definitions of long standing.

The CHAIRMAN. I am not objecting to it; I am wondering if they should not be written into this bill.

Mr. EASTMAN. That might, perhaps, be better. Some paraphrasing would have to be done if that were done in that way.

The CHAIRMAN. The very fact it would have to be done is a reason that it should be done. If you define the terms of one act by another act, everybody has to dig it up.

Mr. EASTMAN. I am not sure the language as it stands does cover all that it is intended to cover. I shall be glad to give it further consideration, and to indicate later any changes which I think ought to be made.

As I have already indicated, it is an essential feature of the present Railway Labor Act that the two parties which engage in collective bargaining shall be truly representative of the interests which they purport to represent and wholly independent of each other. This purpose is reflected in the paragraph of section 2 marked "Third", which reads as follows——

Senator WAGNER. You do not agree that this is realistic bargaining where one side controls both sides of the table.

Mr. EASTMAN. No, indeed.

Senator WAGNER. I brought for myself a shower of protests because I made that assertion once.

Mr. EASTMAN (reading):

> Third. Representatives, for the purposes of this act, shall be designated by the respective parties in such manner as may be provided in their corporate organization or unincorporated association, or by other means of collective action, without interference, influence, or coercion exercised by either party over the self-organization or designation of representatives by the other.

While this provision stated a noble purpose, it has not proved to be self-enforcing, and the act provided no other means of enforcement. Consequently the purposes were not accomplished. Perhaps I should say it was not entirely accomplished. It has been accomplished in part. This failure has already been twice recognized by Congress in other and more explicit provisions which it has inserted in other statutes. The first recognition was in the amendment to the Bankruptcy Act, which became law on March 3, 1933. I quote paragraphs (p) and (q) of section 77 of that amended act, which read as follows:

> (p) No judge or trustee acting under this act shall deny or in any way question the right of employees on the property under his jurisdiction to join the labor

organization of their choice, and it shall be unlawful for any judge, trustee, or receiver to interfere in any way with the organizations of employees, or to use the funds of the railroad under his jurisdiction in maintaining so-called "company unions", or to influence or coerce employees in an effort to induce them to join or remain members of such company unions.

(q) No judge, trustee, or receiver acting under this act shall require any person seeking employment on the property under his jurisdiction to sign any contract or agreement promising to join or to refuse to join a labor organization; and if such contract has been enforced on the property prior to the property coming under the jurisdiction of said judge, trustee, or receiver, then the said judge, trustee or receiver, as soon as the matter is called to his attention, shall notify the employees by an appropriate order that said contract has been discarded and is no longer binding on them in any way.

The second recognition was in the Emergency Railroad Transportation Act, 1933, which became law on June 16, 1933. Paragraph (e) of section 7 of part I of that act reads as follows:

(e) Carriers, whether under control of a judge, trustee, receiver, or private management, shall be required to comply with the provisions of the Railway Labor Act and with the provisions of section 77, paragraphs (o), (p), and (q), of the act approved March 3, 1933, entitled "An act to amend an act entitled 'An act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and act amendatory thereof and supplementary thereto."

Thus Congress recognized that the specific provisions against interference with freedom of choice in the selection of labor representatives should be applied to all railroads, as well as to those which happened to be under the control of judges, receivers, or trustees.

The enforcement of that provision of the Emergency Act has devolved in the first instance upon me, and I have done my best to induce compliance. The duty so to do has been a pleasure, because I have no question whatever as to the soundness of the principle involved, and I do not see how it can well be questioned by anyone. Let me make clear what that principle is. It neither undertakes to outlaw so-called "company unions" or to promote the cause of the American Federation of Labor. The principle is simply that the employees shall be free to join and be represented by any labor organization that they wish to join and to have as their representative, and that the railroads shall in no way interfere with their freedom of choice, directly or indirectly. If a company union is what the employees really want, they are free to have it, and the same applies to the American Federation of Labor.

I may say I use the expressions "company union" and "American Federation of Labor", because those are the expressions used commonly in the discussion of this subject. As a matter of fact, in the case of railroads, six of the national organizations are not affiliated with the American Federation of Labor.

Senator WAGNER. I am very glad you are bringing out these points so very clearly. In legislation that I have proposed outside of the railway situation, I have attempted the only thing—and I think that is the purpose of the act—I think it is so expressed in language, to give the worker a free choice to join any union he wants, company union or no union, and yet they have insisted by giving him free choice that it creates a large national union. I do not know how that conclusion is reached, but it has been broadcast, so I am very glad you are clearing that point.

Mr. EASTMAN. So far as the railroads are concerned, the principle was recognized in the Railway Labor Act of 1926, and as I have said,

it has been more explicitly recognized in the Bankruptcy Act, and finally in the Emergency Railroad Transportation Act. So far as this principle is concerned there is nothing new whatever in S. 3266.

To understand this "company union" question you must realize the influence which a company is able to exert over its employees, if it cares to use it, particularly in a time when jobs are not to be had for the asking. It is like the power of life and death, for it means the power to deprive a man of the very means of subsistence. The influence may be exerted at the time when a man wants a job, by making him agree to limit his freedom of choice in the matter of labor organizations, or it may be exerted after he becomes an employee, by instilling in him the fear that if he does not do as the company wishes he may lose his job. Bear in mind that there are any number of plausible reasons which may be conjured up for demotion or dismissal, and that the real reason need not be brought out into the open.

In addition to this use of fear, which is a most potent instrument of influence and easy to employ, there is the hope of gain. This is utilized by paying the salaries of officers or in other ways meeting or helping to meet the expenses of favored organizations and extending concessions of this sort to them which would not be extended to organizations which are not favored.

In the investigations which my staff has made, I have gone rather exhaustively into this matter, and I entertain no doubt whatsoever that the chief reason why railroad managements prefer so-called "company unions" is because they can more readily influence their policies and management than would be the case with national organizations.

At that point I should say I do not necessarily mean, referring to influence, any sinister influence. I think many of the railroad managements are desirous of doing what they regard as best for their employees, and one of the reasons why they do not like to see them in the national organization is because they wish to preserve them from what they regard as the sinister influence of agitators on the outside. So that when I refer to "influence", I do not necessarily mean anything which the employers regard as in any way sinister.

Nor do I have any doubt as to the fact that they have in the past played—I refer to railroad managements—a large part in both the initial organization and the subsequent operations of these company unions. Proof of this fact can be supplied, if necessary, but for present purposes I do not believe it to be necessary.

The fact is that I have spent considerable time with the railroad executives on this matter, and their attitude has on the whole been very commendable. The conditions have been improved very materially. The improvement has not been complete, but excellent progress has been and is being made. I do not now suggest legislation because of immediate need, but in order that the legislative situation may be clarified and stabilized and proper provision made for the future.

Statutory provisions guaranteeing independence of railroad labor organizations and freedom of choice to employees in selecting their labor representatives plainly belong in the Railway Labor Act, rather than in the Emergency Railroad Transportation Act, 1933. The latter is a temporary measure. It will come to an end on June 16,

unless its operation is extended by the President, and it can be extended at most for only a year. The provisions in question are foreign to the general purposes of the Emergency Act, and have imposed a burden upon the Coordinator's organization which was not originally contemplated. Clearly these provisions should assume a permanent rather than a temporary form, and they conform exactly to the intent and purpose of the Railway Labor Act. They are, in fact, only an amplification of provisions which now form a part of that act.

In adapting the provisions now in the Bankruptcy Act and the Emergency Act for incorporation in the Railway Labor Act in permanent form, I have tried, with the help of my staff, to remedy some defects and to fit the provisions to the practical situation which they are designed to meet. Some legal questions have been raised in regard to these provisions as they appear in the Emergency Act.

(1) It is claimed that the rather bald and meager language of section 7 (e) is not sufficient to make the prohibitions of paragraphs (p) and (q) of section 77 of the Bankruptcy Act applicable to all railroads, however controlled and managed. I have no sympathy with this point, believing it to be a mere quibble. Nevertheless it is raised.

(2) Section 10 (a) of the Emergency Act contains a proviso to the effect that nothing in the act "shall be construed to repeal, amend, suspend, or modify any of the requirements of the Railway Labor Act or the duties and obligations imposed thereunder or through contracts entered into in accordance with the provisions of said act." It is claimed that the use of railroad funds in one way or another for the support or maintenance of company unions is in some instances a matter of contract protected by this proviso.

Whether such contracts exist and, if so, whether they were entered into in accordance with the provisions of the Railway Labor Act are debatable questions. The point, however, is one which may be productive of unnecessary dispute and trouble.

(3) The penalty provisions of section 12 of the Emergency Act were drafted before the introduction of section 7, containing the labor protection provisions, and were never redrafted to cover the latter provisions adequately. Consequently it is at least doubtful whether the Coordinator has at his command adequate means for the enforcement of the prohibitions of section 7 (e). Fortunately good progress has been made in securing compliance with those prohibitions without resort to legal processes. The legal point involved, however, is one which might cause trouble.

In redrafting the provisions for incorporation in the Railway Labor Act, all of these points have been kept in mind, and it has also been the endeavor to cover specifically the various means whereby railroad managements have exerted or sought to exert undue influence upon the choice or conduct of labor organizations.

Enforcement involves nothing but the determination of the facts, and for this reason it has in S. 3266 been definitely placed, where it belongs, in the hands of the Department of Justice. The penalties provided are aimed not only at the carriers but also at their officers and agents, for experience has shown that a very large part of the undue influence is exerted by lesser officials who are often allowed to

pursue policies which the formal announcements of the managements disapprove.

A very important feature is definite provision for secret elections conducted under the auspices of the National Mediation Board, at which, when doubt exists, the employees may record their actual preference. Recently various elections of this kind have been conducted in an orderly way under the auspices of the present Board of Mediation and with excellent results, but it is desirable that the law should provide explicitly for such elections. They furnish the best possible means of determining what the employees really want.

I come now to the provision for a National Adjustment Board. I think the term in the statute is National Board of Adjustment. The Railway Labor Act now provides that boards of adjustment "shall be created by agreement between any carrier or groups of carriers, or the carriers as a whole, and its or their employees."

You will note that the duty thus imposed is definite and positive. The law also prescribes the procedure under which such adjustment boards shall act, and makes their decisions "final and binding on both parties to the dispute."

These provisions were regarded when they were enacted as a vital and essential part of the act. Three national boards of adjustment had operated during the period of Federal control and, on the whole, very successfully. The employees wanted similar boards established when the railroads were returned to private control, but the carriers were unwilling to agree to national boards. They did, however, agree to the general principle involved, and when the Railway Labor Act was formulated in 1926, it embodied this principle in the provisions which I have just quoted.

The fact is, however, that this obligation which the law imposed has largely been disregarded. No national boards of adjustment have been created, and there are only four regional boards, and all but one of these were in existence prior to the Railway Labor Act. They are confined to the train service, and by no means all of the carriers participate in them. There are a considerable number of system boards of adjustment in various of the crafts, but these also are sporadic, and some railroads participate in no boards of adjustment whatsoever.

The CHAIRMAN. What is the reason for that?

Mr. EASTMAN. I was going to remark that so far as the employees are concerned, I understand that they have been willing to participate in the national boards of adjustment, and in many cases in regional boards, but that the carriers have not been willing to participate in national boards and not always in regional boards. Some of these regional boards as they now exist are not participated in by all the carriers in the region. When it comes to system boards of adjustment, the failure to set them up has been due often to the employees, because they feel that system boards are of no use and add nothing to the ordinary machinery, and therefore they have at times declined to enter into the establishment of system boards.

The CHAIRMAN. There is no compulsory method of having these boards created?

Mr. EASTMAN. No.

The CHAIRMAN. Is there in the new law?

Mr. EASTMAN. Yes.

The CHAIRMAN. Is it compulsory?

Mr. EASTMAN. The new law provides definitely for a National Board of Adjustment, as I shall explain.

Senator WHITE. You refer to the "new law"; you mean S. 3266?

Mr. EASTMAN. Yes.

The situation which exists may be illustrated by the following quotation from the report of an emergency fact-finding board appointed by the President which recently considered a labor dispute on the Delaware & Hudson Railroad.

(1) The board is no position to express an opinion upon the merits or demerits of the Loree plan.

That was a plan for the adjustment of wages in the train service.

It does, however, feel justified in pointing out that "no machinery or contract and adjustment", as contemplated by the Railway Labor Act, had been established for the settlement of disputes upon the Delaware & Hudson Railroad. The several paragraphs of section 2 of that act are a unit, and, read together, they provide a definite procedure for joint effort in making and maintaining agreements respecting rates of pay, rules, and working conditions; for the expeditious consideration and settlement of all controversies arising out of their interpretation and application; and for the prompt and just disposition of grievances, however they may arise. In case of a dispute, the questions in issue shall be "considered in conference between representatives designated by the carrier and the employees respectively, without interference, influence, or coercion" by either party over the choice of representatives by the other. The board of disciplining officers of the Delaware & Hudson Railroad has an infelicitous title; it is the sole creation of the carrier, devoid of employee representation; and its composition fails to meet the bipartisan standards of the act.

Nor can it be justified by the second provision of section 3, which grants to "an individual carrier and its employees the privilege of setting up such machinery of contract and adjustment as they may mutually establish"; for the board in existence fails to meet the requirement of mutuality. In short, while in all matters relating to rates of pay, rules, and working conditions the principles underlying the Railway Labor Act are those of equality or bargaining power and industrial democracy, the only available tribunal to which disputes may be referred is under the entire control of the management.

(2) The successful operation of section 3 of the Railway Labor Act dealing with adjustment boards, or other machinery of contract and adjustment, depends upon whole-hearted compliance with its provisions. The record in this case does not disclose such compliance. It is the opinion of the board that these provisions of the act, if not already mandatory, should be made so.

This lack of proper adjustment boards is the more serious because section 5, first, (a) of the Railway Labor Act defines a certain class of cases where the services of the Board of Mediation may be invoked as follows:

(2) A dispute arising out of grievances or out of the interpretation of application of agreements concerning rates of pay, rules, or working conditions not adjusted by the parties in conference and not decided by the appropriate adjustment board.

I may say that board was made up of a judge, the chief justice of the Supreme Court of North Carolina, an admiral of the Navy, and a professor of Yale Law School.

The CHAIRMAN. This was an adjustment board?

Mr. EASTMAN. An emergency fact-finding board.

The Board of Mediation has decided, I understand, that its services cannot be invoked in any case of this class which has not been considered by the appropriate adjustment board; but in many such instances there is no appropriate adjustment board which can consider it. This has prevented utilization of the services of the Board of Mediation in a very large number of cases.

Another difficulty with the present law, even where an adjustment board has been established, is that, although its decisions are final and binding upon both parties, there can be no certainty that there will be a decision. The two sides are now evenly represented on these boards, and hence deadlocks are a very distinct possibility. Not only are they possible, but they have occurred in a large number of cases, and of late there has been a continually growing tendency toward such deadlocks. The number now existing runs into the hundreds.

Because of the lack of adjustment boards in many situations and the tendency of those which do exist to deadlock, very disturbing conditions have at times been created, especially in recent months. In at least four important instances, strike votes have been taken for the purpose of creating an emergency which would justify the President in appointing a fact-finding board, so that these grievances and similar controversies might be passed upon by an impartial body. In two of these instances the controversy was adjusted by the parties without the appointment of such a board, but in the two others fact-finding boards became necessary and were appointed.

The bill before you, S. 3266, attempts to remedy both of these deficiencies in the present law. It provides for the creation of a National Adjustment Board to which unadjusted "disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions" may be enforced. Please note that disputes concerning changes in rates of pay, rules, or working conditions may not be so referred, but are to be handled, when unadjusted, through the process of mediation.

Senator WHITE. What is this quotation just immediately preceding taken from, the 1926 Act?

Mr. EASTMAN. S. 3266.

Senator WHITE. That is taken from S. 3266?

Mr. EASTMAN. Yes.

The National Adjustment Board is to handle only the minor cases growing out of grievances or out of the interpretation or application of agreements. Provision is also made so that deadlocks will be impossible. When the regular members, who will be equally divided between the two sides, disagree, they must call in a neutral member appointed by the Mediation Board to decide the case.

I think that statement is in this respect in error. They can agree upon the neutral member, but if they do not agree he has to be appointed by the Mediation Board.

The willingness of the employees to agree to such a provision is, in my judgment, a very important concession and one of which full advantage should be taken in the public interest. I regard it as, perhaps, the most important part of the bill.

As constituted, the National Adjustment Board is in reality to be four separate boards, because it is to be divided into four separate sections which are to act independently with reference to separate classes of employees. The labor members of the board are to be selected by such railroad labor organizations as are national in scope. Bear in mind, however, that where the labor members and the railroad members are unable to get together, the final decision is to be rendered by a strictly neutral member appointed by the Mediation

Board. Bear in mind, also, that it is explicitly provided that nothing in the act shall be construed to prevent a carrier or group of carriers from agreeing with employees, or any class thereof, upon another method of settling disputes. I shall propose an amendment to that proviso a little later on.

If a company union is formed lawfully, and is truly representative, there is nothing to prevent them then from agreeing to settle their disputes by another method, if they prefer that to the National Adjustment Board.

The CHAIRMAN. I am not thinking merely of a company union, but I am thinking of organizations that might be formed, that might develop independently, of national organizations, and independently of railroad management.

Mr. EASTMAN. When I speak of a company union, Mr. Chairman, I refer only to a union which is limited to one system. I do not necessarily mean one which is under the domination of the company.

The CHAIRMAN. The term applies usually to a union under the domination of the company.

Mr. EASTMAN. I know that the railroads will present, before these hearings are through, very emphatic objections to the creation of this National Adjustment Board.

I may say that I conferred with the representatives of the railroads before making the report on this bill.

They will probably tell you that it is something like shooting sparrows with a 16-inch gun; that those minor disputes ought to be considered locally and not by a national board far removed from the seat of conflict; that this is especially true of discipline cases; that the very existence of a national board will prevent the local settlement of these cases as they ought to be settled; that the tendency for the parties will be to disagree and to "pass the buck" to the national board; and that the national board will bog down with a multitude of docketed but undecided cases, to the dissatisfaction and great expense of all concerned.

Now I do not wish to dismiss these objections as of no moment. On the contrary, I think they have substance and that you ought to give them very careful consideration. Nevertheless I believe that this experiment of a National Adjustment Board should be tried. In the first place, as I have already indicated, I regard the appointment of a neutral member to prevent deadlocks as a provision having the very greatest of importance.

I now refer to the appointment of such a neutral member in the last analysis by a Federal Government agency.

It is, however, a principle which it would be far more difficult to apply if there were a large number of regional boards of adjustment, to say nothing of a possible multitude of system boards. In the second place the success of the undertaking will depend very largely upon the wisdom with which it is administered, both by the actual members of the board and also by the parties which stand behind them, namely, the carriers and the labor organizations. I am quite hopeful that the members, including whatever neutral members are appointed, will decide the early cases in such a way as to discourage the overloading of the board with unsubstantial cases of no intrinsic merit. I am also hopeful that the carriers and the labor organizations will try to make the new undertaking work instead of trying to make it

fail, and will so conduct themselves that the cases which go to the board will be the exception rather than the rule. Either can make the experiment fail, but what I have seen of the two parties in recent months leads me to believe that they are not altogether lacking in wisdom, so that I am hopeful of a very fair degree of cooperation in making the new plan work.

In the third place, past experiments with boards somewhat like this, not only in the railroad industry but in other industries, lead me to hope for success. The three National Adjustment Boards during Federal control, which were evenly divided between the two parties, adjusted a multitude of minor labor disputes satisfactorily under very trying and difficult conditions.

In going over the record of those adjustment boards, I may say I find, notwithstanding the Government was then in control of the railroads, that the decisions in favor of the carriers exceeded those in favor of the employees.

It may also be said that the Railway Labor Board, however its handling of major labor controversies may be criticized, disposed satisfactorily of a great number of minor disputes. Other illustrations may be found in the anthracite and bituminous coal industries, in the manufacture of both men's and women's clothing, and in the printing industry. I think there are others. My assistant, Mr. Beyer, is familiar with these experiments, and can tell you how they have resulted, if you so desire.

I should say there I do not think the boards in all those instances which I mentioned in other industries were national in scope, because the industry did not adapt itself to a national organization, not so well as the railroads do. However, they are comparable institutions.

Finally, I believe that the consideration of these minor disputes from a national viewpoint instead of a strictly local viewpoint will have advantages which will more than offset its disadvantages. This will be particularly true in the case of interpretations of rules and working conditions. There is, I believe, no sound occasion for the multiplicity of interpretations which now seems to exist, and if some greater degree of uniformity can be attained by national consideration, the tendency will gradually be to reduce the number of debatable disputes. Precedents will mean something, whereas they now often mean little or nothing.

For these reasons, which I have endeavored to state very briefly and compactly, I hope that the experiment of a national adjustment board will be tried. I admit that it will be an experiment.

I come now to the last salient feature of the bill, which is the reorganization of the present United States Board of Mediation into a national mediation board.

The CHAIRMAN. Before you take that up, the neutral member is not to be appointed until after the division disagrees and is unable to come to an understanding?

Mr. EASTMAN. Yes.

The CHAIRMAN. Will not your neutral member be at a disadvantage in not being in the hearing up to that time?

Mr. EASTMAN. Judging from my own experience on the Interstate Commerce Commission, I do not think that is necessarily true. Wherever a case is briefed, the briefs are there, and wherever there has been an argument, there is an opportunity to read what has been

said. I should think—these are minor cases—they are not major issues; I should not suppose it would be difficult for a neutral member to inform himself of the issues involved very readily, because as a matter of fact the other members of the Board are in one sense partisan. One group represents the railroads and the other group represents the employees, and I should suppose they would provide him with all the argument that would be necessary.

The CHAIRMAN. Is it your thought if you had a neutral member of these boards all the way through, that neutral man would tend to become allied with one side or the other?

Mr. EASTMAN. No; I think the idea is to encourage the getting together of the railroads and their employees, without the necessity for outside help; and to call in help only when it becomes necessary.

Senator HATCH. Your thought is something like having a thirteenth juror only to vote in case of a deadlock?

The CHAIRMAN. In my State he sits all through the case. That is what I am wondering about. If you brought him in after the case was tried, it would not be worth much. Still this is different, because they can study the case.

Mr. EASTMAN. Yes, sir.

Senator WAGNER. Under that rule there is not any question of veracity involved.

Mr. EASTMAN. I would not suppose so, ordinarily. In most of these minor cases it should be comparatively easy to arrive at the facts.

The CHAIRMAN. Your adjustment boards, the compulsory features of the adjustment boards' appointment, if either side fails to appoint, the Secretary of Labor will appoint.

Mr. EASTMAN. Yes.

The CHAIRMAN. I have not had time to study this bill.

Mr. EASTMAN. The neutral member would be appointed by the Board of Mediation.

The CHAIRMAN. I understand that; but I am speaking of the weakness which exists where you do not get your board appointed. Under the proposed law, if either party failed to appoint, the Secretary of Labor would then appoint.

Mr. EASTMAN. That is true.

Let me at the outset say that considering the handicaps under which the present Board of Mediation has labored I think that in many respects it has done a very good job. It has endeavored to hold the scales even and to administer the provisions of the act wisely. The present chairman is entitled to much credit, and I hope that you will hear him before you are through.

The CHAIRMAN. I may say I talked to him about it, and at a later date will call him before the committee.

Mr. EASTMAN. It is thought, however, that the present Board may well be made more compact, by reduction from a membership of five to a membership of three. If the National Adjustment Board is created, the National Mediation Board is likely to be relieved of what is now a comparatively large number of minor cases, and will be able to concentrate upon the major cases of substantial national importance. Three first-class men can do this as well as or better than five, and the tendency should be to magnify the importance of the work and secure appointment of men of the best possible type.

The present machinery for mediation and possible arbitration and for the final appointment of a fact-finding board are left largely unchanged. I call your especial attention, however, to a change which appears in the first paragraph, section 5. This provides that the Mediation Board, in the event that its mediatory efforts fail, shall notify both parties in writing to this effect, the prevailing rates of pay, rules, and working conditions, however, to remain in statu quo for 30 days thereafter.

As the present act reads, a railroad, by rejecting the Board of Mediation's final recommendation to arbitrate the dispute, is enabled to change the rates of pay, rules, or working conditions arbitrarily, prior to the issuance of an order by the President appointing a fact-finding board and maintaining the status quo for 60 days. The only way the employees can now guard against this possibility is for them to be forehanded and arm themselves with a strike vote prior to the termination of mediation, obviously a very unsatisfactory expedient, so as to enable the Board of Mediation to certify to the President that an interruption to interstate commerce threatens, thus enabling him in turn to issue an executive order before the railroad can change the status quo. The railroads have taken advantage of this unintentional hiatus in the present law in several instances. The change now proposed is designed to plug this hole.

One further change should be mentioned. Section 6 of the act prescribes the procedure for changing rates of pay, rules, and working conditions.

I am speaking now of the present section 6.

It is proposed in S. 3266 to amend this section by striking out a provision which reads as follows:

> Should changes be requested from more than one class or associated classes at approximately the same time, this date for holding the conference shall be understood to apply only to the first conference for each class; it being the intent that subsequent conferences in respect to each request shall be held in the order of its receipt and shall follow each other with reasonable promptness.

This provision was inserted, I understand, at the request of the railroads so that they would not be confronted with the necessity of handling a number of wage demands at one and the same time. But this provision in reality has the effect of forestalling any attempt on the part of all the labor organizations to move in unison in respect to the readjustment of wages. It is thus a safeguard wholly to the advantage of the railroads when wages are rising and to the employees when wages are falling. If the employees had not waived any advantage under this particular provision when the Chicago wage deduction agreement was originally entered into and met the railroads jointly, the railroads would have suffered from this provision in 1932. It serves no useful purpose other than to give either party certain advantages, depending upon the circumstances. I believe that it has no legitimate place in the act.

Mr. CHAIRMAN. I have certain amendments to which I should like to call attention. Some of these are purely typographical. Shall I read those?

The CHAIRMAN. It will not be necessary to read the typographical ones. They will be incorporated in the record.

(The proposed amendments and corrections of Senate bill S. 3266, are as follows:)

Page 2, line 8, substitute "a" for "the."
Page 2, line 12, insert "the Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso."
Page 3, line 17, after the word "jurisdiction" substitute "or" for "of."
Page 5, line 11, change "purpose" to "purposes."
Page 6, line 6, insert after "organization," "labor representative, or other agency of collective bargaining,".
Page 6, line 11, eliminate the words "members of."
Page 8, line 9, insert after the word "the," "receipt of the."
Page 9, line 25, eliminate the words "any employee or" and substitute therefor "an individual employee to render labor or service without his consent, nor shall anything in this act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent."
Page 10, eliminate lines 1, 2, 3, 4, and 5.
Page 12, line 10, insert after the words "has merit," the words "the Secretary shall notify." Substitute "accordingly" for the word "shall."
Page 12, line 11, eliminate the words "be so advised."
Page 12, line 12, insert after the word "advice," "the Mediation Board."
Page 12, line 15, eliminate comma.
Page 13, line 6, substitute "third or neutral party" for "arbitrator".
Page 13, line 11, insert after comma "or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while serving as such third or neutral patry."
Eliminate the words "while serving as arbitrator."
Page 15, line 23, substitute "(n)" for "(i)".
Page 20, line 3, insert at end of line 5 comma in place of period followed by words "not in conflict with any of the provisions of this Act."
Page 20, line 10, insert after the word "abolished" "effective thirty days from the approval of this Act and".
Eliminate the words "except that".
Page 20, line 12, substitute "approval" for "passage".
Page 20, line 12, insert after the word "shall", "continue to function and".
Page 20, line 20, insert after the word "shall", "begin as soon as the members shall qualify, but not before thirty days after the approval of this Act, and".
Page 21, line 11, strike out the word "the" between the words "of" and "law".
Page 21, line 18, substitute "approval" for "passage".
Page 24, lines 1 and 2, eliminate the words "or the Mediation Board may proffer its services".
Page 24, between lines 9 and 10, insert a paragraph reading
"(c) The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time,"
Page 25, line 8, substitute "of" for "as to".
Page 26, line 20 and 21, eliminate the words "or a member thereof".
Page 27, line 15, insert after the word "Arbitration" "or".
Page 29, line 12, substitute "affecting" for "effecting".
Page 29, line 14, insert the words "the beginning of" between the words "for" and "conference".
Page 30, line 6, eliminate the word "and" between "8" and "10" and add, after "10", "and 12".

Mr. EASTMAN. Page 2, line 12, at the end of the line it is suggested that the following be inserted:

The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso.

That was suggested by the Board of Mediation, because it finds some difficulty in deciding whether an electric railroad is a street, interurban or suburban road, or whether it is a part of a general steam railroad system of transportation, and that Board has felt the Interstate Commerce Commission could pass upon that.

The CHAIRMAN. They have that trouble from time to time and find themselves necessarily falling back upon the Interstate Commerce group to sustain their own positions.

Mr. EASTMAN. I may say the Interstate Commerce Commission has considerable difficulty in making that determination in many cases, and has in the past suggested a clarification of that language, which, however, has not been acted upon by Congress.

The language in the bill now corresponds to similar provisions in the Interstate Commerce Act.

On page 6, line 6, after the word "organization", insert "labor representative or other agency of collective bargaining."

In other words, the financial help which the railroad gives to the association may be by direct payment to an individual rather than to the organization itself, and it was thought this amendment would clarify that situation.

The CHAIRMAN. This is to make more certain the railway shall not support an organization?

Mr. EASTMAN. Yes.

The CHAIRMAN. As I take it, the meaning of that section, since you have referred to it, the rest of that section, that subdivision, is to prevent the railroads from charging off dues as mines do? Is that the intention of that?

Mr. EASTMAN. It is not exactly the same, as I understand it, as the so-called check-off in the case of mines. My understanding about the check-off, if I am right about it, is that an arrangement which applies to every employee, whether or not he wants to join the organization. Is that true, Mr. Beyer?

Mr. BEYER. No; it only applies to the members of the organization.

The CHAIRMAN. This forbids the deduction from wages of employees any dues, fees, assessments, or other contributions payable to members of labor organizations, and so forth?

Mr. EASTMAN. Yes.

The CHAIRMAN. As I understand, that lifts this thing out as a thing they cannot even agree upon. The railroad could not do it if it wanted to?

Mr. EASTMAN. Yes. That changes the present law in that respect.

The CHAIRMAN. What is your reason for that?

Mr. EASTMAN. The reason is that a railroad is thus given information as to whether or not employees are paying dues in an association. It is very easy for the railroad to create the impression, or for the employees to get it in some other way, that the fact they do or do not pay dues will have some influence upon their record with the railroad company. It would seem to me that is a thing that the labor organization ought to handle for itself. I do not see why the railroads should mix in it.

The CHAIRMAN. It is a case of leading them not into temptation.

Mr. EASTMAN. Yes; that is a good way of putting it.

The CHAIRMAN. All right; go ahead.

Mr. EASTMAN. Page 9, line 25, begining line 24, there is a proviso to this effect:

Provided, That nothing in this Act shall be construed to require any employee or any officer of any carrier to render labor or service without his consent or to authorize the issuance of any orders requiring such service or to make illegal

the failure or refusal of any employee individually or any number of employees collectively to render labor or service.

Now that, in my judgment, is too broad, and the language in the present Railway Labor Act ought to be substituted, which would read as follows:

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

That is the language in the present act.

What is now in the bill goes a little beyond that by speaking of a number of employees collectively, and the act is intended to prohibit strikes under certain circumstances, for example, the 60 days during which the fact-finding board is to act.

The CHAIRMAN. Have you anything further?

Mr. EASTMAN. Yes. I am looking these over. I think most of them are merely improvements in language. I am trying to pick out those which are of importance.

On page 20, at the top, there is a paragraph which reads as follows:

Second: Nothing in this Act shall be construed to prohibit any carrier or any group of carriers and its or their employees or any class thereof from agreeing upon the settlement of disputes through such machinery of contract and adjustment as they may mutually establish.

I think that the words should be added to that paragraph "not in conflict with any of the provisions of this act."

Senator HATFIELD. Where would you add it?

Mr. EASTMAN. At the end, so as not to open the door to an agreement which recognized an organization which is not independent or truly representative of the employees.

Now the empoyees have suggested to me another substitute for that, which I have looked over, and have rephrased a little, and while I have not had a chance to study it, I do not at present see any objection to this change, which is a little more explicit than the way in which I put it.

Nothing in this section shall be construed to prevent any carrier, system or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon 90 days' notice to the other party elect to come under the jurisdiction of the Adjustment Board.

The CHAIRMAN. Would agreement by such system or individual organization be enforcable the same as the decision of your board provided for in this act?

Mr. EASTMAN. I think there is no provision in the act which would cover that.

The CHAIRMAN. If they did not carry them out they could immediately appeal.

Mr. EASTMAN. They could establish an adjustment board, and if that board agreed I assume there would be no difficulty in applying its decision—they could also agree upon a neutral member to prevent

a deadlock. They would not be able, as the bill is now drawn, to have a neutral member selected by the Mediation Board.

Senator THOMPSON. If you would adopt that provision that would exclude any and all other provisions of the act from consideration when determining what should be done, would it not?

Mr. EASTMAN. You are now referring to this paragraph

Senator THOMPSON. The last one you say was offered you. If that was adopted then no other provision of the Act could be made to apply to the things that provision covers. That is what I wanted to get. They have put in a limited provision.

Mr. EASTMAN. Yes; the limitation being in accordance, as I understand it, with the provisions of the act.

Senator THOMPSON. That is what I wanted.

Mr. EASTMAN. Yes.

The CHAIRMAN. Have any you any other important amendments?

Mr. EASTMAN. No.

The CHAIRMAN. Senator Wagner, have you any questions?

Senator WAGNER. No.

The CHAIRMAN. Senator Hatfield, have you any questions?

Senator HATFIELD. No.

The CHAIRMAN. Senator White, have you any questions?

Senator WHITE. No.

The CHAIRMAN. Senator Hatch, have you any questions?

Senator HATCH. No.

The CHAIRMAN. Senator Thompson, have you any questions?

Senator THOMPSON. No.

The CHAIRMAN. Senator Brown, have you any questions?

Senator BROWN. No.

The CHAIRMAN. Mr. Eastman, I want to ask you a question or two on a little different proposal: I have communications still before us, representatives of the employees of the telegraph company particularly wanted to be heard, with a view to having some labor disputes machinery set up in that bill. I pointed out to them that would be entirely out of the field of a communication commission, but suggested it might be possible to work them in some organization such as this, having their disputes taken up under some plan like this.

What do you think about the feasibility of having the employees of communication companies given permission to be brought in under this act, and to have their disputes adjudicated under the provisions of this act?

Mr. EASTMAN. You asked me to take into consideration that question, and gave me warning that you were going to ask it. I am sorry to say I forgot to do that, but I think I can give you an answer now, perhaps not as carefully considered as it ought to be: I see no reason why the employees of the communications companies should not be handled under provisions of law in all respects similar to those proposed here, nor do I see why the mediation or other acts which are necessary on the part of governmental agencies cannot be done through the proposed National Mediation Board. However, in order to avoid difficulty in the construction of the act, I think it would be well, if such employees are included, to make their inclusion an entirely separate part of the act instead of linking them in here.

The CHAIRMAN. You think they might have some sort of national adjustment board or some sort of adjustment board similar to this?

Mr. EASTMAN. I should say so.

The CHAIRMAN. And also that their cases might be handled by the mediation board as the railroad cases are heard?

Mr. EASTMAN. I should think so.

The CHAIRMAN. In the same manner. Would you not recommend also the employees there would have the same free choice given them of selection of their representative?

Mr. EASTMAN. Oh, yes; I would make the provisions in all respects similar, but I would not combine the communications employees with the railroad employees. I would have it a distinct part of the act.

Senator THOMPSON. Why would that not be naturally introduced into the other bill by leaving it that permission to examine and report; then if you passed the new act——

The CHAIRMAN. Of course, the communications commission corresponds to the Interstate Commerce Commission, in that it studies the economic questions involved, and it seems to me, and more so than ever does now seem to me, that since this is a labor bill setting up the machinery for the adjustment of labor disputes, it might be properly added here to this legislation, because the members of this Board are engaged in that kind of business—namely, the settling of labor disputes. I have notified the representative of those employees, so they will probably be here later.

If there are no other questions, Mr. Eastman—we appreciate your coming this morning and presenting this so fully—we may want you to come back at the end of these hearings.

Mr. EASTMAN. I know there are a lot of questions that will arise in connection with this bill that I have not touched upon this morning.

The CHAIRMAN. If it is possible for you to be with us tomorrow or the next day, I would appreciate it. I do not know whether you can or not. I will see that copies of the transcript are furnished to you.

Mr. EASTMAN. I appreciate that, because I have got a lot to do.

The CHAIRMAN. Well, all parties who desire to be heard please communicate with the assistant to the committee, Mr. Stephan.

We will recess at this time until tomorrow morning at 10:30 o'clock, in the Senate Interstate Commerce Room in the Capitol.

(Whereupon, at 11:45 a.m., Tuesday, Apr. 10, 1934, the hearing in the above-entitled matter was adjourned until 10:30 a.m., Wednesday, Apr. 11, 1934, in the room of the Interstate Commerce Committee in the Capitol Building.)

TO AMEND THE RAILWAY LABOR ACT

WEDNESDAY, APRIL 11, 1934

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D.C.

The committee met, pursuant to adjournment, at 10:30 a.m., Senator Clarence C. Dill (chairman) presiding.

The CHAIRMAN. The committee will come to order.

Several Senators promised to be here but they have not arrived, and I think we will have to go ahead. Mr. Harrison, I believe, will be heard first.

STATEMENT OF GEORGE M. HARRISON, PRESIDENT OF THE BROTHERHOOD OF RAILWAY CLERKS

The CHAIRMAN. Give your name and address and position.

Mr. HARRISON. My name is George M. Harrison, Cincinnati, Ohio, president of the Brotherhood of Railway Clerks. I appear here as the chairman of the legislative committee of the Railway Labor Executives Association, speaking for the 21 standard railway labor organizations, the list of which I file with the reporter.

The CHAIRMAN. It will be printed at this point in the record.

(The list referred to above is as follows:)

Brotherhood Locomotive Engineers.
Brotherhood of Locomotive Firemen and Enginemen.
Order of Railway Conductors of America.
Brotherhood of Railroad Trainmen.
Switchmen's Union of North America.
Order of Railroad Telegraphers.
American Train Dispatchers' Association.
International Brotherhood of Boilermakers.
Iron Ship Builders and Helpers of America.
International Association of Machinists.
International Brotherhood of Blacksmiths Drop Forgers and Helpers.
Sheet Metal Workers' International Association.
International Brotherhood of Electrical Workers.
Brotherhood of Railway Carmen of America.
International Brotherhood of Firemen and Oilers.
Brotherhood of Railway and Steamship Clerks.
Freight Handlers Express and Station Employees.
Brotherhood of Maintenance of Way Employees.
Brotherhood of Railroad Signalmen of America.
Order of Sleeping Car Conductors.
National Organization Masters Mates and Pilots of America.
National Marine Engineers' Beneficial Association.
International Longshoremen's Association.

Mr. HARRISON. The railway employees find that they are in substantial agreement with the bill S. 3266, which was introduced by

Senator Dill and which the Coordinator presented yesterday. The organization has several slight amendments that they will desire to offer later in my testimony.

The bill is designed to maintain substantially the same method as is now provided in the railway labor act for the adjustment of labor relations between the railroads and their employes. Our experiences, however, after 8 years of operation under that bill have brought us to the definite conclusion that, while its principles are sound, there is need of some amendments to clarify the language and to prevent certain unfair practices that have developed over that period of time.

The main purposes to be accomplished by bill S. 3266 may be divided into two sections. Fundamentally, the railway labor act was designed to provide machinery to aid the employees and their representatives and railway managements through conferences and negotiations to adjust such differences as may arise, with the provision of governmental assistance when the parties were unable to get together.

One of the fundamental principles underlying that procedure is, of course, that the representatives of the parties must be true and free representatives. Free to fairly and truly represent their respective interests.

The existing law, the railway labor act, provides that representatives for the purpose of the act shall be selected free of influence, or coercion exercised by either party over the selection of representatives by the other. I take it that that fundamental principle was put in the law because, subsequently it provides for machinery to reach decisions on controversies either through boards of adjustment or by arbitration, and it provides for the enforcement of those decisions in the courts. Since the decisions are enforceable in the courts, they must stand the test of having been arrived at by representatives that were free and truly representative, and many practices as I said, have developed under that law which we feel are such that serious unrest and strife will develop in our industry unless they are corrected.

The first difficulty arises out of the fact that the present law provides no machinery for the enforcing of its provisions and does not specifically spell out the practices that are unfair and which may be undertaken to defeat the very purposes of the act itself. As a result of the absence of those specific provisions in the existing law, we have found in our industry that railroad managers have set up dummy organizations with representatives that they control. In many instances the representatives are in the pay of the railroad corporation. To give just a general illustration of how the purposes of the law are being defeated, I might take a typical case. In many railroads where the standard organizations held contracts, the railroad management sought to eliminate those organizations from their property.

As a result, they called in some of their trusted employees and there and then laid the plans to organize dummy organizations, which we call "company unions." Constitutions and bylaws were drafted and emissaries in the pay of the railroad corporations were sent out over the line to persuade and coerce and influence the men to repudiate the existing organizations and set up a company union for the purpose of collective bargaining. There were no associations of the men formed in the nature of an opposition organization. The

inception of the movement was right in the railroad officer's office and by him.

Men are told that for their own best interest they had better repudiate their standard organizations and join the company union, and they are informed in such a fashion that they understand that if they expect to continue in the service and not incur the displeasure of the officers, that they had better not sign to organize this independent or company union.

The CHAIRMAN. Have you any statistics as to what percentage of the railroad employees of the country are in company unions?

Mr. HARRISON. In a rough way, Senator, I can give you some idea; I haven't the exact figures.

The CHAIRMAN. Roughly, 10 percent, or 20 percent?

Mr. HARRISON. I would say out of approximately a million railroad employees today there are probably 35 or 40 percent covered by associations and employee representation plans and local company unions outside of the standard organizations. That is just a rough guess.

The CHAIRMAN. I don't want to interrupt your train of thought, but I wish you would get down to the bill and get down to the changes in the bill.

Mr. HARRISON. Yes; that is the purpose we are trying to accomplish by the bill.

The CHAIRMAN. Description of company unions, all right, but I think we are quite familiar with that.

Mr. HARRISON. So reduced to its simplest form it just means this: The railroad officer writes himself a letter suggesting certain changes in behalf of the employees, and he in turn writes himself another letter as the representative of the employees dealing with those changes. Now, I say that is the simpliest form. However, in some instances they do have their chief clerks and other employees to represent them in dealing with other officers on these matters.

Now, the bill is designed to prevent that, because it provides that the carrier shall use its funds in organizing, aiding, assisting, or maintaining company unions.

The CHAIRMAN. In other words, it carries over the Emergency Railroad Act provisions into this bill?

Mr. HARRISON. Yes.

The CHAIRMAN. But the seriously controversial part of this bill as I see it before this committee is going to be these adjustment boards.

Mr. HARRISON. I agree with you there.

The CHAIRMAN. And I think we would like to have your views on that.

Mr. HARRISON. All right, I will deal with that. Then it provides in connection with representatives that, should there be a controversy as to who should represent the men, the board of mediation shall handle the selection of representatives. That is one reason, today, why men cannot get true representations, because the carrier participates in the conduct of the election and many times problems arise on which we are unable to reach an agreement and often the points of differences cannot be adjusted.

Now, moving on to the right of the men to organize and freely select their representatives, we come to the section establishing the boards of adjustment which I will be glad to deal with.

I might go back to the period of Federal control and say, just as a premise to begin with, that we had national boards of adjustment to which the employes could take their grievances and get a decision.

The CHAIRMAN. How many of them were there?

Mr. HARRISON. There were three boards. Three sections of the country, western, northern, and southern, nationally for three different groups of employees. Those boards functioned satisfactorily to the men. At the termination of Federal control, March 1, 1920, the employees sought to perpetuate that same arrangement of national boards of adjustment. The Transportation Act of 1920, which then took effect, provided that labor boards of adjustment should be established for the settlement of grievances, and it also set up the Railroad Labor Board. The organizations sought a conference with the railroad representatives in an effort to bring about the establishment of national boards. The railroads declined to set up national boards of adjustment and therefore compelled the men to take their cases to the United States Railroad Labor Board.

The Board, of course, having many other major duties to perform in connection with wages and rules disputes, which were quite prevalent at that time, was overburdened in the handling of its work, and consequently it was somewhat delayed in making decisions on grievances cases. However, in the main, the functions of the United States Railroad Labor Board in the handling of grievance cases were satisfactory to the employee. The Labor Board got into many difficulties on other questions that caused the employees to feel that that act ought to be repealed and the Board abandoned. Following that, representatives of the employees and the carriers, through conferences, worked out this present railway labor act. In the present railway labor act, it provides for the establishment of a system of regional or national boards of adjustment, but the joker in the situation is that you cannot establish them unless you can get both parties to agree.

Following the enactment of that law most of these organizations sought to set up regional boards of adjustment. Almost universally the railroads declined to establish regional boards of adjustment. As a result, many of the organizations and many of the railroads set up what we call system boards—that is, local to one system of railroad. Many of the organizations refused to set up a system board because of the impossibility of its functioning satisfactorily; but under the law we were unable to get to the Board of Mediation with our grievances unless they first passed through a board of adjustment. So many of the boards were set up just as a gateway to get to mediation.

Now, this law is designed by the establishment of the national board—this bill, S. 3266, is designed by the establishment of a national board to overcome our experiences and the difficulties that developed out of that situation. The language suggests first, that there shall be a national board established; that means that it is mandatory and it must be set up.

The CHAIRMAN. It is not set up by either party, then; the Secretary of Labor has the right to appoint.

Mr. HARRISON. Yes. The personnel of the board will be 18 representatives of the employees and 18 of the railroads. In the event either party fails to select a representative, the Secretary of Labor will appoint them. That board will have jurisdiction over all controversies growing out of grievances or out of interpretation and/or application of rules and agreements.

The CHAIRMAN. I notice there isn't any qualification set out for these board members.

Mr. HARRISON. I will deal with that, Senator, and will be glad to answer your question.

The CHAIRMAN. Do you think there ought to be?

Mr. HARRISON. No; I do not.

The CHAIRMAN. Well, you think the officers of a railroad and officers of an organization ought to be permitted on the board? Is that your idea?

Mr. HARRISON. No; the situation is this, Senator; The party members will be representing a particular interest on the board and the parties that select those representatives will undoubtedly take such action as to safeguard their interest in the selection of those representatives.

The CHAIRMAN. What I don't get is this: Do you think the railroad presidents and the presidents of railroad labor organizations should be permitted to go on these boards?

Mr. HARRISON. I think officers of the railroads should be permitted on the board. It may be a railroad president, but I doubt that any of them will be selected for that purpose.

The CHAIRMAN. In other words, do you not think there ought to be any limitation on whom they select?

Mr. HARRISON. No; because of the very nature of the controversies to be handled by that board, we should have men that at least understand the problems in the industry.

Senator HATCH. On both sides?

Mr. HARRISON. On both sides of the controversy.

Senator BROWN. What is the object in having so many?

Mr. HARRISON. There are 21 of the national organizations and there are about a million railroad men. So we divide the board into four sections, each section operating independently of each other. Then, in order to put enough men on the board to take care of the work, it takes 18 on each side to round out the board. We have four regional boards in existence today—part of the railroads and part of the organizations—and on those regional boards there are more men on the boards than we suggest here for the one board. The parties, however, compensate their members so there is no expense to the Government in the number of men.

Then the machinery provides that these controversies will be handled in conference in the usual manner, hoping that they will be settled between the parties at home. If they cannot be settled, then they go to this board.

The CHAIRMAN. Suppose one or two of the parties does not appoint his members, is there to be no limitation on the Secretary of Labor as to whom the Secretary of Labor will appoint?

Mr. HARRISON. The Secretary of Labor must appoint someone from the group that the individual is to represent.

The CHAIRMAN. Yes; but I was just wondering whether you wanted to leave an entirely free hand to the Secretary of Labor.

Mr. HARRISON. There may be a necessity of safeguarding that, Senator.

The CHAIRMAN. It is quite unusual to pass legislation and not put any restrictions on who may be appointed. I am just wondering what may come of it.

Mr. HARRISON. We have no objections to any reasonable safeguard.

The CHAIRMAN. I think that is something you ought to think about. There is nothing here which requires that they be members of the organization or that they be satisfactory to the organization.

Mr. HARRISON. If the Secretary of Labor appoints them?

The CHAIRMAN. Yes; and the same way with the railroads. There is nothing here that protects the railroads against appointing somebody that is not satisfactory to them.

Mr. HARRISON. Of course, we couldn't appreciate that, as our side of the situation, a condition would develop where we wouldn't make the appointments.

The CHAIRMAN. I realize that, but I am viewing it from the possible viewpoint of both the railroads and the men.

Mr. HARRISON. Possibly, feeling that way, we didn't cover it as fully as it ought to be covered.

The CHAIRMAN. But I think from the standpoint of the employees you don't need any limitations. You are willing to let the Secretary of Labor take chances; you think they are certain to appoint their own people.

Mr. HARRISON. Yes; we thought that would protect us all right.

The CHAIRMAN. Attention has been called to the fact that there is a general limitation—I am thinking of the probable interest that these men might have for or against this bill. I am not pressing it. I am just raising that issue. Go ahead, Mr. Harrison.

Mr. HARRISON. So, when the grievance goes to the national board, they endeavor to reach a decision. Now, we feel that the parties should be given the greatest freedom and the greatest of opportunity to dispose of their disputes before outside assistance is brought in. Then the bill provides that should the parties—should the board be unable to reach a decision, that they then shall endeavor to mutually agree upon the selection of a neutral, and in the event they are unable to agree upon the selection of a neutral, the United States Board of Mediation which is an impartial governmental agency, shall appoint the neutral member. I may say that under the present act, should that similar condition develop in the selection of an arbitration board, the Board of Mediation makes the appointment of the arbitrators if the parties are unable to agree.

Then we provided, in order to overcome our past experience, that the decision when made by the adjustment board shall be enforceable. We have had several instances where, even though the law provides that the agreement setting up the board shall provide for the acceptance of the decision by the parties, that the decisions haven't been obeyed.

Then we provide that the parties may be free to organize either a system board or a board representing a group of railroads or a board representing all of the railroads in a region, to consider these disputes

instead of going to the national board. There are some of the organizations and possibly some of the railroads that can get together and establish machinery of that character, and we thought it was well to afford them that opportunity, providing, however, that should their experience prove unsatisfactory with such machinery, that then, on notice of either party, they shall have a right to join the national board. That is contemplated in the amendment offered by the Federal Coordinator yesterday, and we, of course, shall file amendments to that later on.

Now, I anticipate that the railroads will probably oppose the establishment of these national boards. The reason I recited the history of this board, was because I wanted the committee to understand that this has been a question for the last 14 years as to what kind of boards we are going to have to settle our grievances and our controversies that arise out of the agreements. We have always sought national boards; the railroads have always refused to set them up. They have sought the system boards, regional boards, and national boards, or group boards, and the entire experiences over that period of 14 years have shown that what the railroads insisted on having was not for the good of the industry, and it wouldn't work.

Most of the boards that have been established under the present law have been unable to reach a decision. They have deadlocked on any number of cases. As a result of that there was fast growing up in our industry a serious condition that might very well develop into substantial interruption of interstate commerce, the very thing the law provided machinery to minimize. They probably say that the national board is far removed from the seat of the controversy. They probably will say that the national board will bog down. Well, now, I don't know anybody that has a greater interest in grievances being prosecuted than the man that originated the grievance. Grievances come about because the men file them themselves. Railroads don't institute grievances. Grievances are instituted against railroad officers' actions, and we are willing to take our chances with this national board because we believe, out of our experience, that the national board is the best and most efficient method of getting a determination of these many controversies that arise on these railroads between the officers and the employees.

The CHAIRMAN. Now, will you explain—I suppose I ought to know this, but I don't—just what kind of controversy is to be settled by these boards, and what kind by the boards of mediation. I haven't got it clearly in my mind.

Mr. HARRISON. I will be glad to. Being so familiar with the law, I probably didn't go into that as thoroughly as I ought to. There are two classes of controversies that develop. One is what we call major changes, when we attempt to write a new contract or to revise a contract covering wages, rules, and working conditions.

The CHAIRMAN. On all the railroad systems in the country?

Mr. HARRISON. That is right. Now, that is handled in this fashion: You have a conference with the officers of the railroad and endeavor to agree. If you are unable to agree then, either party has the privilege of invoking the aid and service of the United States Board of Mediation. The Board of——

The CHAIRMAN (interposing). Will have under the law?

Mr. HARRISON. Yes; there is no change in that. Now, the other class of controversy is the disputes that arise out of the application of that agreement to the practical situation on the railroad. For instance, we may have a claim for time claiming that the rule of the contract should provide for the payment of so much. The railroad may dispute that and claim that they understand it to be another way. We may have a grievance concerning seniority of a man; we may have a grievance concerning the dismissal of a man, the promotion of a man, reduction of force. There are a thousand and one different kinds of controversies that can develop. Those are the controversies that will be settled by the national board. The parties in the first instance have agreed on the contract; they have laid down rules.

The CHAIRMAN. Now, what is the difference between national board and local board of adjustment?

Mr. HARRISON. Local boards of adjustment are the same kind of boards as the national board, designed to handle the controversies on that one particular railroad. The national board will handle all the controversies developing in the country.

The CHAIRMAN. Would the action of the local board be appealed to the national board?

Mr. HARRISON. No; we don't so comprehend in our suggestions.

The CHAIRMAN. Do you have regional boards also?

Mr. HARRISON. No, sir. The situation is this, Senator: The bill provides in the first instance for the setting up of a national board. Now, we say to the parties: "You don't need to use this national board if you can't agree with your men back home to set up a board in lieu of that national board."

The CHAIRMAN. That is a system board?

Mr. HARRISON. A system board, or a regional board, or a group board. "If you do set it up, then you are exempt from the national board."

The CHAIRMAN. Are the decisions enforceable in the courts just the same as the national-board decisions?

Mr. HARRISON. We don't provide for that, but it is our intention and our purpose that such system boards, group boards, or regional boards that are established by the parties, by agreement, will provide such terms that the decisions can be enforced in the courts. The fact of the matter is the present law provides for that. It provides that decisions shall be final and binding and conclusive on the parties, and I think that kind of decisions can be enforced.

The CHAIRMAN. Not unless there is specific authority, I think.

Mr. HARRISON. Well, we might very well provide for that, if the committee don't think it is covered.

The CHAIRMAN, I just want to get this clear. Then the local and regional of the system board are voluntary?

Mr. HARRISON. They are voluntary.

The CHAIRMAN. And if either party refuses, there is no way to compel them, and that matter would necessarily go to the National board?

Mr. HARRISON. That is right. In other words, we want to set up something that will be available, and hope that the parties will get together and establish something in its place.

We have had experience for 14 years under these boards, and we hope that the committee will give us this national board, because if

it is not approved and put into the law, we will be unable to work out satisfactory machinery by mutual agreement. The only reason we will be able to agree on other machinery is because we have this board set up by law that we can go to if we can't get an agreement on something else. It is a very troublesome problem and I just want to make this observation: These railway labor organizations have always opposed compulsory determination of their controversies. We have lived a long time and got a lot of experience, and we know that these minor cases that develop out of contracts that we make freely, and which we have the right and privilege of entering into and have something to say about their terms, we are now ready to concede that we can risk having our grievances go to a board and get them determined, and that is a contribution that these organizations are willing to make.

I just want to tie this tail on to that kite—if I may express it that way—that if we are going to get a hodgepodge arrangement by law, rather than what is suggested by this bill, then we don't want to give up that right, because we only give up the right because we feel that we will get a measure of justice by this machinery that we suggest here.

Going on from that national board——

Senator HATCH (interposing). Before you leave that national board, if I understood you correctly, you believe that the setting up of the national board will cause the regional board to be set up?

Mr. HARRISON. Right.

Senator HATCH. That is really what you want?

Mr. HARRISON. Some of the organizations want regional boards; some of the organizations probably will want a system board; some of the organizations will undoubtedly prefer the national board.

Going back to the scope of the bill, the scope suggested by 3266 is somewhat broader than the present Railway Labor Act, and it is the position of these organizations that we want to keep in the law everybody that is in there now. I say that, because undoubtedly there will be some attempt to exclude some people that are in the law now. We want to keep them in. We don't want to narrow it down. We want to broaden it to this extent: We want to include the railroad owned and operated refrigerator-car lines, because that is an instrumentality of interstate commerce.

Then we have had some difficulty in the past with these electric railroads, and we want to so amend the definitions of the act, the scope, as to make it clear that electric railroads that are engaged in the general interchange of freight and passengers with other railroads of the country shall come under the act; such electric railroads, for instance, as the Pacific Electric; Piedmont & Northern; Chicago, South Shore & South Bend; Fort Dodge, Des Moines & Southern; Oklahoma Railway. Those railroads are engaged in a general freight business. They receive and interchange freight from the railroads connecting with them. They sell interline passenger tickets and they handle interline freight business. It is a part of the general system of transportation of the country, even though it it operated by electric power. The present law excludes electric street or interurban railroads, and these electric lines have taken the position that they are interurban railroads because they operate between certain cities and, therefore, do not come under the law.

The courts have passed on the electric-railroad question and have held that since they could operate a general interchange of freight and passenger business they are a part of the system, and they therefore are covered by the act. We have discussed that matter with the railroads and we find ourselves in substantial agreement with the railroad representatives on that question, and that is about the extent that we would like to go in enlarging the law. It is not our purpose to go beyond that.

The CHAIRMAN. Have you got some specific amendments on this line?

Mr. HARRISON. Yes; I have some amendments that I will be glad to offer.

We do not have an amendment on scope, but I think that possibly could be cleared up as the result of the inquiry you made of the coordinator yesterday. But we do have an amendment on the definition of organization, and if it is not—there is no necessity of reading them. I will be glad to file them.

The CHAIRMAN. If you want to give your reasons—you want to change the definition that is here?

Mr. HARRISON. Yes. On page 3, line 20, of S. 3266, we wish to insert a new paragraph to read as follows——

The CHAIRMAN. You want to strike out "Sixth"? That is, line 20, page 3—"Sixth. The term 'representative' means any person or persons"—you want to strike that out?

Mr. HARRISON. We want to insert a new definition.

The CHAIRMAN. You want to insert a new paragraph, a definition for some words not now covered?

Mr. HARRISON. Yes; the definition is this:

> The term "company union" means any group or association of employees formed for the purpose of collective bargaining, whether or not the same shall be formally organized, which was so formed at the suggestion, with the aid, or under the influence of any carrier or carriers or their officers or agents, and/or whose constitution, bylaws, or actions are under any control or influence of any carrier or carriers or its or their officers or agents.

Now, that amendment is designed to accomplish the matters that I have pointed out in my previous testimony. In other words, it is designed to forbid the creation of agencies that defeat the very purposes of the law itself.

Then we want to change paragraphs 6 to 7.

The CHAIRMAN. Those are simply details.

Mr. HARRISON. On page 5, line 11, we wish to strike out all language down to and including the word "representatives" on line 19—page 5, line 11—and insert in lieu thereof paragraph "third", reading:

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

Now, the purpose of that is this: Some of the railroads have taken the position that you cannot designate any one to represent you except an employee. We say that because of that they are denying

men their rights under the law to select nonemployees or organizations to represent them.

The CHAIRMAN. Why should you want some one not an employee to represent them?

Mr. HARRISON. If these men organize labor unions, their officers represent them, and many times the officers are not employees.

The CHAIRMAN. They are former employees?

Mr. HARRISON. Yes; but they are not in the employ of that particular carrier.

Senator HATCH. Doesn't this paragraph do that now? Doesn't it prevent—isn't that the law as it is written here?

The CHAIRMAN. This does prohibit them unless they are employees.

Senator HATCH. It does.

The CHAIRMAN. Yes; lines 17 to 18.

Mr. HARRISON. Page 5, line 20, strike out this entire paragraph ending on page 6, line 13, and insert in lieu thereof the following paragraph:

Fourth. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of employees or to use the funds of the carrier in maintaining or assisting or contributing to any company union, employee representative or other agency of collective bargaining, or to influence or coerce employees in an effort to induce them to join or remain members of such company union.

Now, the essence of that is in the present Emergency Railroad Transportation Act, and we are trying to write it in here, but we are trying to make it broad enough so that they cannot contribute to company unions, they cannot contribute to employee representatives, and they cannot contribute to any other agency designed to do collective bargaining.

Page 6, line 14, strike out the entire paragraph down to and including line 21, and insert in lieu thereof the following:

Fifth. No carrier, its officers or agents, shall require any person seeking employment to sign any contract or agreement promising to join a company union. If such contract has been in force prior to the effective date of this act, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

In other words, that outlaws the "yellow-dog" contract forcing the men to join the company union as a condition of employment. That substantially carries into the act the same provision that is now in the Bankruptcy Act and which was written into the Emergency Railroad Transportation Act.

The CHAIRMAN. What is wrong with this one that is here? What is the trouble with the one that is in the bill now? You say you want to strike it out.

Mr. HARRISON. We like the words "company union" better than what appears in the bill. We want to insert that specifically because that is in the legislation now. We don't want to give that up.

Senator HATCH. Back there on page 5, I can't see that they are permitted to hire outside representatives under that paragraph third.

Mr. HARRISON. Then we make it clear on page 13, line 2, by striking out the words "selecting him", it being intended here that the members selected by the carriers shall be compensated by the

carriers and that the members selected by the national labor organizations of the employees shall be compensated by the organization.

Senator HATCH. You say you want to strike that out?

Mr. HARRISON. Strike that out and insert in lieu thereof the words "he is to represent."

The purpose of that is this: If either party refuses to make their appointment on the board and lets the Secretary of Labor make the appointment, then there would be no way to pay the representative. So we make it clear that, regardless of who appoints the representative on the adjustment board, the party that the representative is to represent shall pay his salary.

Senator HATCH. You merely try to clarify what is in here?

Mr. HARRISON. That is all. We don't change the intent, but to safeguard against that possibility. Then we propose on the board an adjustment section. Page 20, line 1, strike out the entire paragraph ending with the word "establish" on line 5 and insert in lieu thereof the following:

Second. Nothing in this section shall be construed to prevent any carrier, system, or group of carriers, and any class or classes of its or their employees, each acting through their representatives selected in accordance with the provisions of this act from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to a board of adjustment, as provided for in this subsection, is dissatisfied with such arrangement, it may, on 90 days' notice to the other party, elect to come under the jurisdiction of the national board of adjustment created by this act.

That amendment is designed to permit freedom of the parties to set up either kind of this machinery which we designate, if they do not want to go to the national board with their grievances.

Senator HATCH. Do you not think this language does that?

Mr. HARRISON. We think that language permits that.

Senator HATCH. I mean the language in the bill as now drawn?

Mr. HARRISON. Well, the Coordinator offered an amendment to that yesterday. We don't think that lnaguage is plain enough.

The CHAIRMAN. It will be printed in one body at this point in the record.

(The paper referred to follows:)

PROPOSED AMENDMENTS TO SENATE BILL S. 3206

Page 3, line 20, insert a new paragraph to read as follows: "Sixth. The term 'company union' means any group or association of employees formed for the purpose of collective bargaining, whether or not same shall be formally organized, which was so formed at the suggestion, with the aid, or under the influence of any carrier or carriers, or its or their officers or agents, and/or whose constitution, bylaws, or actions are under any control or influence of any carrier, or carriers, or its or their officers or agents."

Page 3, line 20, change the word "Sixth" to "Seventh."

Page 3, line 24, change the word "Seventh" to "Eighth."

Page 4, line 6, strike out entire paragraph and heading from words "general purposes" in line 6 to and including words "working conditions" in line 20.

Page 5, line 11, strike out all language down to and including the word "representatives" in line 19 and insert in lieu thereof "Third. Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other, and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to

prevent the designation by its employees as their representative of those who or which are not employees of the carrier."

Page 5, line 20, strike out the entire paragraph ending with page 6, line 13, and insert in lieu thereof the following: "Fourth. No carrier, its officers, or agents shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of employees, or to use the funds of the carrier in maintaining or assisting or contributing to any company union, employee representative, or other agency of collective bargaining, or to influence or coerce employees in an effort to induce them to join or remain members of such company unions."

Page 6, line 14, strike out the entire paragraph down to and including line 21, and insert in lieu thereof the following: "Fifth. No carrier, its officers, or agents, shall require any person seeking employment to sign any contract or agreement promising to join a company union; and if such contract has been enforced prior to the effective date of this act, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way."

Page 7, line 11, after the word "notice", add the following: *"And provided further*, That nothing in this paragraph shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties."

Page 13, line 2, strike out the words "selecting him, it being intended hereby that the members selected by carriers shall be compensated by the carriers and that the members selected by the national labor organizations of the employees shall be compensated by the organization." And insert in lieu thereof the words "he is to represent".

Page 14, line 15, strike out the words "of carriers".

Page 15, line 23, change the reference at the end of the line from the letter "(i)" to the letter "(n)".

Page 17, line 14, after the word "which", strike out the words "the road of the carrier runs" and insert in lieu thereof "the carrier operates".

Page 20, line 1, strike out the entire paragraph ending with the word "establish" on line 5 and insert in lieu thereof the following: "Second. Nothing in this section shall be construed to prevent any carrier, system, or group of carriers and any class or classes of its or their employees, each acting through their representatives, selected in accordance with the provisions of this act, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to a board of adjustment as provided for in this subsection is dissatisfied with such an arrangement, it may upon 90 days notice to the other party elect to come under the jurisdiction of the National Board of Adjustment created by this act."

Page 24, line 7, after the word "dispute", insert "not referable to the National Board of Adjustment and".

Mr. HARRISON. That is about all I have to offer, Mr. Chairman, unless there are some questions.

The CHAIRMAN. Are there any questions by the committee? Thank you very much, Mr. Harrison.

We will now hear Mr. Davis, representing shop crafts of the Pennsylvania Railroad System.

STATEMENT OF THEODORE H. DAVIS, CAMDEN, N.J., REPRESENTING THE SHOP CRAFTS OF THE PENNSYLVANIA RAILROAD

Mr. DAVIS. Mr. Chairman and gentlemen, my name is Theodore H. Davis, representing the shop crafts of the Pennsylvania Railroad.

The CHAIRMAN. What is your address?

Mr. DAVIS. Camden, N.J.—or the suburb, Woodline, N.J., designated as Camden.

Now, Mr. Chairman, I have prepared a large brief of some 80 pages——

The CHAIRMAN (interposing). A brief on what?

Mr. DAVIS. In defense of the organization which I represent, which is absolutely opposed to the bill as drawn, S. 3266, and my reasons for it are these: Much has been said regarding the so-called "company unions", or, as recently referred to, these "dummy organizations."

For your information, Mr. Chairman, you may not be aware of the fact that approximately 67 percent of the shop forces of this country are members of these so-called "company organizations" of these United States, and that has resulted from the past experiences that they have gone through during the period of Federal control. Many of these organizations came into being during the period of Federal control, and I want to read to you this brief, and I would like the secretary here to present you with a copy of it.

The CHAIRMAN. I have it.

Mr. DAVIS. My appearance here is on behalf of the seven shop crafts of the Pennsylvania Railroad System, namely, the boilermakers, blacksmiths, sheet metal workers, electricians, machinists, molders, and carmen. The shop crafts were organized into associations 13 years ago for the purpose of establishing satisfactory working conditions, brought about by the abrogation of the national agreement. They were also organized for the purpose of establishing satisfactory working conditions, adjusting differences as they arise, and promoting mutual understanding between the management of the Pennsylvania Railroad System and its employees. What I say has like reference to the other associations of the Pennsylvania System, comprising an additional group of employees of about 35,000 men who organized similar associations. The membership of the shop crafts which we represent is approximately 35,000 employees on the Pennsylvania System, making a total of those concerned of about 70,000 men.

Our purpose in being here is to protest on behalf of the men against the passage of this bill, S. 3266, which if passed in its present form will destroy the amicable relations which have existed between the men whom we represent and the management of the railroad for the past 13 years, and it would wipe out existing contracts which have been tried and proven to be practical, efficient and satisfactory to the men and which have effected the very results sought to be obtained by the Railway Labor Act of 1926.

The purpose of this class of legislation is stated in the Railway Labor Act of 1926, as follows:

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

I want to say this, Mr. Chairman, that during that period of 13 years there is not a case on the docket, of the many hundreds and hundreds of cases that we have handled, with the exception of those that might have arisen very recently, in a few days, that would lead anyone to believe that we have not, as far as the Pennsylvania is concerned, lived up to the letter of the law and have brought the spirit of cooperation to the extent that it must be admired regardless

of what the opposition might say. It must be admired for the spirit in which they entered into this agreement with the management.

The CHAIRMAN. Now, Mr. Davis, you represent the employees here, I understand?

Mr. DAVIS. Yes, sir.

The CHAIRMAN. Are you in any way connected with the Pennsylvania Railroad?

Mr. DAVIS. I am a boilermaker on the Pennsylvania Railroad.

The CHAIRMAN. Are you one of the officers of the railroad?

Mr. DAVIS. I am the general chairman of the shop crafts, elected from the boilermakers' craft.

The CHAIRMAN. I know, but what I want to get is this: Are you an officer of the railroad? You say you are a boilermaker but are you an officer of the railroad company?

Mr. DAVIS. I am not.

The CHAIRMAN. You have no connection with the management of the railroad?

Mr. DAVIS. Absolutely not.

The CHAIRMAN. You are an employee only?

Mr. DAVIS. I am an employee only.

The CHAIRMAN. I want to get that straight.

Senator BROWN. Did you prepare this brief?

Mr. DAVIS. I did.

Senator BROWN. I am wondering if you work at your trade. It would take a man some time to prepare a brief like that. Did you do it nights?

Mr. DAVIS. I devote my time to the work of general chairman for the shop crafts.

Senator BROWN. I thought you said you were a boilermaker.

Mr. DAVIS. Well, I am wondering, Senator, if you are asking the question whether a boilermaker has any mental capacity or any education?

Senator BROWN. Not at all. I am wondering how you can be a boilermaker and put in so much time making up a brief.

Mr. DAVIS. I was elected, as I stated, to the chairmanship from the boilermakers' craft, to the general chairmanship by election of the employees.

The CHAIRMAN. You are an officer, then, of this company union?

Mr. DAVIS. I am.

The CHAIRMAN. Are you paid a salary as an officer of the company union?

Mr. DAVIS. I am.

The CHAIRMAN. And do you get a salary as a boilermaker also?

Mr. DAVIS. No; I do not. I may say that the salary of a boilermaker, which I will explain later in the brief, would be on the basis of the number of hours that I would devote to the work.

Senator BROWN. You don't work at it? You don't do anything as a boilermaker?

Mr. DAVIS. Not since I was elected to the general chairmanship of the employees.

The CHAIRMAN. In other words, it is just as the officers of the railroad organizations were former employees who still call themselves employees but no longer work for the railroad? So you are not really working in the boiler shop?

Mr. DAVIS. Not at the trade; no, sir.

The CHAIRMAN. But you are the representative of these organizations?

Mr. DAVIS. That is right.

The CHAIRMAN. And the men put up the money by dues to pay your salary?

Mr. DAVIS. No; I will explain that later in the brief, Mr. Chairman.

The CHAIRMAN. All right, go ahead.

Mr. DAVIS. We respectfully submit and will endeavor to show that the very end sought to be attained has been accomplished by means of the associations which we represent.

Following notice that the national agreements would be abrogated in July 1921, the management of the Pennsylvania Railroad invited its employees to elect a committee to meet with it in conference in order to arrive at agreements covering rates of pay, rules, and regulations. A large number of the men whom we represent were members of the American Federation of Labor at that time. I might qualify that statement by saying of the railway department of the American Federation of Labor.

The CHAIRMAN. That was at the time of the strike in 1921?

Mr. DAVIS. No; the strike was in 1922, but this was following the abrogation of the national agreement.

The elections took place in the spring of 1921—and please don't get this confused with the strike of 1922—at which elections all the employees in the groups we represent were eligible to vote. Remember that at that time, I was a member of the local of Camden, N.J., under the jurisdiction of the American Federation of Labor.

At this first election, about 10 percent of the eligible employees cast their ballots. I want to make that clear because the orders went out that certain men were not to vote.

The CHAIRMAN. Went out from where?

Mr. DAVIS. The source of which has never been determined.

The CHAIRMAN. You mean from some labor organization?

Mr. DAVIS. I presume so. I would not make that positive statement, but it emanated from some source.

The CHAIRMAN. Not from the railroad?

Mr. DAVIS. Absolutely not. The representatives elected met with the management and after discussions covering several weeks an agreement was made on the questions of rates of pay, rules, and regulations. Following the adoption of rates of pay, rules, and regulations, the men, on their own initiative, drew up bylaws and formed associations, which associations we represent here today. The bylaws referred to provided a complete plan for final disposition of all complaints between the men and the management, and agreements were entered into with the management to put the plan into effect.

This plan was put into operation, in spite of the opposition, I might say, to prevent it, and has continued most successfully up to the present time.

In 1923—this I want to make a crucial test as to whether or not, after 2 years, the plan would meet with the approval of the men—in 1923, at the next regular election, after 2 years' trial of these associations representing the men and the agreements made, more than 80 percent of the employees cast ballots for representatives and thus ratified the agreements made in 1921. I might say that in that

election there were 31 ballots cast for federation with the organization represented by the railway department of the American Federation of Labor. Might I define, Mr. Chairman, the procedure of that election?

The CHAIRMAN. You say 80 percent voted for it?

Mr. DAVIS. Eighty percent voted to sustain this plan.

The CHAIRMAN. I am anxious to get down to the bill as soon as I can. We haven't very much time, and I don't think this is so important as long as you haven't any trouble. I would like to get down to this bill.

Mr. DAVIS. I have only got two pages, Senator. I would like to go through it.

The CHAIRMAN. But you are talking away from the paper.

Mr. DAVIS. I said in the beginning, Mr. Chairman, that our purpose was to offset the passage of this bill.

The CHAIRMAN. I understand that.

Mr. DAVIS. And my reasons for it, I believe, ought to be explained specifically.

The CHAIRMAN. Well, go ahead. I don't want to interrupt you.

Mr. DAVIS. This agreement was ratified in 1921, and at the same election of 1923, which brought out the 80-percent vote; at similar elections following, which was every 2 years, the average number of men voting has been over 90 percent for this particular plan and its representatives—and I might say that many of those men are representatives of the craft today that were former members, and there may be several of them now that I don't know anything about and don't care, maybe carrying their card in the labor organization which was in being previous to or during the war. They may be. I don't ask any questions of that kind.

At the time of making the original agreement in 1921 it was demanded by the representatives of the employees that the management should compensate them while they are performing their duties as representatives of the men, merely as committeemen; and there is where the whole cry comes down, and that is why I am opposed to the passage of this bill, that in the performance of this duty as committeemen, simply representing them on wages and grievances, they are determined to destroy that part of the program where the management simply pays them for the time that they are engaged in settling the disputes, and I ask, in all fairness, if it isn't the liability of the management where a grievance arises, that an employee of the railroad should be required to receive his compensation while trying to bring about an amicable adjustment of the grievance which originated on that railroad? And no man, Mr. Chairman, can convince me that the mere payment of dues makes a man more independent in that respect than it would if the company paid him for the time engaged, because on some of the federated roads today, which are very few in the shop crafts, those committeemen receive compensation for the time served as committeemen while dealing with these disputes or with these grievances, or whatever it is, representing the men in their local districts.

During all this period of time not a single strike has taken place among the shopmen of the Pennsylvania System, with the exception that in 1922, a national strike was called by the railway department of the American Federation of Labor. Less than 35 percent of

the shopmen on the Pennsylvania System responded to this strike call. And that was in a period of 6 or 7 weeks.

Hundreds of complaints have been handled under the plan agreed to between the associations and the management and not a single case remains undisposed of on the docket, excepting two or three of recent origin.

The method of caring for the expenses of the associations has been entirely satisfactory to the men and has not been objected to by the management. It is one of the features of this plan which has particularly appealed to the employees, in that there have been no dues or assessments levied any time during the existence of the associations. In this respect the crafts' organizations differ from most other employees' associations.

The fear expressed by the advocates of this bill that undue influence of the representatives of the men would result from such a plan has been proven to have been without foundation in the experience of these associations.

It was frankly conceded by the proponent of this bill before the committee yesterday that the system or plan to be set up under the proposed law is "an experiment." We respectfully submit and urge upon the committee that this bill, if it is to be passed, should be amended so as to save and preserve associations such as we represent, and their contracts which have proven practical, satisfactory, and efficient.

It was further conceded by the proponent of the bill at yesterday's hearing, that even if this bill is enacted into a law, it will be a mere nullity unless there be cooperation between the employees of the railroads and their employers. We respectfully protest against the enactment of new legislation, experimental in character, which gives no assurance of satisfactory results, but which destroys present existing associations and contracts which have proven satisfactory, successful, and efficient in protecting the rights of the employees, maintaining continuous service in the industry and protection to the public.

The CHAIRMAN. Who determines the amount of your pay as the representative of the men, your salary? Who determines the amount of that salary?

Mr. DAVIS. We negotiate with the management on the basis of the time, assuming that many times we devote our evenings to this work in going to different places en route on the system.

The CHAIRMAN. Are you paid on an hourly basis?

Mr. DAVIS. No; but it is regulated on the basis of what you would have earned in the shop. In plain words I might say to you, so there would be no question as to the amount of salary—I have heard some people say how much my salary is, and it is a matter of record which the coordinator has on his records that my salary is $275 a month, less two days deduction which I have arranged with the shopmen as to their part, whatever they take, in reduction of hours. We take on a salary plus 10 percent deduction, which is the agreement on the national scale.

The CHAIRMAN. What would be your salary as a boilermaker?

Mr. DAVIS. I would say for the hours that I put in, the general chairmanship that the salary would amount to about $235 or $240 a month. The number of hours would determine.

The CHAIRMAN. How many representatives of this company, do you know, are paid by the railroads who are not actually working but who are working as representatives of the men?

Mr. DAVIS. Devoting their entire time, you mean?

The CHAIRMAN. Yes.

Mr. DAVIS. I would say approximately 28 on the entire system, of which I represent the shop crafts.

The CHAIRMAN. They get a smaller salary than you do?

Mr. DAVIS. Yes; they receive considerably smaller salaries. There are four general chairmen representing four districts. Each general chairman gets the same amount.

The CHAIRMAN. If there is a grievance of some employee or a man is discharged or something of that kind, that is taken up through your organization?

Mr. DAVIS. It is.

The CHAIRMAN. And you present his case and argue it on his behalf, if you feel that his case is just, if the employees decide that way?

Mr. DAVIS. Yes.

The CHAIRMAN. And you are paid by the railroad for representing the men's side of the case?

Mr. DAVIS. We are paid on the basis, as I say, as a boilermaker, so far as I am concerned.

The CHAIRMAN. I am simply trying to get the facts.

Mr. DAVIS. You are right.

The CHAIRMAN. Are there any questions by the committee?

Senator HATCH. There is one thing that I don't quite gather from the witness' testimony. As I understand this proposed bill, it merely is designed to protect the right of freedom of the men to contract, to organize, associate, join what unions they desire. It doesn't necessarily destroy your company union.

Mr. DAVIS. It does in the presentation that the officers of the company—in plain words, if I deal with the bill it would permit men to go into the shops, interfere with the line of work; it would prevent the company from negotiating to a conclusion any dispute, with this thought in mind, you understand, that if we did deal directly it would debar us from becoming part of the national adjustment board. In plain words, the statement was just made to abolish the so-called "company union".

The CHAIRMAN. Of course, that is the part of the bill that strikes you most. You could still have your system boards and have your company organization. You could do that, but the part of the bill that strikes directly is that part that forbids the railroad paying the salaries of representatives of the organization.

Mr. DAVIS. That is right.

Senator HATCH. And that is where it would destroy the company union?

Mr. DAVIS. Yes; but in considering the bill remember we don't want to lose sight of the fact that it is premeditated on the part of some organization that is demanding a national organization.

The CHAIRMAN. But the bill still permits the Pennsylvania System to have its adjustment boards, if it desires.

Mr. DAVIS. Yes.

The CHAIRMAN. They don't need to go to the national organization.

Mr. DAVIS. No.

The CHAIRMAN. The part that hits you hardest, or really destroys you, is forbidding the railroads paying the cost or the expenses of the company-union representative.

Mr. DAVIS. That is the part of the bill; yes. But in many instances the whole bill is predicated on the basis of the elimination of so-called "company unions."

The CHAIRMAN. Yes.

Senator HATCH. In the question that the chairman asks he stated it correctly, as I understand it.

Mr. DAVIS. I think that is well founded.

The CHAIRMAN. I want to get this clearly—get this clearly in mind. It is the theory of yourself and others that you can represent men in a dispute and be paid—represent them fairly and fully and be paid by the person against whom the grievance is taken?

Mr. DAVIS. That is right. And further than that, that I believe we can handle disputes to a conclusion a great deal faster than they could be submitted, because you are unloading the responsibility in plain words. The man that comes up for election is bound to understand that case and see if he can't make an adjustment.

The CHAIRMAN. What about your engineers and conductors? Aren't they in the national order?

Mr. DAVIS. They have an organization of their own. They are not part of the American Federation of Labor, of course.

The CHAIRMAN. They are not members of the national organization?

Mr. DAVIS. No; they are not.

The CHAIRMAN. And the four brotherhoods?

Mr. DAVIS. They are a national organization.

The CHAIRMAN. But they are not represented on the Pennsylvania?

Mr. DAVIS. They work on the same basis of handling disputes on the Pennsylvania as the other associations with the exception that they are a national organization and are free to take their case on a national basis.

The CHAIRMAN. And they are not represented by men paid by the Pennsylvania Railroad, but by their own men?

Mr. DAVIS. I would not like to answer that. I think not.

The CHAIRMAN. I don't know. I am asking for information.

Mr. DAVIS. I don't know what their procedure is.

The CHAIRMAN. I have always understood that the four brotherhoods were not in the company unions.

Mr. DAVIS. They are not company unions. They have a national organization.

The CHAIRMAN. Well, if the provision prohibiting company unions were taken out, the other parts of the bill would not destroy your ability to adjust your grievances and your disputes?

Mr. DAVIS. What would be the procedure, Mr. Chairman, for the election of representatives?

The CHAIRMAN. You are allowed to pick your local boards, your system boards, if you care to, voluntarily. I don't see anything in the bill that prohibits that. I wanted to get it clear if there was anything else in the bill. I don't know of anything.

Mr. DAVIS. All we object to is the regional or national boards, which will be a nucleus of——

The CHAIRMAN (interposing). But you don't need to join those if you want to settle your disputes.

Mr. DAVIS. I understand. Of course, the opposition is vigorously protesting the right of the management to pay for services, and I demand—in fact, I could not do anything else—that in itself will bring about a controversy as to the men who in the past have had these experiences from assessment, and so forth. If they can accomplish their needs and there is nothing else appropriated for any other person to deal with these disputes—and that is all they are compensated for.

The CHAIRMAN. Who paid your expenses on this trip? Is that paid out of your salary or paid by the railroad?

Mr. DAVIS. This is part of our day's work.

The CHAIRMAN. Then the expenses are paid by the railroad company?

Mr. DAVIS. All expenses are paid. I make no denial of that fact at all.

The CHAIRMAN. I am asking for information only. I am not criticizing.

Mr. DAVIS. That is well defined, and we have stated that to the coordinator in every respect.

The CHAIRMAN. Are there any other questions? Thank you very much, Mr. Davis.

We will now hear Mr. Todd, if he is here.

STATEMENT OF D. F. TODD, TOPEKA, KANS., ASSISTANT CHAIRMAN OF THE ASSOCIATION OF CLERICAL EMPLOYEES OF THE SANTA FE LINES, MAINTENANCE-OF-WAY FOREMEN, MECHANICS, AND HELPERS OF THE UNION PACIFIC AND THE CHICAGO, BURLINGTON & QUINCY RAILROAD

Mr. TODD. My presentation, Mr. Chairman, will be rather brief, and before submitting it I would like to offer a few words in connection with the proposed amendments as just submitted by Mr. Harrison.

It seems to me the bill in its present set-up adequately sets forth its intentions, and there is no need for incorporation of any specific references to company unions.

I am authorized to speak for employees numbering approximately 36,000, comprising the maintenance-of-way foremen, mechanics, helpers, and laborers; the clerical and other office, station, and storehouse and warehouse employees; and the mechanical department group, including helpers and laborers of Santa Fe System Lines, and maintenance-of-way foremen, mechanics, helpers, and miscellaneous employees of Union Pacific System Lines, and the maintenance-of-way foremen, mechanics, and helpers of the C., B. & Q. Railroad.

In appearing at this hearing in behalf of the aforementioned employees who are represented by independent railroad labor associations, I desire to state that I am not taking issue with the basic principles embodied in the proposed bill. However, in the interest of the employees in whose behalf I appear, I wish to respectfully submit the following as an amendment to, and in lieu of, section 3, second, commencing with line 1 and including line 5 of page 20.

The CHAIRMAN. Will you state that again? Where is your amendment?

Mr. TODD. In lieu of section 3, commencing with line 1 and including line 5 of page 20.

Senator HATCH. The same one that Mr. Harrison talked on.

Mr. TODD. Yes. [Reading:]

Second. Nothing in this act shall be construed to prohibit any carrier or any group of carriers and its or their employees or any class thereof from agreeing upon the handling and/or settlement of disputes through medium of system boards of adjustment in the case of individual carriers and its employees or through medium of regional boards of adjustment in the case of groups of carriers and their employees; the number of representatives of the carrier or carriers and the number of employee representatives on such boards to be equal: *Provided, however*, The provisions of paragraphs (i), (j), (k), (l), (m), (n), (o), (p), and (q), of this section of the act shall govern and control where system and/or regional boards of adjustment are agreed upon as the machinery for the handling and/or settlement of disputes in lieu of the national board of adjustment.

Information is not available to us at the moment indicating the present set-up as between railroad employees represented by independent or system organizations, whose membership and representatives are confined to the employees of single railroad companies or systems, as opposed to the number represented by organizations national in scope, however, exclusive of train, engine, and transportation yard service employees, who are almost, if not altogether, represented by so-called standard railroad labor organizations, the hearing before the Committee on Interstate and Foreign Commerce, in connection with the Emergency Railroad Transportation Act, 1933, indicated the following situation as having existed in February 1933, so far as the several groups as enumerated are concerned:

Occupational group	All employees	Represented by national organizations	
		Number	Percent
Professional, clerical, and general	165,686	65,134	39.3
Maintenance of way and structures	179,723	125,666	70.9
Maintenance of equipment	256,249	83,306	32.5
Transportation, other than train, engine, and yard	122,385	68,372	55.9
Total	724,043	342,478	47.3

There has not been any appreciable change in the relative representation standing so far as I have been able to determine. Hence it is plain to be seen that a large number of employees stand to be affected by the legislation proposed in bill S. 3266, and many of whom, whose representative organizations are not national in scope, shall not have their rights and privileges properly safeguarded unless the bill before this committee is enlarged, and which end can be accomplished by the incorporation of the amendment I have been privileged to recommend.

I realize the press of far-reaching problems forces you to expedite this hearing as much as possible. I have, therefore, only briefly touched upon the subject matter of this presentation. While the employees for whom I am definitely authorized to speak constitute

but a small group of the railroad craft organized under representative plans independent of those national in scope, I feel I bespeak the sentiment of all railroad employees under the truly independent representative plan who are insistent upon their rights as American citizens to organize, bargain, and deal collectively with their employers through representatives of their own choosing, and they are justly entitled to sincere consideration for protection under this bill without penalty or preference and without prejudice to any plan of employee representation.

The CHAIRMAN. Are you an officer of the company, paid by the Santa Fe Railroad?

Mr. TODD. Not by the Santa Fe Railroad; no, sir.

The CHAIRMAN. Who pays your salary?

Mr. TODD. The dues that we collect, the organization.

The CHAIRMAN. You are a dues-paying organization?

Mr. TODD. Yes, sir; voluntary dues-paying.

The CHAIRMAN. Then you are not a company union as such?

Mr. TODD. Only by inference.

The CHAIRMAN. But I mean that you are not a union that the railroad supports?

Mr. TODD. The railroad supports it in no manner whatever, never has.

The CHAIRMAN. How long has your organization been in existence?

Mr. TODD. Since July 1, 1927.

The CHAIRMAN. And you were formerly a worker or employee of the railroad?

Mr. TODD. Yes, sir; I was.

The CHAIRMAN. What was your craft?

Mr. TODD. I was in a clerical position.

The CHAIRMAN. That is, you were a clerk?

Mr. TODD. A clerk; yes, sir.

The CHAIRMAN. And how many of the craft in the Santa Fe are organized as your craft is, as the clerks are in this organization?

Mr. TODD. Well, the maintenance of way, and the 7 shop crafts, the yardmasters, and the train dispatchers, as I offhand recall.

The CHAIRMAN. That does not, of course, apply to the four brotherhoods?

Mr. TODD. No, sir; it does not.

The CHAIRMAN. We thank you for your statement, Mr. Todd.

Senator HATCH. Do the shop crafts pay their dues the same as your organization?

Mr. TODD. They pay their dues; yes.

Senator HATCH. The company does not pay their representatives?

Mr. TODD. No; the men have the same plan for dues payment as we do.

The CHAIRMAN. Thank you very much for your presentation, Mr. Todd.

We will now hear Mr. Randolph, representing the porters, the Pullman porters. Please state your name and address and the position you hold.

STATEMENT OF A. PHILIP RANDOLPH, NATIONAL PRESIDENT BROTHERHOOD OF SLEEPING-CAR PORTERS

Mr. RANDOLPH. Mr. Chairman and gentlemen, my name is A. Philip Randolph. I am president of the Brotherhood of Sleeping-Car Porters. My residence is New York City, 207 West One Hundred and Fortieth Street.

The Brotherhood of Sleeping-Car Porters, which I represent, embraces a membership of some six or more thousand sleeping-car porters and maids, and on behalf of this group I wish to register our approval and support of bill S. 3266, with the following amendment:

In paragraph I, of the third division, page 14, under general caption, National Board of Adjustment—Grievances—Interpretation of Agreements, add the words: "sleeping-car porters and maids and dining-car employees", after the words, "sleeping-car conductors."

My reason for making this request is that the sleeping-car porters number some nine or more thousand workers in the railway industry and there are many thousands of dining-car employees in the railway industry who logically belong under the jurisdiction of this act in general and the third division in particular. Unless this is done, it is apparent that endless complications will arise in attempts to adjust disputes that will arise between these classes of employees and the railway companies for which they work.

Since the various classes of carriers have been particularized and specifically designated along with definite classes of workers, to insure clarity and preciseness of intent and purpose with respect to the groups that fall under the scope of this act, it is proper, logical, and sound to name sleeping-car porters and maids and dining-car employees. These are basic and major groups of workers in the railway industry and should have access to the machinery of this act so as to be able to exercise their right of self-organization, free from intimidation and coercion.

The CHAIRMAN. Do you know how many of them there are? You say there are 9,000 porters; do you know how many there are of dining-car employees and maids?

Mr. RANDOLPH. I don't know the number of dining-car employees, but I think there are far more dining-car employees than there are Pullman porters.

For almost a decade the porters and maids in the Pullman service have struggled to organize a union of their own but have found as their biggest obstacles the company union and the lack of power and definiteness of the Railway Labor Act with respect to getting decisive action on the principle of representation.

When the Emergency Railroad Transportation Act of 1933 was enacted with its far-reaching provisions to safeguard the right of self-organization for railroad workers, the porters and maids thought that they would then be able to establish their right to select and designate representatives of their own choosing, but when their case was raised to the coordinator, they were informed that the Pullman Co. did not come under N.R.A. because it is a carrier, and that it does not come under E.R.T.A. because it is not a carrier by railroad, and that the only remedy was to amend the act so as to include sleeping-car companies. Now that the term "sleeping-car com-

panies" is included, it is the desire of the Brotherhood of Sleeping Car Porters that the term "sleeping-car porters" be also included with the other groups of workers and also the term dining-car employees.

I want to say a word, too, Mr. Chairman, in confirmation and justification for the amendments presented by Mr. Harrison in relation to the company union, and in order that you might get a concrete picture of what I want to say, or the basis that I want to present, if you will permit me I would like to describe briefly the structure of the company union the Pullman porters are up against. It will not take very long.

The CHAIRMAN. I hope you will not take very much time.

Mr. RANDOLPH. It will not take long. The matter of the company union is really the crux of this whole question, and you might get a concrete picture of it from this particular group. They have a company union which is divided into three groups.

Figure 1. They have what is known as a local grievance committee, which is the organization of original jurisdiction. All grievances are presented to this committee first. On that committee the superintendents of the various districts sit together with his assistants.

The CHAIRMAN. The superintendent of what?

Mr. RANDOLPH. Of the Pullman Co. That is to say, he has the power to hire and fire. He sits on the committee; although he has just fired a porter, he sits on that committee and determines whether he was justified in having fired that porter or not. He is judge, jury and prosecutor.

The CHAIRMAN. He is like the judge in a contempt proceeding.

Senator HATCH. Does he ever decide against himself?

Mr. RANDOLPH. He never decides against himself. We have a case in Cleveland, Ohio, where even the committee decided—they had a sort of a decision in favor of putting a porter back to work, but the superintendent overruled it. So that the whole set-up of the company union, of The Pullman Co., is designed to contravene and submerge and destroy the ability and the right of The Pullman porters for self-organization.

Now, this first committee has the right of appeal to, they call it, the "Zone General Committee", supposed to be the circuit court of appeals, and on this Zone General Committee you also have the superintendents of The Pullman Co. who have the power to hire and fire. Invariably anything that goes to the court of appeals or the Zone General Committee usually finds that same confirmation of the original committee, the grievance committee.

Then they have what is known as the "supreme court" or the industrial relation board. On that they have the general supervisor of industrial relations. This gentleman is paid by the Pullman Co. a handsome salary, and he handles and controls the entire machinery of the employees' representation or the company union. On that board they once had a Pullman porter. I think he has disappeared now. [Laughter.] Consequently, the whole machinery for adjudicating the disputes and grievances of the Pullman porters is entirely in the hands of the Pullman Co.

The CHAIRMAN. You said there were 6,000 of the 9,000 in your organization?

Mr. RANDOLPH. Yes.

The CHAIRMAN. And that is not a company union?

Mr. RANDOLPH. It is not a company union.

The CHAIRMAN. But your grievances must be decided by this board of which you speak?

Mr. RANDOLPH. Yes. We took our case to the United States Mediation Board, but the Board was unable to reach any decision, as they could not compel the company to meet us. Then we also went to the Federal district court to get an injunction, to prevent the Pullman Co. from maintaining a company union, and that decision went against us, and we are now taking an appeal.

The CHAIRMAN. To the Supreme Court?

Mr. RANDOLPH. To the circuit court of appeals, and finally, to the Supreme Court.

The CHAIRMAN. I thought possibly you might think that this being a labor bill, we ought to require that Pullman porters be American citizens in this law, too.

Mr. RANDOLPH. Well, the Pullman porters, who are American citizens, I might say built up the Pullman Co.

The CHAIRMAN. I notice that the Filipinos and Japanese are being used to replace the colored man on those jobs.

Mr. RANDOLPH. Yes, and I might say in connection with that, Senator, that the Filipino and the Japanese were employed by the Pullman Co. purposely and fundamentally to break the Brotherhood of Sleeping Car Porters and prevent the men from organizing. That was the primary purpose. Of course, I think their wages are lower, and consequently they are able by using them, to hold sort of a weapon over the heads of the Pullman porters who desire to join the union.

The CHAIRMAN. I think the American public is pretty well pleased with the colored man as a Pullman porter. I don't think they want to get anyone else to handle the Pullman cars and the dining car system. But go ahead.

Mr. RANDOLPH. I want to say a word too about the matter of the company paying the representatives of the company union. If you eliminate that phase of the bill, permitting the companies to pay the representatives of the company union, then you really destroy the power of the bill, because if the companies are able to pay the representatives of the company union, then they will be able to intimidate the employees and practically prevent them from joining legitimate and bona-fide unions. So that I think that is basic, because the power over a man's subsistence is the power over his will, and usually the man who pays the fiddler calls the tunes, so that the Pullman Co. by paying these representatives of the company union, they make them do just what they want done.

Now, in the elections no doubt the representatives of the Pullman Co. will tell you, when they are held, that 98 percent of the porters vote for the company union. We are willing to concede that probably they may take 101 percent if they want to, but these men, when they vote, vote under duress and intimidation, fear of losing their jobs. Many of them, especially the independent spirits, have been fired. For instance, negligible and insignificant derelictions of duty are piled up against these men. Then they are presented with a record card and shown, "here, your services have not been so good," despite the fact that some of these men have been in the service for 30 years.

The CHAIRMAN. And probably never had a serious complaint against them at any time.

Mr. RANDOLPH. No, sir; no serious complaint at all, and despite that fact these men are fired, and that is all done to break up the organization.

So that we, the Brotherhood of Sleeping Car Porters, in harmony with the program presented by Mr. Harrison, and especially those amendments and recommendations designed to give freedom of choice in the selection of representatives to negotiate agreements and wages, rules and working conditions; and we are especially concerned about this matter because it relates to our ability to carry forward this work of enabling the porters to determine the conditions under which they work and the wages that they receive.

Senator HATCH. Who pays your expenses?

Mr. RANDOLPH. The Brotherhood of Sleeping Car Porters. And I might say, too, that I don't get any salary. Our organization—we use all the money that is available and put it into actual work carrying forward the movement. We, for instance, have about 15 or more organizers, and all those organizers today are working without pay.

The CHAIRMAN. Is Mr. Ogburn here? We have got to close the hearing, but Mr. Ogburn is on the list as representing the street and electrical railway employees. I think he must have gone.

Tomorrow we will meet at 10 o'clock instead of 10:30, in room 414, Senate Office Building. The committee will now adjourn.

(Whereupon, at 12:15 p.m., the committee adjourned until 10 a.m., Thursday, April 12, 1934.)

TO AMEND THE RAILWAY LABOR ACT

THURSDAY, APRIL 12, 1934

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D.C.

The committee met in room 414, Senate Office Building, at 10 a.m., pursuant to adjournment, Senator Clarence C. Dill (chairman) presiding.

The CHAIRMAN. The committee will come to order. Our first witness this morning is Mr. M. W. Clement:

STATEMENT OF M. W. CLEMENT, CHAIRMAN OF THE COMMITTEE OF THE RAILROADS DELEGATED TO DEAL WITH PROPOSED AMENDMENTS TO THE RAILWAY LABOR ACT

Mr. CLEMENT. Mr. Chairman, my name is M. W. Clement. I am chairman of the committee of the railroads delegated to deal with the proposed amendments to the Railway Labor Act. As such, I officially represent all class I railroads in the United States and am delegated by them to give you their views.

Incidentally, I should say I am vice president of the Pennsylvania Railroad Co., with headquarters at Philadelphia, Pa.

At heart I am also speaking for a million railroad employees of the United States.

The CHAIRMAN. That is an interesting statement—"at heart". Your heart or their heart?

Mr. CLEMENT. Both, sir. The Railway Act of 1926 was prepared after careful consideration and after a meeting of minds of the representatives of the organizations and the representatives of management. It was brought about after a realization that much legislation had in the past been prepared to meet the situation as to railway labor, and that such legislation had never successfully met the situation. Men and management felt that if they could sit down together, discuss their common problems and prepare an act together that would cover the situation as they saw it, it would go a long way to solve their difficulties and bring industrial peace.

As a consequence, the Railway Labor Act of 1926 was enacted. It has functioned effectively for 8 years. During that time, however, men and management have come to recognize that there are two defects in the law from the standpoint of the men:

1. That, on certain railroads, men and management have not observed the spirit of the law.

2. Failure of the law to provide machinery for the prompt disposal of matters in controversy referred to the boards, that became deadlocked.

On page 1 of the bill, line 10, we wish to strike out the words "any company".

I will now go the bill, touching first on its scope, as defined in section 1, paragraph 1.

The use of the words "any company" in line 10, first page of the bill, makes it absolutely impossible for anyone to determine just what is intended to be covered.

Bearing in mind that the Railway Labor Act which it is proposed to amend was designed to bring industrial peace to employees on the railroad, the effect of such broadening of scope will have a contrary result.

Widening the scope to take in other than railroad employees does not create any advantages to the employees of the railroads for whom the act was written.

Bringing into the railroad adjustment field the problems of outside labor, differing in working conditions as they do, not only add to the complexity of the situation, but bring into the picture the possibility of all kinds of jurisdictional disputes which will add greatly to and adversely affect the work of adjustment boards.

It will not promote the public interest.

It will not bring advantages to men.

It will not bring advantages to management.

It will not bring advantages to the organizations; in fact, it will greatly increase their problems.

What tends to restrict management tends to restrict the employees, and that, in the end, tends to restrict employment. I want to use several illustrations.

Grade-crossing elimination. That generally today is a problem between the States and the railroads. Conditions of employment around grade-crossings elimination work in some States are defined by statute. The work is of a character that is similar to work done by railroad employees. The grade crossings being put under the railroad, the tracks are going to be maintained by the track laborers, the employees of the railroad, the carpenters, perhaps some of their bridge men; the work itself will probably be done under the statutes of the State, requiring competitive bidding under the conditions prescribed by the State, and if any one of these companies, contracting companies—to bring them into this picture adds very much to the problems and helps in no way.

Suppose we have a large bridge to build. All railroads maintain in their maintenance-of-way department bridge workers. If you get into a large bridge, it gets into the kind of work that the railroads do not handle, either in their engineering field or in their labor field. It is always handled by contract, or generally handled by contract, and by contractors who have followed that line of work and are particularly equipped to do it. Again, that is by competitive bidding between large companies under labor conditions entirely different from those of the railroad, and we certainly want to see nothing that brings the picture of the large contracting companies into the scope of railroad labor.

New line construction is practically the same—brings in exactly the same kind of a situation. The normal construction maintenance work, odds and ends of construction, a few changes here and there, are done by the maintenance men, but when you come to a change of

line or a heavy piece of reconstruction, again you are out in the contractual field with the contracting companies, men who gather together organizations especially equipped for that kind of work, a mass employment here today and some other place tomorrow, and is a thing that will not work out in the railway labor field.

The CHAIRMAN. Now, is this argument all based on your objection to the words "any company"?

Mr. CLEMENT. "Any company" and the possible interpretation of that scope, sir.

The CHAIRMAN. It is all modified by the definition of "railroad" and "transportation" as defined in the Interstate Commerce Act. I didn't draw this bill, you understand, and I don't want to be too critical, but I think it is bad legislation always to define something in terms of another law.

Mr. CLEMENT. We went very carefully through this term "railroad" and the term "transportation" in the Interstate Commerce Act, and they are very broad and all-inclusive.

The CHAIRMAN. Do they control the building of bridges and these things we are talking about now?

Mr. CLEMENT. All bridges, car-floats, ferries.

The CHAIRMAN. I mean, does the Interstate Commerce Commission control that now?

Mr. CLEMENT. There is nothing that we do that is not in the end referable to the Interstate Commerce Commission, whether a construction item, the cost of things, the final plan of this completion and everything in connection therewith.

Senator HATFIELD. Must not the Interstate Commerce Commission grant permission to construct a bridge before it is constructed?

Mr. CLEMENT. If it involves a change of line or relocation, or if it is a branch line; yes, sir.

The CHAIRMAN. If it is a matter of repair, it is not always necessary.

Senator HATFIELD. It usually requires a change of line, doesn't it?

Mr. CLEMENT. Sometimes it gets into—well, in some instances, yes, and some instances, no.

Senator KEAN. Very often; yes?

Mr. CLEMENT. Yes; very often that. But if a bridge is 35 or 40 years of age and it has become too light for modern conditions, we will just build a new bridge in that place or around it.

Senator KEAN. But you have got to get permission from the Interstate Commerce Commission? If you are going to replace a bridge that cost $20,000 with a bridge that cost $100,000, you have got to get their permission?

Mr. CLEMENT. Indirectly we have to capitalize it, and in that capital account it is approved by the Commission.

The CHAIRMAN. What I am trying to get at is, you object to the bill covering the labor used in this work?

Mr. CLEMENT. We object to a bill that has in it a term that we don't know where it leads us.

The CHAIRMAN. I note that the language of this bill is somewhat modeled after the language of the Interstate Commerce Act on this common carrier and using the definition for "railroad" and "transportation." I think they ought to be set out in the bill, but I don't yet get your objection, the point of your objection. The labor that is used on these ought to be under the control of this board, should it

not, the same as the railroads are under the control of the Interstate Commerce Commission?

Mr. CLEMENT. The labor on this contract work?

The CHAIRMAN. Yes.

Mr. CLEMENT. No, sir.

The CHAIRMAN. You don't think so?

Mr. CLEMENT. No, sir. If we go into the building of a station in a large city by contract——

The CHAIRMAN (interposing). You don't want that labor brought into this law?

Mr. CLEMENT. It brings in the building-trade unions of that town, and they are away outside the railroad field.

The CHAIRMAN. Your objection is that this does do that?

Mr. CLEMENT. Yes, sir.

Senator HATCH. There are no words like that in the Interstate Commerce Act now?

The CHAIRMAN. Yes, this is practically taken from the Interstate Commerce Act, except they don't quote the definition; they simply say it means the same.

Go ahead, Mr. Clement. I don't want to interrupt you.

Mr. CLEMENT. It was mentioned in the hearing, I think day before yesterday, the possible complication of the telephone and telegraph companies. All of these railroads have some form of contract or other with the telephone or telegraph companies—at least, most of them do.

The CHAIRMAN. Some of them have exclusive contracts, we have found, with certain telegraph companies.

Mr. CLEMENT. But when you reach into the telephone and telegraph field, there are pretty nearly 300,000 men employed. I don't believe that either labor or the railroads want to see a situation where the troubles of 300,000 men under different conditions of employment, different working conditions, will be brought into the railroad adjustment field for adjudication, because it can only react against the promptness with which their grievances can be handled.

The CHAIRMAN. But they have a right to some such board, it seems to me, as well as railroad workers. Whether we ought to set up a new board may be another question, but don't you think that the employees of the communication companies have a right to have some method of adjustment of their complaints?

Mr. CLEMENT. My own personal feeling is that all employees should have a right to an adjustment of their complaints, but in this instance I am speaking for the railroads and I am speaking for the interest of the railroad men, and I think it only can bring confusion to bring them into the railroad field, particularly in the telegraph department, where the employees on the railroad have been represented generally by one of the oldest organizations in the United States, the Order of Railroad Telegraphers, and when you get into the commercial field it is my understanding that there is another organization that represents them.

The CHAIRMAN. Do you think it would seriously interfere for those boards and this board of mediation, these boards of adjustment and the board of mediation, to be given power to handle the telegraph disputes as well as the railroad disputes?

Mr. CLEMENT. Yes; it is just bringing more and more things in that are going to delay prompt settlement.

The CHAIRMAN. Then we will have to have another commission. I think we have got too many commissions now.

Senator Hatfield, did you have a question?

Senator HATFIELD. I think he answered my question.

The CHAIRMAN. All right, Mr. Clement. Go ahead.

Mr. CLEMENT. Another thing, we are to reach into the truck competition feature. The railroads have been seriously hit by truck competition. The railroads, in order to meet the situation of truck competition and turn the business back to the rails, are gradually going into the collection-and-delivery field, and it is being done more or less by contracting with companies already existing. This may be 10, 15, 20, or 30 percent of their work. They are men that are organized locally within the cities in other organizations, and yet any company engaged in transportation, the contractual relation between the railroads and an existing trucking company brings them into the field. It doesn't work to the benefit of the railroads; it doesn't work to the benefit of the men. Restrictions tend towards inaction. Lack of activity is lack of progress. Progress in the improvement and enlarging of facilities of this country tend towards the employment of from 30 to 40 percent of the labor of the country, and the more you hamper freedom of action in this direction, the more you retard progress.

Now, when you get into this truck field, if you start to restrict the railroads in their truck operations—and I don't think the employees desire it, and the management doesn't desire it—you are gradually going to force us out of that situation in our collection and delivery; then you are going to force the thing onto the highway, absolutely competitive with the railroads.

Summed up, the carriers feel that the scope as written in the 1926 law more definitely covers the situation and believe that with slight modifications it will be equally acceptable to the organization, and, as I recall, Mr. Harrison said yesterday that railroad management and employees will have no trouble agreeing on scope.

Turning to page 2 of the bill, in line 13, we want to strike out the word "the" at the end of the line and insert "any one of the". Strike out "national" in line 14. Strike out "created by" in line 14 and insert in lieu thereof "provided for in."

It is perfectly possible under this bill as written to have either system, regional, or national boards; therefore, the term should be revised so as to be applicable to any one of these boards. That is simply for clarification.

On page 3 of the bill, line 23, insert after the words "their employees" the words "severally or collectively." The change suggested will afford equal opportunity to every employee, collectively or individually.

On page 4, line 14, after the words "the matter" we want to insert "and methods". After the words "self organization" we wish to insert an amendment "collective bargaining and adjustment of disputes and grievances". This is for clarification. As clarified it allows men and management to determine the method by which they can get together to form such bodies as might be necessary toward the prompt handling of disputes through collective bargaining.

The CHAIRMAN. You are thinking now of the system boards or the local boards, the regional boards that might be formed voluntarily for the adjustment of disputes?

Mr. CLEMENT. Yes, sir; and methods of getting together. The men and management should be privileged to agree on the methods.

The CHAIRMAN. Methods of what?

Mr. CLEMENT. Methods of procedure, or how they are going to organize.

The CHAIRMAN. Are you speaking now of the methods of organization or are you speaking of the argument that is on between the so-called "company unions" and the others?

Mr. CLEMENT. No, sir.

The CHAIRMAN. You are not thinking of that?

Mr. CLEMENT. No, sir. I want to add that I am speaking for all the railroads of the United States, so I cannot get into the argument.

The CHAIRMAN. I know, but I wanted to get clear what you had in mind on that.

Senator KEAN. He said "methods of operation."

The CHAIRMAN. Yes, but the self-organization line is what prompted me to ask that question.

Mr. CLEMENT. On page 5, line 6, after the word "employees" we want to insert "or groups of its or their employees."

In line 9, after the word "by" strike out "the" and insert in lieu thereof "its or their," and strike out the word "thereof" and insert "or groups of its or their employees." This change is submitted for clarification. Railroads and employees deal by groups and not en masse.

In line 12, we wish to strike out the word "interference" and insert the word "dominating". After the word "influence" in line 13, we want to insert the word "interference."

After the word "party" in that same line, we want to insert "or by or from any person".

In line 14, we wish to strike out the word "carrier" and insert in lieu thereof "person, or organization or corporation, or his or."

In line 15, we strike out the word "interference" and insert in lieu thereof the word "dominating." After "influence" we insert "interference."

In line 16, we insert "induce or seek to induce employees of a carrier to designate or".

In line 17, we strike out "its" and after "employees" insert "of a carrier."

The modifications suggested are for two purposes; one for clarification, and the other to place the same responsibility upon organizations as upon management in keeping with the general trend of the times.

The CHAIRMAN. What do you mean by "place the same responsibility on organizations"?

Mr. CLEMENT. There should be two parties to a dominating influence or interference. The organization should not be allowed to interfere any more than the management should be allowed to interfere with these dominating influences. Dominating should be added as directly defining the intent of the act, not only as clarifying but in harmony with other legislation of the day and in keeping with the Supreme Court decision in *Texas and New Oeleans Railroad Co.* v.

Brotherhood of Railroad and Steamship Clerks (281 U.S. Sup. Ct. Rpts., p. 548).

We included "or by or from any person" to be more explicit and to make it apply to both sides alike.

This makes the spirit of the law the same for both organizations and management, leaving the employees freedom of action, which is the spirit of the Wagner bill covering those same relations in other industry, and is in harmony with the President's announcement in settling the motor-industry dispute.

In line 20, page 5, after the word "employees" we want to insert "or any group of employees." At the end of the line we want to strike out the words "to organize" and insert "of self-organization and determination or selection of representatives and to", striking out the word "and" in line 21.

The CHAIRMAN. What is the value of that? That means the same thing, doesn't it, or should mean the same thing? Why do you want to say "self-organization" instead of "to organize"? I don't quite see that. You say they have the right of "self-organization"; the bill says "the right to organize." I wonder what is the difference.

Mr. CLEMENT. Well, we say "of self-organization and determination by selection of representatives." It is more explicit. It gives the employees the privilege of organizing in their own way and determining on the selection of their representatives in any way. This simply says to give them the "right to organize."

The CHAIRMAN. It seems to me it is unnecessary words. It seems to me the word "organize" covers it.

Mr. CLEMENT. If we could go on with the balance of that section, on the next page I think I could make it clear.

Page 6, line 1, after the words "right of" we wish to insert "any or all of." In line 2, we wish to strike out the word "the" and substitute the word "any." After the words "labor organization", we want to insert "or group of employees he or they choose to join, organize, or assist in organizing."

In line 3, we wish to insert after "any" the word "person." After "carrier" insert "corporation or organization." In line 4, we want to strike out the word "its" after "of" and substitute the word "the." After "employees" insert "of a carrier or for any carrier."

Strike out the word "or" and "the" in that line.

We wish to strike out in line 5 on page 6 the words "or assisting or contributing to", and after the word "organization" strike out the last 5 words in line 6, "or in performing any work", inserting in line 7 after "or" the words "for any person, organization, or corporation to use dominating influence."

Strike out the words "therefor" and "to influence" in line 7, page 6.

I would like to explain those changes. There was no such paragraph in the Railway Labor Act of 1926. It is our recommendation that this paragraph be excluded from the proposed revised act, as we believe it is a paragraph of ambiguity and will probably create strife. We see lots of trouble coming from this paragraph, considering the fact that among other things it can be correctly interpreted to restrict cooperation of management and organization leaders. If the paragraph is to be continued, the changes recommended will clarify the intent, although we believe these are matters that can be better

handled by negotiation between men and management than by statute.

As to the section of that paragraph which prohibits the use of funds of the carriers, the law should be so written that nothing contained therein shall be construed so as to prohibit a carrier from according its employees compensation for time spent and expenses actually incurred in settling disputes growing out of grievances or out of the interpretation or application of agreements governing rates of pay, rules, and working conditions, when agreements therefor are entered into between such a carrier and its employees. When the principle is stretched so far as it is in this bill it reaches into a very broad field of contracts between carriers and employee. Practically all the railroads of the country allow their employees, on company time, to handle their grievances up to the foreman, master mechanic, or superintendent.

If this application is carried out literally, as we interpret it, it would be impossible for anyone to handle grievances on company time, and this is not only going to bring dissatisfaction to the men but is going to add tremendously to the cost of organization, unionization, or collective bargaining, and we believe it is a mistake to penalize men to this extent to accomplish some of the things which it is intended to accomplish by this bill.

It will upset practices of long standing in this respect between men and management.

As to that section which prohibits "performing any work therefor"; part of the peace under the Railway Labor Act in the last 8 years has been in the cooperation between management and the general chairmen of the organizations. The general chairmen ask many of these managements to do work for them in connection with their correspondence, getting out circulars or things of that sort, a relationship which it is desirable to continue. Such courtesies are prohibited under this bill.

In my judgment, this section as a whole conceals in it the possibility of promotion of much discord.

By far the great majority of cases between men and management are adjusted on the ground, between the officer and the men, both paid by the company, the grievances being thus settled before becoming major issues.

The destruction of this contact will have the effect of making all these minor things matters of major issue and thereby defeats the very purpose of the act, that management and employees shall exert every reasonable effort to dispose of their differences.

Considering this part of the act in connection with the penalty features later on, I do not believe that anyone except those who have lived through this all their lives can fully realize the effect it will have. When you come to the sociological features of the relations between men and management, which are so closely interwoven with their working lives, this thing gets into many ramifications of employee relations, involving relief for accidents and other matters in the everyday social side of the men's existence, which contact is between the individual and the management and not between him and the organizations. These things are all related, and we believe it is a serious thing, to the men, to break this contact between them and management.

The CHAIRMAN. Mr. Clement, how many railroads in the country oday are paying their employees to handle grievances to which this refers, which you are discussing?

Mr. CLEMENT. I cannot quite be sure of my answer, but I think it is applicable to every railroad in the United States. It certainly is to all the large systems.

The CHAIRMAN. But I am speaking now particularly of the paying of the officers out of railway-company funds, paying the officers of the men's organizations. Mr. Davis, who was before us yesterday, said that he received his pay, and several other men did, from the Pennsylvania Railroad, and I was wondering if you knew what other railroads, or how many other railroads, are doing that?

Mr. CLEMENT. I don't believe there are many other railroads besides us that do that. But this is the situation: It is the same on these railroads whether they have standard organizations or whether they do not have standard organizations.

The CHAIRMAN. That is, the matter of using company time?

Mr. CLEMENT. These are practices that are allowed on railroads that are 100 percent standard organizations.

The CHAIRMAN. Now, this money that is paid by these railroads that do pay the officers of the men's organizations, is that a part of the operating expense of the railroad? How is that accounted for?

Mr. CLEMENT. That situation was brought up yesterday, and getting away from all these railroads which I represent, that was just a particular situation that happened on the Pennsylvania. The Labor Board in 1920 instructed the railroads to get together with their employees and form some board of adjustment or some method of settling their disputes and grievances. We undertook it first with the four train-service brotherhoods and completed negotiations and a contract arrangement with them. Having completed it with them, we started in with all the other labor organizations that existed on our road, and we entered into one form of contract with one organization and another form of contract with another organization. In some of them, as Mr. Davis testified yesterday, we let them do all the work on the company's time; in other organizations they are partly paid by the men and part on the company's time.

The CHAIRMAN. That is, some of them have dues and pay part of it?

Mr. CLEMENT. Yes; the signalmen on our railroad, their delegation is 100 percent a union delegation, always has been from the time of its inception.

The CHAIRMAN. By "union" you mean standard union?

Mr. CLEMENT. Standard union; yes, sir. They pay their general chairman—I don't know what they pay, but nevertheless, all their system committees are working on our time.

The CHAIRMAN. Your four brotherhoods are standard union too?

Mr. CLEMENT. Yes, sir.

The CHAIRMAN. Your company pays no fees of their officers?

Mr. CLEMENT. Generally, no. If we were to call them in for conferences and ask them to bring in all their chairmen, they would probably say: "Well, if you wish to have this conference, that will be at your expense."

Senator HATCH. Under this bill as proposed, that would be prevented?

Mr. CLEMENT. Under this bill carried out to the extreme, there cannot be any relation between men and management.

The CHAIRMAN. But I come back again, How is this money that is paid to these employee representatives accounted for in your account to the Interstate Commerce Commission? Is it part of the operating expense?

Mr. CLEMENT. Yes, sir.

The CHAIRMAN. Then it is taken out of the receipts of the railroad and charged in that way?

Mr. CLEMENT. Yes, sir.

The CHAIRMAN. And not charged as—then, in effect, it is charged to the wages of the men?

Mr. CLEMENT. Yes, sir.

The CHAIRMAN. Do you know how much money a year it costs your company?

Mr. CLEMENT. Yes.

The CHAIRMAN. How much?

Mr. CLEMENT. I want to divide that into two parts. Up to and including those things which are generally done on railroads, that is, up to the master mechanic and superintendent, that costs us about $150,000 a year. Above that it probably costs us another $150,000 a year. So that is all it costs us for perfect peace.

The CHAIRMAN. The salaries plus that amount?

Mr. CLEMENT. That includes salaries, expenses, and everything in connection therewith.

The CHAIRMAN. And you say you don't know of any other large system that follows that policy?

Mr. CLEMENT. Of paying the general chairmen their wages while they are working for the men? Off-hand I do not. I would have to ask.

Senator HATFIELD. How many employees do you have on the Pennsylvania?

Mr. CLEMENT. Right now we have about 115,000 employees, 12 percent of the United States.

Senator HATFIELD. What is your mileage?

Mr. CLEMENT. Roughly, 10 or 11 thousand miles of line; 20,000 miles of track.

There is one other thing in that connection—I didn't make any note there, but it came to me as I was listening yesterday, and that is the feature of discipline. The thing that gives to the public a differentiation in service, good or poor, is discipline. The thing that distinguishes management, good or poor, is discipline. When you have destroyed discipline you have broken down the morale of the men, and when you do not have morale you do not have contentment among the employees. No matter in what business or what station in life or what calling a man finds himself, whether a position of high degree or low degree, discipline is the one thing that brings to him the greatest possible contentment. And we believe this thing breaks down discipline.

The CHAIRMAN. You think you have better discipline of your men when the company pays the officers of the organization?

Mr. CLEMENT. You have better discipline when the men are satisfied.

Page 7, at the end of line 11, as the closing part of that paragraph, we wish to add:

And provided further, That nothing in this act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

Senator HATFIELD. What line is that?

Mr. CLEMENT. Line 11, after the word "notice" put a semicolon and add that language. This language is in the present Labor Act, and unless included will have the effect of nullifying the existing agreements between men and management which have been reached after years of negotiation.

Going to the next thought in the act, and still page 7, lines 14 and 15, after the word "employees" we wish to insert "as a class as embodied in agreements", and after the words "prescribed in" in that same line add "such agreements or in", striking out the word "and" at the end of that line and striking out, in line 15, the words "in other provisions", and the words "relating thereto". So that that will read:

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

This is proposed because the working conditions are not defined in the act. They are covered by agreement, and we believe this is a helpful suggestion.

Page 8, in line 4, after the word "employees" we want to insert "or a group thereof," and after the first word in line 5, the word "employees" we want to insert "or a group thereof."

After the word "employees" in line 12, we want to insert "or group thereof".

In line 15 we want to strike out the words "the craft or class" and insert "such employees or group thereof."

In line 21 we want to strike out the last word in the line "interference" and substitute therefor the word "dominating", and after the word "influence" in line 22 we want to insert the word "interference". After the word "carrier" in that line, we want to insert "or any person, corporation, or organization, its, his, or their officers or agents."

In line 24, we want to strike out "designate who may participate" and insert "permit only employees as defined in this act to vote."

In line 25, after the word "and," we want to insert the word "shall". This is the paragraph that provides for the determination of representation, negotiation, and mediation. The paragraph is new. It is not in the present Railway Labor Act. Management considers it inadvisable to include it in the amendments to the Railway Labor Act. We believe it is fraught with possibilities of jurisdictional disputes, and trouble to the organizations themselves.

What makes trouble for the organizations will make trouble for men; in the end, it will also make trouble for management and for transportation as a whole, through demoralization. It tries to determine by statute what men and management could determine much better together, through negotiation. But if it is to be included, we recommend, for purposes of simplification and clarification, the changes I have read.

Influence is again defined as "dominating" influence, in keeping with the trend of the times and to make the organizations equally responsible with management in this situation.

It also so limits the definition of employees so as to prevent disputes and thereby assists in carrying out the purposes of the act.

On page 9, line 5, after the word "carrier" we wish to insert "or person, corporation, organization or his or their."

In line 9 of that page, after the word "carrier" we want to insert "person, corporation or organization, its, his, or their."

The CHAIRMAN. You think that the word "carrier" does not include that definition in the act?

Mr. CLEMENT. No, sir. In line 13, after the word "carrier" we want to insert "person, corporation, organization, its, his, or their."

In line 16 we want to strike out the words "to whom," striking out all of line 17, and striking out "may apply" in line 18.

Page 10, line 4, we want to strike out "or any number of employees collectively." This is the penalty section. With this language written into law, there will be no negotiation, in my judgment, between management and committees without the presence of an attorney, because, as a railroad officer myself, I would hesitate to ask officers to enter into any negotiations with any committee without legal advice at all times. I don't believe that these organizations have any desire or inclination to bring about a condition where they will be in a position that they cannot deal directly and freely with the operating officers of these railroads.

I would hesitate to ask officers to make any suggestion to the employees, as it might under this paragraph be considered as coming under the sphere of "influence" and make them subject to the penalty. All contacts of that kind between men and management would necessarily be broken off.

Management, therefore, hesitatingly but definitely recommends that these penalty sections be left out of the proposed amendments to the act, as we believe this is a thing that defeats the purposes of the bill, and very definitely slows down and curtails negotiations between men and management.

As the coordinator explained, these relations go right down into the ranks, and the penalties apply to all supervisors. This penalty clause alone will flood the boards of adjustment out of existence.

If, however, it is to be adopted, the amendments we suggest will make the law equally effective on both sides.

The last paragraph of the bill should be modified by omitting the words "or any number of employees collectively", in lines 4 and 5, page 10. As this paragraph now stands, it attempts to legalize strikes—yet we are here with the view of preventing interruptions to transportation.

Senate bill 3266, proposed by the coordinator, contains no definition of "company union."

In their presentation of the case before the committee yesterday morning, Mr. Harrison, speaking for the organized employees, proposed the following amendment:

The term "company union" means any group or association of employees formed for the purpose of collective bargaining, whether or not the same shall be formally organized, which was so formed at the suggestion, with the aid, or under the influence of any carrier or carriers, or its or their officers or agents, and/or

whose constitution, bylaws, or actions are under any control or influence of any carrier or carriers or its or their officers or agents.

The carriers, in their discussions, have stayed away from this very controversial matter and believe there should be no attempted definition of the term.

If it is to be defined, we suggest the following language for substitution of that suggested by Mr. Harrison:

The term "company union" means any group or association of employees formed for the purpose of collective bargaining, whether or not the same shall be formally organized, which was so formed at, with, or under the dominating suggestion, aid, or dominating influence of any carrier or carriers, or its or their officers or agents, and/or whose constitution, bylaws, or actions are under any control or dominating influence of any carrier or carriers or its or their officers or agents.

It is observed that the text proposed by the carriers in lieu of that proposed by the organizations covers the feature of domination. Unless this feature is included, there would be little if any cooperation between men and management in connection with setting up so-called "company unions."

We now come to that section of the act which has to do with the national board of adjustment and interpretation of agreement.

The carriers believe that a National Board of Adjustment as proposed in this bill will not accomplish what the act has set out to accomplish.

The Coordinator in submitting his proposed amendments to the railway labor act in his letter to Chairman Rayburn, of the House committee, and discussing a national board of adjustment, says he is "not unduly sanguine" as to its working. Management is sanguine it will not work. As this is the crux of the bill, it is unfortunate that any machinery should be set up to which there is attached any doubt. Management is positive that regional boards can be made to work satisfactorily and efficiently and thousands of organized employees share this view. Management is equally positive that this national board, as set up, will not work successfully. It will not be satisfactory to the carriers, it will be far less satisfactory to the men, it will not be satisfactory to the organizations and the results obtained therefrom will not be satisfactory to the public.

Men and management are agreed that what they want is compulsory, prompt, and equitable settlement of disputes. How is this best arrived at? None of the things proposed in this bill is new. We have had national boards, both in the boards of adjustment during the Government administration of railroads and in the United States Labor Board. We have had regional boards. We have had system boards. We have had Presidents' emergency boards, and we have had arbitration boards.

The result of past experience is that the farther away from the property you go, the less satisfaction is brought to men, management, and the organizations.

As is well known, the United States Labor Board was unsatisfactory from the standpoint of the organizations, of men and of management. Despite the fact that neither men nor management submitted any cases to this Board during the last 3 or 4 months of its existence, it nevertheless turned back some 500 cases unsettled at the time of its dissolution.

On December 9, 1920, months after the railroads were returned from Government control, a circular issued by the Director General of Railroads states:

> My conclusion, therefore, is that as to cases pending before boards 2 and 3, some other means must be found to deal justly by the claimants as to any money due them arising out of Federal control.

Board no. 3 was abolished a year after the end of Federal control, but for a still longer time no cases had been submitted to that board by men or management, and yet when these boards (1, 2, and 3) were abolished by order of the Director General, after all that lapse of time, there were still 513 cases on hand undecided.

The general experience with system boards is that men and management have agreed on a sort of compulsion, approaching questions with an honesty of purpose and disposing of cases currently.

The Coordinator recommends that the experiment be tried. We do not believe that an experiment that has been tried in the past and found lacking should be tried again at the expense of the men. In other words, it is not right to jeopardize the rights of the employees by making an experiment which has been attempted before and which has failed.

Based on a computation made by eastern region carriers, 75 percent of all grievances between employees and management have to do with local conditions on a particular carrier, or part of a carrier, under the working conditions that apply to that section, and it is impossible for any one national board or division thereof to be familiar with the different methods and practices in effect on all class I railroads of the country.

The very set-up of a national board predestines it to failure. Board no. 2, for instance, has 5 members representing 6 major crafts of employees and some minor crafts, so that by the very nature of the thing there will be, for example, only 1 machinist from 1 section of the country representing all machinists from all sections of the country. Some crafts will not be represented at all and a man without representation or without proper representation cannot have satisfaction. Some sections of the country, like New England, would be without representation.

Moving to board no. 3, consisting of maintenance-of-way labor, clerks, telegraph operators, dispatchers, signalmen, and sleeping-car conductors, there are brought together six classes of employees between which there are practically no common working relations in the railroad field. There is in that group one craft not represented. And, for example, all the affairs of all the clerks in the United States, a group numbering about 150,000, will be placed in the hands of but 1 representative. It will put all the affairs of the maintenance-of-way labor, irrespective of climatic and racial conditions, in the hands of one man.

The CHAIRMAN. Just how is that handled now? How are those grievances handled now?

Mr. CLEMENT. With the system boards that are set up there will be probably 6 or 8 or 10 men from a class and 6 or 8 or 10 from the management. If it is the clerks, they are all clerks on the employees' side; they are all management on the management side. In the engine and train service, they generally work together in the four

groups. You will have an equal number of men from the engine and train service on one side and men——

The CHAIRMAN (interposing). When you get beyond the system?

Mr. CLEMENT. Going to the regional, eastern regional board, train- and engine-service board, that is made up entirely of men from the engine and train service on the side of the employees and is made up entirely of management on the side of the management.

The CHAIRMAN. You are familiar with the complaints, that they can't get these boards appointed?

Mr. CLEMENT. When men and management sat down 8 years ago, neither side was willing to write into that act compulsion. We have experienced the act for 8 years, and both sides are now willing to sit down together and write in compulsion. That is the defect of the present act.

The CHAIRMAN. Compulsion of the regional boards?

Mr. CLEMENT. Yes, sir. These things are not going to produce decisions or adjustments satisfactory to the employees. If you could fully realize the overlapping of some of these crafts in the various groups and the jealousies that at times exist between them, then you could understand that the proposed amendments to this act merely set up machinery that will defeat the very purpose for which the act was intended. You must recognize that there is a certain pride in all these crafts and the very idea of this thing is, to them, repugnant to justice.

The whole intent of the Board of Adjustment is to bring prompt, equitable, just, and final decisions. We agree that conclusiveness should be a part of any act. Promptness is necessary from the point of view of the men, and it should be the very foundation of the act.

Based on past experience, experiments, and practices, decisions that are equitable, just, prompt, and conclusive can be secured in 90 days from system boards. It will be a matter of months in regional boards, and it will extend into years in national boards. I predict that if Congress gives to these men a national board for the settlement of their disputes, the board will not survive and men and carriers will be back here again as we have been in the past, seeking new machinery.

Therefore, based on past performance and experience, the railroads recommend an amendment to this portion of the bill; the amendment we propose will create regional boards, with compulsory decisions, prompt and equitable settlement of grievances, and provision for system boards or craft boards where desirable.

Men and management are agreed that there shall be an unbiased, efficient board required to promptly adjust and dispose of controversies between the parties. We feel this is provided for in our proposed amendment.

Summed up, the proposed amendments to the labor act deprive men of rights granted in the fore part of the bill, in that the first part stipulates that men shall have freedom to join organizations of their choice for collective bargaining, and unless they happen to choose one of the organizations enumerated they are deprived of the right of representation.

The amendments as proposed, creating a national board of adjustment, provide everything by statute, leaving no room for negotiation between organizations, men, and management. The amendments

we propose give to these organizations, men, and management that right. It is a right that should be the heart of all management and labor relations.

I have this amendment, and may I ask one of my men to read that.

The CHAIRMAN. Yes. Who is going to read it?

Mr. CLEMENT. Mr. R. A. Knoff, of Pittsburgh.

Mr. KNOFF. This is a proposed substitute for section 3 of the Dill bill:

BOARDS OF ADJUSTMENT—GRIEVANCES—INTERPRETATION OF AGREEMENTS

SEC. 3. That section 3 of the railway labor act be, and the same is hereby, amended to read as follows:

"SEC. 3. (1) For the purpose of creating regional boards of adjustment there shall be established four regions to be described as the eastern, southeastern, western, and southwestern, the members of said adjustment boards shall be selected within sixty days after approval of this Act, in the manner following:

(a) Within thirty days after the approval of this Act the carriers shall agree among themselves as to the carriers which shall be embraced in each of said regions, which shall then become the allocation of carriers among the regions as hereinbefore referred to.

(b) Within forty-five days after the approval of this Act the carriers shall furnish the representatives of employees with a list of carriers embraced in each said region.

The CHAIRMAN. Mr. Clement, this is quite a long amendment. I wonder if you could tell us the differences more briefly. If it is going to take a long time, it may become tiresome and I am afraid we will not get much out of it. It can be printed in the record at this point. I really think that would serve the committee better.

(The proposed substitution in full is as follows:)

PROPOSED SUBSTITUTION FOR SECTION 3 OF DILL BILL

BOARDS OF ADJUSTMENT—GRIEVANCES—INTERPRETATION OF AGREEMENTS

SEC. 3. That section 3 of the Railway Labor Act be, and the same is hereby, amended to read as follows:

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(a) Within thirty days after the approval of this Act the carriers shall agree among themselves as to the carriers which shall be embraced in each of said regions, which shall then become the allocation of carriers among the regions as hereinbefore referred to.

(b) Within forty-five days after the approval of this Act the carriers shall furnish the representatives of employees with a list of carriers embraced in each said region.

Provided, That if in the future it may be deemed desirable to consolidate one or more of the regions hereinbefore provided for, the same may be done by mutual agreement between the representatives of carriers of such regions and representatives of employees affected by such consolidations.

(2) Regional boards of adjustment, whose proceedings shall be independent of one another, shall be created for each of the four groups of employees corresponding, insofar as practicable, with the scope of agreements in effect upon carriers parties thereto, and the groups shall be as follows:

First group: Train and yard-service employees of carriers, that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, train and yard men.

Second group: The following employees in the locomotive and car department: Machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, car men, the helpers and apprentices of all of the foregoing; coach cleaners and railroad shop laborers; also power-house employees.

Third group: Station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, store employees, signal-

men, and all other employees of railroad carriers not included in the first, second, and fourth groups hereof.

Fourth group: Employees of carriers directly or indirectly employed in transportation of passengers or property by water.

Provided that the employee grouping above enumerated shall be subject to change by agreement between representatives of the carriers and representatives of the employees concerned in each region hereinbefore provided for.

Provided further, That the members of each board so created shall be an even number equally divided as between representatives of the carriers and of the employees; such number to be the subject of agreement between representatives of the carriers in each region and representatives of each of the four respective employee groups in each such region.

(3) Notwithstanding any of the provisions of this Act, if any carrier, group of carriers, or system of carriers, and any class or classes of its or their employees shall desire to, and agree to, create on the line or lines of the particular carrier group or system of carriers local, group or system boards of adjustment, hereinafter called "system boards", such boards may be created by agreement for the purpose of adjusting and settling disputes of the character specified in subsection 4 of this section.

Where any carrier or carriers and any class or any classes of its or their employees may by appropriate arrangement set up any other method for the handling of grievances, they shall be exempt from the jurisdiction of such regional boards of adjustment as to those classes of employees.

In the event that either party to a board of adjustment as provided for in subsection 3 of this section is dissatisfied with such arrangement, it may upon, ninety days' notice to the other party, elect to join a regional board created in that territory.

(4) (a) Disputes between an employee or class or classes of employees and any carrier growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, shall be handled in conference between such representatives of the carrier or carriers and its or their employees duly designated so to confer, in accordance with procedure provided for in their respective existing agreements or practices.

(b) If the parties fail in such conference to reach a settlement of a dispute arising out of grievance or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, such dispute shall be referred by the parties or by either party to the appropriate board created to hear such cases, with full statement of facts and all supporting data bearing upon the dispute.

Provided, That no board created under the provisions of this section shall consider a grievance of any character, the cause of which arose more than two years prior to the effective date of this Act.

(5) Whenever any board is unable to agree upon the determination of any case, such board shall undertake to appoint a referee to determine such case or cases, and if they are unable to agree upon a referee, upon such certification to the Mediation Board a referee shall be appointed by the Mediation Board.

(6) (a) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several boards shall give due notice of all hearings to the respective representatives of the employee or employees and the carrier or carriers involved in any dispute submitted to them. After hearings, the several boards shall promptly decide such disputes and advise the parties thereto of their decision.

(b) Each member of the several boards shall, as a condition of his qualification to office, subscribe to an oath to faithfully perform his duties and make his decisions upon the evidence submitted and by the exercise of his independent judgment.

Provided, That any case submitted to an adjustment board which shall not be decided within ninety days from the conclusion of a hearing, unless by agreement of a majority of the members of such board the decision shall be longer deferred, the board shall, if possible, then agree upon the selection of a referee to decide such case.

Provided further, That the referee so selected shall decide the dispute upon the presentation by the board, all members of which may present to such referee their respective views and such referee shall not, unless he deems it necessary in special cases, require a rehearing of the dispute or disputes so submitted to him for decision.

(7) (a) All adjustment boards shall adopt rules for giving notices, conducting hearings, covering time and places of meeting, and such like procedural matters,

including authority to cause hearings to be held upon disputes when properly submitted, at any place designated by the board, by a section of said board consisting of an even number of the representatives of the respective parties.

(b) The members of adjustment boards shall receive such compensation as the parties selecting them may designate, and the carriers and employees shall each pay the compensation and expenses of the members of all adjustment boards chosen by each side respectively. All other expenses, including reasonable compensation for any referee that may be selected or appointed, shall be borne by the carriers and employees in equal proportions; provided, if written transcript of record be required by either party the party requesting the same shall pay the expense thereof.

(8) A majority vote of all members of a board shall be required to make an award with respect to any dispute submitted to it, and the opinion and award of such board, or the referee's opinion and award, shall be in writing, and either of such awards shall be final and binding upon all parties to the dispute, except insofar as it shall contain a money award. If the award includes requirement for payment of money, it shall provide that such payment be made on or before a day named.

(9) If a carrier does not comply with an award of a board within the time limit of such award, the complainant, or any person for whose benefit such award was made, may file in the district court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the road of the carrier runs, a petition setting forth briefly the causes for which he claims relief, and the award of the Board in the premises. Such suit in the district court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and award of the Board shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit.

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

(11) Nothing in this Act shall be construed to prohibit an individual carrier and its employees from agreeing upon the settlement of disputes through such machinery of contract and adjustment as they may mutually establish.

Mr. KNOFF. Mr. Chairman, I have some marginal notes from which I can tell you just what this thing means.

The CHAIRMAN. I think that will be better.

Mr. CLEMENT. The sum and substance of the thing is regional boards with equal representation and the option of system boards, each required to conclusively dispose of controversies. The boards are to adopt rules of procedure, decide cases in 90 days. Deadlocks are avoided by means of compulsory selection of referees, either by boards or the mediation board or groups of the four groups of employees set up to give definiteness to employees in the groups, but the carriers believe that under the permissible negotiation feature what would eventuate would be system or regional craft boards more definite in action and more satisfactory to all concerned.

The CHAIRMAN. Now, your amendment provides for complusory appointment of members of the board if either side fails to appoint?

Mr. CLEMENT. Yes, sir.

The CHAIRMAN. By whom?

Mr. CLEMENT. The Board of Mediation.

The CHAIRMAN. The bill provides the Secretary of Labor, and I wanted to get clear the difference. This is an advance over existing law?

Mr. CLEMENT. Yes.

The CHAIRMAN. And you provide that these decisions may be enforced in the courts?

Mr. CLEMENT. Yes, sir.

The CHAIRMAN. That is a definite proposition, to say the least.

Mr. CLEMENT. Turning to page 24, then, to make these changes in the bill, and so as not to outlaw some cases where the employees have had no place of appeal heretofore, it will be necessary for us to strike out lines 7, 8, and 9 and write a new subsection (b), page 24 of the bill:

(b) Any other dispute undisposed of not barred by the provisions of subsection Fourth (b) of Section 3 of this act, which is not referable to a Board created under the provisions of section 3 of this act; *Provided, however*, That the bar recited in subsection Fourth (b) of section 3 of this act shall not apply to a dispute as to which the carrier involved refused to join in the creation of some one of the forms of adjustment boards or machinery of adjustment provided for in section 3 of the Railway Labor Act.

Senator HATCH. I want to ask Mr. Clement, has this substitute ever been discussed with the Coordinator, Mr. Eastman, or is this the first time this plan has been proposed?

Mr. CLEMENT. I do not believe it has been discussed with the Coordinator; no, sir.

Senator HATCH. It is practically completely new, then, the offer at this time?

Mr. CLEMENT. This is an amendment to this act to try and make it conform as nearly as possible with the present act, putting in the compulsion and the teeth of the law to make it operate about as the new act is proposed.

The CHAIRMAN. Mr. Eastman said that he thought the railroad management would probably be willing to agree to some kind of regional board. So evidently he [illegible] about the situation.

Mr. CLEMENT. He had [illegible] one of the railroad men, and they t[illegible]oards. But answering your quest[illegible]atch, I do[illegible] had seen that text.

Of course, there [illegible]uat[illegible] Each [illegible]ut [illegible] to the other in any wa[illegible]mploye[illegible]ogeth[illegible]iscuss some of these sit[illegible], and we [illegible]y to [illegible]yees, and there was p[illegible]edom[illegible]give it [illegible] Mr. Eastman's repr[illegible]m[illegible] So [illegible]ave seen it before to[illegible]

Page 29 of t[illegible] the words "in agree[illegible] after th[illegible]." That [illegible] definiteness and cla[illegible]

On the same p[illegible]ine 18, [illegible] "notice" [illegible]nt to insert the languag[illegible]

Should changes be r[illegible]an one [illegible] classes at approximately the same[illegible]or the con[illegible]nderstood to apply only to the firs[illegible]or each cla[illegible] intent that subsequent conferences in [illegible] the order of its receipt and shall follow ea[illegible]ss.

This language is now conta[illegible] the 1926 law. It is obvious that it permits a convenience for handling of disputes and requests as to changes. To strike it out would, without doubt, lead to confusion, misunderstanding, and controversy as to proper sequences as to filing notices which govern hearings.

Now, I come to a portion of my discussion in connection with this bill which I very much hesitate to approach for fear it might be misunderstood. That is, the unionization features of the bill.

No railroad is objecting to a man joining a union; we believe that union should be the union of his choice; we believe a man's union affiliation should be treated exactly as his religion or his politics, it is a matter of personal privilege and not a condition of employment. Management has no desire to destroy unions. Unions have no desire to destroy railroads. Together and severally, they both have an obligation to the employees. But, above either is the right of the employee.

We believe that the railroads must, in their dealings with their men readjust themselves, from time to time, to meet the progress of the development of employee and management relations. We also believe that the unions, from time to time, have got to readjust themselves to meet the necessities of the men as brought about by changing conditions. If management does not readjust, the conditions of employment may become unbearable. If the unions do not readjust, the conditions of membership may become intolerable.

We do not believe legislation is necessary to make men join unions. There are unions on these roads today, strongly and efficiently managed; through their statesmanship and ability to serve, they have an undivided front of practically all the men in their class; they have never sought statutes to force men into their organizations. Therefore, the only thing necessary to get men into an organization is to see that the organization is well managed. Any effort to compel a man to join an organization is an affront to civil liberty.

Throughout this bill, worded in here and worded in there, is a contrary spirit, a spirit of compulsion that men must join certain unions and if they do not joint these unions, they are denied representation. This is no new experiment; it has been tried before and tried disastrously to these very same organizations. If the carriers were of a mind to drive these organizations off the railroads, they could no better do it than seek through Congress a statute to compel the men to join. Now it may appear strange that the carriers may be, in a way, pleading for these same organizations, when there is here an opportunity for the carriers to do them serious harm. All of the carriers went through the days of the railroad administration and the conditions that existed in those days with all classes and all grades being led by the hand of Government into these organizations, resulting generally in demoralization of the railroad workers of the United States and eventually leading to a revulsion of feeling that almost destroyed some of those organizations. And, that is what is anticipated will result from this legislation.

Out of all the cases of demoralization, of dissatisfaction, of strikes, of discontent, from around 1918 to 1922, a common point of view came to organization leaders and railroad managements, each recognizing the rights of the other—but, above all, the greater rights of the men—they came together and prepared the Railway Labor Act of 1926. Never in modern times has there been such peace, such contentment, so little strife in any one industry as has existed in the transportation field in those past 8 years. Taking cognizance of the fact that these relations have endured and carried through the greatest depression of modern civilization, it is a tribute to the cooperation

which brought this thing about. The records will show that there have been no strikes of moment since the passage of the Railway Labor Act.

There has been less wage reduction in the transportation field than in any other big industrial field during the depression. Employment held up as well or better in the railroad industry than in any of the other major basic industries. There was a sincere effort throughout this depression in the transportation industry to divide work, to satisfy employment, to protect the older men, with a strict observance of seniority, and of the rules and regulations. This may be because the railroad employees are the finest body of men in America, but we believe no small part of it has been due to the statesmanship of the leaders of the men working with management. It should not be possible to knowingly destroy these conditions by making amendments to this act, impelled by the temporary influences that have come out of the depression, without relation to the hindsight that should come from the past, nor with foresight for the future. We do not believe that these proposals are advantageous to unionism nor to the national unions themselves.

We know they are not advantageous to the employees, and a thing that is not advantageous to the employees cannot help but bring a reaction against them in the end; and, by reacting against them, it reacts against the efficiency of management and service to the public.

The only difference between the Railway Labor Act of 1926 and these amendments as proposed—outside of the adjustment features desired by the men—is the skillful wording into section after section, or the introduction of new sections, to bring about a cleavage between men and management through compulsory unionism, compulsory only so far as certain particular unions are concerned.

Any American citizen who is an employee of one of the railroads of the United States has certain inalienable rights. His labor-union affiliations are personal prerogatives and they should not be a condition to employment or nonemployment, nor should they, under any consideration, be made so by legislation.

Railroad management as a whole believes in collective bargaining. We believe that the railroad employees should have the absolute right to select their own representatives for dealing with their managements. We just as firmly believe that the railroad employes should have the freedom to select, without coercion—either from management or from any organization whatsoever—whom they wish as their representatives.

We further believe that the Government should not, by coercion or insistence, force upon the men some system of representation that they themselves do not want.

The whole tendency of the bill is to draw a direct line of cleavage between employees and the carriers. To make a cleavage between men and the carriers defeats the whole purpose of the Railway Labor Act and reverts to a theory of unionism that has become antiquated.

Summed up, the Railway Labor Act of 1926, with certain modifications, is nearly a perfect bill for the settlement of major troubles between men and management.

If you will eliminate from this bill all those things which we believe will make contention between men and management, and include only those things necessary to make this law compulsory in the spirit

that it was originally written, correcting the two recognized defects, namely, (1) that, on certain railroads, men and management have not observed the spirit of the law, and (2) failure of the law to provide machinery for the prompt disposal of matters in controversy referred to the boards that became deadlocked—all that is necessary is to change section 3 of the law and make certain minor modifications in section 5. If this course is adopted, I cannot help but feel that you will assure men complete freedom of action in all ways, for collective bargaining, and concurrently assure to them prompt, equitable settlement of disputes, and assure the country against any interruption to commerce or to the operation of the carriers.

I am handing to the secretary, and if anybody else would like to have one, a copy of the Railway Labor Act of 1926, with such modifications as will make those two points effective, and the language is identical to that which we proposed to read a few minutes ago as our amendments to section 3 and section 5 and made a part of this record.

The CHAIRMAN. Are there any questions by the members of the committee?

Senator WAGNER. There is just one question I want to ask you. I didn't understand these provisions compelled an employee to join any particular union. I thought the purpose of it was just the opposite, to see that the men have absolute liberty to join or not to join any union or to remain unorganized.

Mr. CLEMENT. That is the way we hope they will read when they are finally amended.

Senator WAGNER. Well, what is there in there now that restricts the worker?

Mr. CLEMENT. In your board of adjustment you are limited to national organizations for representation, therefore you limit any man that doesn't belong to a national organization to any representation at that point.

Senator WAGNER. Is it that the feature does not call for voluntary selection? Is that what you object to? How about the enumeration of the unfair practices, and so forth? Did you object to those?

Mr. CLEMENT. I have got a lot of things underlined here—

a majority of any craft or class shall have the right to determine who shall represent employees who have the right to determine who shall be the representatives of the craft or class for the purposes of this act.

Certain of these organizations have contracts. Now, it is perfectly possible in the time of depression that all the firemen on a railroad will be off and the engineers will be doing the firing, and the engineers' organization says: "Now, we want to take a vote. We want to represent everybody in the engine." You go through with this and you do it. Times pick up and back comes the fireman on the left-hand side of the engine. They say: "Now, here we are. We represent this craft. We want a new vote taken to see who represents the left side of the engine." Exactly the same thing could be true of trainmen and conductors. The same thing could be true if one organization had a contract of long standing. As men come and go, you might drive out that organization temporarily; then out on some other road that organization bobs up with a majority of men. That would be driving them out, so you would be just gradually changing from one organization to the other as people change, as times went up and down.

The most serious thing to me, Senator—I went over this before you came in——

Senator WAGNER (interposing). Then I will read your testimony.

Mr. CLEMENT. I have covered that at considerable length.

Senator WAGNER. I am sorry. I came in late. What about the particular provisions, did you touch them at all, which relate to their joining an organization without interference by the employer or coercion by the employer? You remember those provisions?

Mr. CLEMENT. The railroads take the position that a man should have absolute freedom in that respect, and there should not be any dominating influence from the carrier.

Senator WAGNER. That is what I had in mind. You don't object to these particular provisions in the act then?

Mr. CLEMENT. We object to nothing that gives a man absolute freedom of choice. We tried to harmonize it with certain modifications which you have made in your act governing other industries. We read those changes and embodied that thought.

Senator HATCH. You have inserted the word "dominating" frequently through the act.

Mr. CLEMENT. Yes, sir; "influence".

Senator HATCH. Thinking that might be hard to define?

Mr. CLEMENT. Some organizations will say to a man: "Well, now, you can't take out any insurance in that relief association. That is influence. You can't sit down with the management and discuss your loan association. You can't have any membership there. That is influence."

Now, "influence" is eventually going to have to be definitely determined, therefore we turn to a decision of the Supreme Court in the case which I referred to, which described it as "dominating" influence, so we thought we might just as well start out in the act clear and concise in the beginning, just where we would probably end up after a court decision a year or two from now.

Senator WAGNER. You suggest the word "domination" in place of the word "influence"?

Mr. CLEMENT. No, sir; we said "dominating influence."

Senator WAGNER. Of course, I have been using the words "company dominated unions."

Mr. CLEMENT. That is exactly the same thought, sir. We don't believe in that.

Senator WAGNER. You don't believe in that?

Mr. CLEMENT. No, sir.

Senator CAPPER. To what extent are the labor organizations here, usually known as the "brotherhoods", in control of the labor on the railroads?

Mr. CLEMENT. That would be very hard for me to tell. I will say this: We have no record of that. We don't ask whether a man belongs to a labor organization or not, but from time to time we get this knowledge. We know that the signalmen on our railroad is a 100 percent organization. We have an idea that about 30 percent of the committeemen in our telegraphers representation belong to their national organization.

First we say we have no organization; second, we say a man can belong to any organization he wants to; third, all you do is elect your

representatives every 2 years, or whatever the term is. So, so far as my belief is concerned, I believe I have got men on my railroad that belong to every organization there is.

Senator CAPPER. You think then it would be impossible to organize these various groups in a way that would bring them within the membership of one organization, do you? That is, one group?

Mr. CLEMENT. I don't believe you can compel men to stay in an organization if they don't want to stay in it.

Senator THOMPSON. Is there anything in this bill that attempts that?

Mr. CLEMENT. We think it is possible of interpretation all the way through. Those are the things I tried to outline as I went through.

Senator THOMPSON. I came in late. I did not hear that.

Mr. CLEMENT. I described that in my testimony as I went through. It is in paragraphs fourth, fifth, ninth, and tenth.

Senator THOMPSON. I will not bother you then. I will read your testimony.

The CHAIRMAN. Mr. Clement, you have presented a very concise and definite argument this morning, and we thank you very much for helping the committee and making it as brief as you have.

Mr. CLEMENT. And I thank you, sir, for the courtesy the committee has extended to me.

STATEMENT OF W. L. WHITE, PRESIDENT OF THE AMERICAN SHORT-LINE RAILROAD ASSOCIATION

Mr. WHITE. My name is W. L. White; address, Union Trust Building, Washington. My appearance before this committee is on behalf of the American Short-Line Railroad Association of which I am president, which has a membership of 333 short-line railroads, with a total mileage of 11,600 miles.

Senator CAPPER. Does that take in about all of them?

Mr. WHITE. That is approximately 78 percent, Senator, of the independently owned and operated short-line railroads in the country.

We are asking that the independently owned and operated short-line railroads 100 miles and less in length be exempted from the provisions of sections 2 and 3 of the Railway Labor Act as amended by this bill, S. 3266, in the same manner and to the same extent that they are now exempted from the provisions of the Adamson Law. This will retain jurisdiction in the board of mediation to settle any dispute that may possibly arise on the short-line railroads. To accomplish the purpose we are seeking, we suggest that at the end of line 12, page 2, the following language be added:

Provided further, That sections 2 and 3 of the Railway Labor Act as amended by this act, shall not apply to independently owned and operated lines of railroads 100 miles or less in length.

Our reasons for requesting this exemption will be stated to you as concisely as possible.

First. There is no demand on the part of the employees of these short-line railroads for this legislation, just as there was no demand from them for the Railway Labor Act of 1926.

Second. In most instances the employees of these short-line railroads do not belong to any of the 21 standard railroad labor unions

represented by Mr. Harrison, who appeared before your committee yesterday.

Third. There are so few employees on the average short-line railroad, and they perform such a variety of duties, as to make it impossible to classify them by crafts, as is done on the standard lines.

Fourth. As a very general rule there are no contracts or agreements between the railroads and their employees on the short-line railroads, such as are in existence on the standard lines.

Fifth. The short lines have been singularly free from labor disputes over a long period of years, and I know of no short line 100 miles or less in length that has had a serious labor controversy since the enactment of the transportation act of 1920. There is no friction between the management and the employees of these roads.

Sixth. The operating conditions on the short-line railroads are so different from those on the standard lines that the national board of adjustment, created by the bill now before you, would have no appreciation whatever of these conditions.

Seventh. The provisions of section 3 of the proposed bill, dealing with the national board of adjustment, are wholly inapplicable to the short-line railroad situation, and it will readily be seen that neither the short-line managements nor employees would have any representation whatever on the adjustment board; consequently, it would be unjust to subject the short lines to this particular section of the bill.

Eighth. This bill, by reason of its many drastic provisions, would create strife on the short-line railroads where none now exist, and none of the alleged evils which the bill seeks to correct exist on these short lines.

A very brief description of the short-line railroads will demonstrate to you both the necessity and the desirability for their exemption from the provisions of this act. The short-line railroads are, for the most part, community affairs, very local in their nature, and the management and employees are neighbors and friends. They work together harmoniously and cooperatively for the common good of themselves and the communities dependent upon these lines for transportation service. During the depression the managements of the short-line railroads have done everything possible to keep their employees at work. A man on a short-line railroad may be an engineer in the morning, and a boilermaker or mechanic working in the shops in the afternoon.

In other words, everything possible is done to provide full-time employment for the employees on the short-line railroads.

So far as the short lines are concerned, legislation is the potential source of a great deal of friction, for there are no conditions on these roads which demand remedies by such legislation.

The CHAIRMAN. Have you discussed this problem with Mr. Eastman?

Mr. WHITE. We have, and Mr. Eastman expressed himself as sympathetic toward our viewpoint, but didn't feel as though he could make any recommendation along this line to the committee at this time.

The CHAIRMAN. Do you know of anybody that objects to your being taken out of the operation—your amendment to exclude your lines from operation of certain parts of the bill?

Mr. WHITE. We haven't discussed it with the representatives of the brotherhoods.

The CHAIRMAN. I can see that a very difficult situation confronts you because of the fact that your men, as you say do so many different things.

Mr. WHITE. That is very true, Senator; and I will say this, that the short lines have settled their disputes between the management and the employees for a number of years, and the amendment that we ask would still leave them subject to the mediations board for any such disputes as couldn't be settled between the management and the employees.

The CHAIRMAN. How many employees are there in the short-line railroads, would you say?

Mr. WHITE. Approximately 100,000.

The CHAIRMAN. Are there any questions of Mr. White?

Senator WAGNER. Just what will you be exempted from?

Mr. WHITE. We will be exempted, first, from the provisions of section 2, which is very drastic in its effect; it contains penalties for certain failure to perform—which would be extremely detrimental to the short lines, Senator—and, second, to the provisions setting up the national adjustment board, on which neither the management nor the employees of the short lines could possibly have any representation.

The CHAIRMAN. Would you want to be exempted from the regional boards the same way?

Mr. WHITE. We would; the same objections would apply there.

The CHAIRMAN. If the committee decided to apply regional boards, you wouldn't want to be exempted from them?

Mr. WHITE. We would; yes, sir.

Senator CAPPER. As I understand it, you don't object to the general principles of the legislation here, but claim that it is not practical as applied to the short lines.

Mr. WHITE. To the short-line railroads; that is true, Senator.

The CHAIRMAN. Thank you very much, Mr. White.

Senator WAGNER. Just one moment—section 2—do you mean, for instance, the provisions here are wrong? For instance, to forbid any limitation upon freedom of association among employees or any denial as a condition of employment or otherwise of the right of an employee to join labor organizations?

Mr. WHITE. No, we don't object to that; but I will say this, in many instances employees of the short lines do have membership in some of the national labor organizations, but the number is so small on the average short line that they don't have a local chapter of the organization, and they are practically without representation.

Senator WAGNER. Well, this is simply to—I am sure that you and I are in accord on that. You don't mean that you want to be relieved from the requirement that the men, the employees, shall have the right to join a union or not to join a union, just as they wish?

Mr. WHITE. No, sir. We have no objections to that whatever.

The CHAIRMAN. Thank you very much, Mr. White. Mr. Kelly of the Pullman Co.

STATEMENT OF GEORGE A. KELLY, GENERAL SOLICITOR OF THE PULLMAN CO.

Mr. KELLY. My hame is George A. Kelly, general solicitor of the Pullman Co., Chicago, Ill.

In view of certain statements which were made at this hearing yesterday, I would like to sketch, just as briefly as I can, appreciating the necessity for speed, the origin, development, and results accomplished under the plan of employee representation of the Pullman Co., under which all classes of employees of that company participate and have their representation for purposes of the railway labor act. This plan has been characterized as a company union.

President Wilson's Second Industrial Conference, of which Mr. William B. Wilson, the then Secretary of Labor, was chairman, and Mr. Herbert Hoover was vice chairman, in its report, which was issued in 1919 or 1920, I think, stated that the best plan of organization to create and maintain peace in industry, was an organization that was based on confidence, cooperation, and conference, and that the way to establish that relationship was by its deliberate organization. In that report, that conference outlined a model for a plan of employee representation.

The Transportation Act of 1926 also made it the duty of carriers and their employees to make and maintain agreements governing rates of pay, rules, and working conditions and for the settlement of disputes. In accordance with this mandate of the transportation act, and using as a model the plan of employee representation outlined and recommended by President Wilson's Second Industrial Conference, the Pullman Co. in 1920 prepared and submitted to its employees a plan of employee representation. This plan was first submitted to the employees of the Pullman Car Works. The employees voted to reject it. The matter was then dropped. Some time later, without any suggestion from any of the officers of the company, some of the men in the car works went to the manager of the works and said that they didn't think the employees understood what this plan was about and what was sought to be accomplished and suggested that some meetings be held with the employees where the plan might be explained to them. That suggestion was adopted; those meetings were held; the plan was again submitted to the employees and they voted by an overwhelming majority to establish it. It was so established in Pullman Car Works, and has been in effect there ever since.

The CHAIRMAN. That is the car works, you say?

Mr. WHITE. Car works, Pullman Car Works.

The CHAIRMAN. That is a manufacturing establishment?

Mr. KELLY. It is a manufacturing establishment now. It was the manufacturing department of the Pullman Co. at that time.

Senator CAPPER. It corresponds with the shops of the railroad company.

Mr. KELLY. I was just coming to that, Senator.

Senator WAGNER. Who owns that company?

Mr. KELLY. The Pullman Car Manufacturing Corporation. I say it is the Pullman Car & Manufacturing Corporation.

Senator WAGNER. It isn't subsidiary?

Mr. KELLY. Yes, the stock is owned by Pullman, Inc.

Senator WAGNER. Is that a holding company?

Mr. KELLY. Yes, sir.

Senator WAGNER. And is that holding company controlled by any other outside organization?

Mr. KELLY. Well, you mean is there any pyramid holding company?

Senator WAGNER. Yes.

Mr. KELLY. There is one holding company for all of the various companies in the so-called "Pullman group," which is the Pullman, Inc. It owns substantially all of the stock of the Pullman Co. which is the Sleeping Car Co., the operating company, the Pullman Car & and Manufacturing Corporation, which is the manufacturing company manufacturing cars and equipment, Standard Steel Car Corporation, which also is in the car-building industry and one or two others.

Senator WAGNER. How old is the holding company, Mr. Kelly?

Mr. KELLY. It was created, I think, in 1927, as I recall.

Following the adoption of the plan by the Pullman Car Works, it was also submitted to the employees in the Buffalo shops. Those are the shops where repairs are made to the Pullman cars which are operated by the Pullman Co. The plan was also established there, adopted by the employees there, and was put into effect there.

Following that, meetings were held all over the country with our various classes of employees. The plan was explained to them, and at elections which were then held, elections conducted by the employees themselves, by secret ballot, where they had charge of the ballot boxes, had their election committees, they counted the ballots, certified the results, they elected representatives to sit on the committees which were provided for by this plan; so that by the early part of 1921, this plan of employee representation had been established throughout the entire country and covered all classes of Pullman employees, with the exception of a group of Pullman conductors who were members of the Order of Sleeping Car Conductors, which I understand is a member of the Railway Labor Executives Association. Is that right, Mr. Harrison?

Mr: HARRISON. That is right.

Mr. KELLY. As near as we can determine, we don't know who of our conductors belong to the Order of Sleeping Car Conductors, and we don't care, but about a third of our sleeping car conductors have participated in the plan of employee representation and have their representation under that plan.

Senator WAGNER. Are you going to develop the plan, Mr. Kelly?

Mr. KELLY. Under the plan of employee representation, the representatives are restricted to the employees of the company.

Every employee, regardless of his membership or nonmembership in any organization is entitled to vote. Eligibility to election is not conditioned upon membership or nonmembership in any organization. Any employee can belong to any union he desires. Every important question concerning the employees' wages, working conditions, and welfare is settled by joint action of the management and the employees The plan does not provide that an employee join or become a member of any organization. The plan provides that an employee may be a member of a labor union if he so desires. Finally, there shall be no

discrimination by the company or by any of its employees on account of membership or nonmembership in any fraternal society or union. That is article 6 of the plan.

Senator WAGNER. That organization—if they do belong to an outside organization—can't bargain on behalf of the workers.

Mr. KELLY. If they do?

Senator WAGNER. Yes. I mean they can't select.

Mr. KELLY. If there is an outside organization that represents the employees they can.

Senator WAGNER. How can they, because you limit representation to those who actually work in your plant.

Mr. KELLY. I have just stated a moment ago that about two thirds of our conductors are represented in a so-called "standard union", and we deal with them. One third are represented under the plan of employee representation.

The CHAIRMAN. And you deal with them separately?

Mr. KELLY. We deal with them separately.

Senator WAGNER. You mean you ascertain who are members of the outside union?

Mr. KELLY. We don't know who the members are. These conductors whom we assume don't belong to the Order of Sleeping Car Conductors—we don't know whether they do or not—who participate in the plan of employee representation; they elect conductor representatives to the various committees set up under the plan. These committees meet on these joint boards which are composed of an equal number of representatives of management and employees and decide these disputes and grievances.

Senator WAGNER. I don't think I made myself clear as to what I want to know. You have your elections for representatives, employee representatives. Nobody can be elected a representative unless he is actually employed in your plant?

Mr. KELLY. Under the plan of employee representation that is correct.

Senator WAGNER. Therefore, if they do belong—supposing half of them belong to an outside union—independent union or outside union, whatever you care to call it, they are not in any position, because of the restrictions of your constitution to select anybody outside of the plant, not an employee, to deal in behalf of the workers.

Mr. KELLY. Not under the plan of employee representation.

Senator WAGNER. Thank you.

Mr. KELLY. These contracts——

Senator CAPPER (interposing). Are all your conductors members of one or the other group?

Mr. KELLY. We don't know what they belong to, Senator.

Senator CAPPER. I was wondering what percentage they were.

Mr. KELLY. We have no means of knowing.

Senator CAPPER. Are there any who are in no group?

Mr. KELLY. I base my statement about a third of our conductors, since the establishment of the plan of employee representation, have participated in the operation and working of that plan and have elected representatives to sit on the committees created by the plan. Now, whether it is a fair assumption in view of that to state that one third of the conductors do not belong to this other union, standard union, I don't know.

The CHAIRMAN. That was stated yesterday, you recall, by the representative of the standard union. Were you in the meeting yesterday?

Mr. KELLY. Yes, sir.

The CHAIRMAN. He said about six of the nine thousand belonged to their organization.

Mr. KELLY. He was talking about another class though, class of employees.

Senator CAPPER. What I was asking, is whether any considerable number are not organized at all and are in no organization.

Mr. KELLY. I don't think so, Senator. I think they all participate because in these elections, the annual elections which the employees conduct under the plan of employee representation, the percentages of those who vote run up into 90 percent. They range around 93, 94, 95 percent all the time. On that assumption, I would assume that most of them have their representation in that form.

Senator WAGNER. Does the company finance the union?

Mr. KELLY. Yes, sir; we pay all the expenses.

The CHAIRMAN. Do you pay their representatives a salary the same as the Pennsylvania?

Mr. KELLY. When employee representatives are on committees and are taken out of their regular line of duty, they are paid for the time that they spend in the committee work, including any expenses

The CHAIRMAN. Does that amount to a considerable sum?

Mr. KELLY. No; it doesn't.

The CHAIRMAN. Can you get down to the bill? Is there some part of the bill you want to discuss?

Mr. KELLY. I would like to go just a little further on this, if I may.

Senator THOMPSON. May I ask just one question. Is there anything—I haven't been here through the entire examination of the different parties and I may be asking you questions that you don't care to answer. It might disturb what you have or you might have it, in your talk that you intend to give us. That is, could you in a succinct way state or have you any dispute or differences between you and your laborers or employees that they want to be settled by this bill or you don't want whem to come under this bill? That is, is there any dispute existing between——

Mr. KELLY (interposing). Any pending dispute at this time?

Senator THOMPSON. Yes.

Mr. KELLY. I can't recall any, of course there are, maybe, minor grievances about some short-pay claim, but there is no major dispute of any kind existing between us and any of our classes of employees at this time.

Senator THOMPSON. That is all then.

Mr. KELLY. Under this plan of employee representation that has been in effect for 12 years now, we have never had a major dispute of any kind or character. There has never been an appeal from any decision of the bureau of industrial relations, which is the final joint committee under the plan of employee representation, to the United States Board of Mediation.

Senator WAGNER. I would like to bring out one more fact. Do I interrupt you when I ask these questions, Mr. Kelly?

Mr. KELLY. No, sir.

Senator WAGNER. Does it require the consent of the management to amend the constitution of the employees under your plan?

Mr. KELLY. That is a matter of agreement. The contracts of the various classes of employees provide that all disputes and grievances shall be handled in accordance with the plan of employee representation. If these agreements provide for revision there is provision in there for revision of the contract, such as calling another conference, things of that sort. It also provides for the cancelation of the contract.

Senator WAGNER. Have you a constitution that governs this?

Mr. KELLY. We have the plan of employee representation. I don't think you could call it a constitution. It just sets out—I will be glad to offer in the record here a copy of the employee representation.

Senator WAGNER. I just wondered whether that contained a provision that it can't be changed without the company?

Mr. KELLY. I don't recall any such provision.

The CHAIRMAN. I suggest that it may be printed at this point in the record.

(The paper referred to follows:)

THE PULLMAN CO. PLAN OF EMPLOYEE REPRESENTATION FOR DISTRICT EMPLOYEES

(Effective Oct. 1, 1920, revised, effective Jan. 1, 1927)

ARTICLE 1. BUREAU OF INDUSTRIAL RELATIONS

To aid in the carrying out of the plan of employee representation there has been established at the general offices of The Pullman Co. in Chicago a bureau of industrial relations, consisting of representatives of the company appointed by the president, and an equal number of representatives of the employees chosen or designated by and from the employees.

The scope of the work of the bureau shall cover matters pertaining to current wages and working conditions, questions of industrial relations, and such other matters as may be of importance to the welfare of the employees, but shall not include the negotiation of new agreements nor the revision of existing agreements governing wages and working conditions.

ARTICLE 2. FORMATION OF COMMITTEES

There shall be in each district—

(*a*) One local committee for district office forces, conductors and storeroom clerical employees.

(*b*) One local committee for minor supervisory forces, yard mechanics, car cleaners, and storeroom nonclerical employees.

(*c*) One local committee for porters and maids.

(*d*) A forth local committee may be added, where conditions justify.

(*e*) Each such local committee shall consist of not less than 3 employee representatives, or 1 representative for each 200 employees in the classifications above mentioned.

(*f*) There shall be appointed by the management representatives to act on each such local committee not to exceed the number of employee representatives on each of the respective committees.

(*g*) It is intended that any employee or group of employees or the management may at any time present suggestions, requests, or complaints to the local committees with a certainty of full and fair hearing.

(*h*) Employees having suggestions or grievances should first submit such suggestion or grievance to their immediate supervisory officer and, if satisfactory adjustment cannot be made, may then submit same in writing to the local committee for consideration.

(*i*) There shall be in each of the seven operating zones: (*a*) One zone general committee for district office forces, conductors, and storeroom clerical employees; (*b*) One zone general committee for minor supervisory forces, yard mechanics, car cleaners, and storeroom nonclerical employees; (*c*) One zone general committee

for porters and maids; (*d*) One zone general committee for employees classified as group D in zones where there are local committees representing that group.

(*j*) Each such zone general committee shall consist of one employee representative from each district in the zone to be selected by and from the employee representatives on the local committee of the same classification in that district, and an equal number of representatives to be appointed by the management.

(*k*) Each zone general and local committee shall select one of its number as chairman, who shall hold office for a period of not more than 6 months unless reelected. The chairman will have the same voting privileges as the other representatives on the committee.

(*l*) Employee representatives on the local committees and zone general committees shall be elected for a period of 1 year, provided, however, that if an employees' representative is elected to fill a vacancy he shall hold office only for the balance of the year or until his successor is elected.

(*m*) Employees who have been in the service of the company not less than 2 years shall be eligible to election as employee representative on a committee.

ARTICLE 3. ELECTION OF EMPLOYEE REPRESENTATIVES

(*a*) The employees of each district shall annually nominate and elect from among their number who are eligible, representatives to act on their behalf on the committees provided for.

(*b*) Employee representatives on committees shall be elected to hold office until the next annual election or until their successors are elected.

(*c*) Annual elections by employees for election of representatives on committees shall be held simultaneously in all districts on the second Tuesday in November of each year. The supervisor of industrial relations, in issuing notices of nominating elections for the nomination of employees as candidates and of final elections of employee representatives on committees, shall state time and place of elections, and the number of candidates to be voted for. Such notices shall be posted for the information of the employees in the various districts.

(*d*) Special elections shall be called by the supervisor of industrial relations by similar notice when on account of resignation or other circumstances it becomes necessary to fill vacancies on committees.

(*e*) At each annual nomination and final election the retiring chairman and secretary of each local committee will serve as temporary chairman and temporary secretary in arranging for the nomination and election of employee representatives for the coming year, and such chairmen will appoint election committees of an adequate number of employees to supervise the nomination and election of candidates for employee representatives on the various committees, and one representative of the company shall be appointed by the management to serve with the employee representatives on each of such election committees. The secretary will record these appointments.

(*f*) The election committee shall outline, with the approval of the supervisor of industrial relations, the necessary detail procedure in connection with the nominations and elections, and shall act as tellers in the counting of ballots at such elections.

(*g*) Each employee shall be eligible to vote for employee representatives on the committees, and may nominate representatives equal to the total number to be elected on a local committee for the district in which he is employed, except that supervisory officers and other employees having the power of employment or discharge shall not be allowed to vote for employee representatives. All votes, both for nominations and elections, shall be by secret ballot.

(*h*) The nomination election shall be for the purpose of selecting candidates to be voted for at the regular election to the number of twice the employee representatives to be elected to the local committees, and the required number who shall receive the highest number of nominating ballots shall be certified to by the election committee and declared to be candidates for employee representatives, and shall be so announced by the chairman.

(*i*) Within 10 days after the nomination of employee representatives on the local committees the election shall take place in each district. Ballots containing the names of the candidates nominated, stating number to be voted for, shall be distributed to each employee entitled to vote and such employee shall mark the ballot by placing a cross (X) opposite the names of the candidates for whom he wishes to vote. These ballots shall be deposited in a locked ballot box, which shall be located in a convenient place or presented to each employee to enable him to deposit his ballot, and shall be under the supervision and in the custody

of the election committee, which shall be accompanies by a representative of the management with a list containing the names of the employees entitled to vote, whose names shall be checked off as their votes are cast.

(*j*) Car-service employees, whose duties require them to be on the road, may deposit their ballots in the ballot box on election day, or in case of absence, may forward their ballots by mail to the election committee in sufficient time to be deposited in the ballot box on election day. In the latter event the ballot must be accompanied by a separate slip of paper showing full name and vocation of voter.

(*k*) The election committee shall take charge of the voting list, the ballots boxes or ballot returns containing the votes, shall count the votes and shall prepare lists of nominated candidates and elected representatives. The results of the balloting and the names of the nominees elected shall be posted in the district offices and yards as soon as the results have been ascertained.

(*l*) Every assistance will be afforded to facilitate the procedure of nominations and elections of employee representatives, in the preparation of ballots, ballot boxes and other necessary machinery, in order to assure an impartial count of the ballots and to protect the secrecy of same.

(*m*) If dissatisfaction with the count should prevail, either in respect of the nominations or elections, any 25 employees may demand a recount, and for the purpose of recount the election committee shall select from those demanding the recount at least two additional tellers, who shall act with the election committee and a representative of the management in the recount. There shall be no appeal from this recount except to the bureau of industrial relations.

(*n*) Ballots and voting lists shall be preserved for 30 days, within which time any demand for a recount or an appeal to the bureau of industrial relations must be made in writing. Should the bureau deem any election unfair, it shall order a new election at a time to be designated, and to be handled in accordance with the foregoing general outline.

(*o*) Within 15 days following the election of the local committees, the employee representatives on each such committee shall meet and by secret ballot elect from among their number one employee representative to serve on the zone general committee for 1 year or until his successor is elected.

(*p*) Within 15 days following the election of the employee representatives to the general committees, such employee representatives on each zone general committee shall select from among their own number one "elector" so that there will be one elector for each classified group of employees in each zone. These electors, and the similar electors from the repair shops general committee and the general committee representing the clerical forces in the general offices shall then meet and choose or designate representatives for their respective classified groups to serve on the bureau of industrial relations for a period of 1 year or until their successors are elected. The election for each classified group shall be conducted separately.

ARTICLE 4. ZONE GENERAL AND LOCAL COMMITTEE MEETINGS

(*a*) The local committees and zone general committees will each organize with a chairman and a secretary, and will keep minutes of all meetings, which will be accessible and subject to inspection of all employees and copies of which will be furnished to the supervisor. Meetings of local committees may be held from time to time on call of the chairman or on the request of the management or of a majority of the employees which the committee represents. The committees may consider and make recommendations concerning any matters pertaining to their employment, working conditions, questions arising out of existing industrial relations, and such other matters as they may deem important to the welfare of the employees.

(*b*) The zone general committee will consider promptly all matters referred to it by local committees for decision, and where agreement cannot be reached by the zone general committee the matter will be submitted to the bureau of industrial relations for final decision. All grievances or statements must be submitted to the local committees, zone general committees and to the bureau of industrial relations in writing. Copies of all minutes of each zone general committee's meetings will be certified to by the secretary of such zone general committee and delivered to each of the representatives on the zone general committee for report to the local committees and employees.

(*c*) Meetings of the zone general committees will be held in the office of the official in charge of the zone or in the Pullman Building in Chicago at intervals of not more than 6 months. All grievances and other matters which are not

settled by the local committees of the various districts shall be submitted to the supervisor in writing with full report of the contention and result of the conference held by the local committee. The supervisor shall transcribe this report to show all of the circumstances of the case and the contention of the employee representatives and of the management representatives for submission to the zone general committee at its next meeting. On such matters as require decision before the next meeting of the zone general committee, he shall submit a copy to each member of the zone general committee with request that such member state in writing his views on the contention.

On receipt of replies the supervisor shall tabulate them and submit the result to the bureau of industrial relations for final decision.

(*d*) The purpose of zone general committee meetings will be to endeavor to settle all matters that have not been disposed of by the local committees and to discuss freely matters of mutual interest and concern to the employees and the company, including consideration of the enforcement of discipline, avoidance of friction, and to promote in every way possible friendly and cordial relations between the company and its employes.

(*e*) The Pullman Co. will provide appropriate places of meetings for the zone general committees and will defray the necessary expenses of the representatives on the zone general committees in attending meetings.

(*f*) The supervisor may appoint from the representatives on the zone general committees subcommittees to investigate special conditions throughout the company's activities.

ARTICLE 5. DUTIES OF THE SUPERVISOR OF INDUSTRIAL RELATIONS

(*a*) It shall be the duty of the supervisor to respond promptly to any request from employees, local committees or zone general committees, for his, or his representative's, presence at conference or any meetings to be held, and to advise all parties interested in regard to decisions of the management or findings of the bureau of industrial relations or the zone general committees in relation to matters under consideration. Before any question is referred from a local committee to a zone general committee the supervisor must investigate promptly and obtain complete information in regard to the case under consideration and if, in his judgment, it seems desirable, he or his representative should meet with the local committee and arrange a settlement if possible. Whenever it is impossible for the local committee to reach an agreement and appeal is made to a zone general committee, it shall be the duty of the supervisor to see that at statement of the facts in the case is prepared and furnished to the zone general committee under whose jurisdiction the case falls, and to advise the local committee of the date on which the zone general committee will act upon the question involved.

(*b*) The supervisor shall arrange the necessary routine in order that there may be no delay in presenting matters to local committees, zone general committees and the Bureau of Industrial Relations for prompt action, and shall keep himself informed of all matters coming before the several committees and see that complete records are kept and that decisions reached are put into effect as promptly as possible.

ARTICLE 6. GENERAL PRINCIPLES WHICH ARE RECOGNIZED BY THE COMPANY AND THE EMPLOYEES IN THE ADOPTION OF THIS PLAN

(*a*) That all Federal and State laws respecting the conduct of the company's business and the company's rules and regulations will be observed.

(*b*) The company's rules and regulations pertaining to their employment shall be given the employees either by posted notice or personal communication of the same.

(*c*) There shall be no discrimination by the company or by any of its employees on account of membership or nonmembership in any fraternal society or union.

(*d*) The right to hire and discharge, the management of the properties, and the direction of the working forces shall be invested exclusively in the company, but grievances arising in relation thereto shall be considered as in this plan provided.

(*e*) Should a reduction in working forces become necessary consideration will be given to efficiency, length of service, and employees having families, in selecting those to be retained in the service.

(*f*) The company will not permit its employees to be discriminated against because of any action taken by them in performing their duties as committeemen, and employees who consider that they are subjected to such discrimination will have the right to appeal direct to the Bureau of Industrial Relations.

Mr. KELLY. Now, I want to refer just briefly to some of the testimony here yesterday with respect to the so-called "Brotherhood of Sleeping Car Porters", and I use that term advisedly. I don't know whether any Pullman porters are members of that organization or not, but I can state that in June of 1929, the United States Board of Mediation asked the—I don't know what they call them, organizers, I guess—to submit proof of membership of Pullman employees in that organization and also to make a showing of its authority to represent such employees under the Railway Labor Act, and that such proof and such showing has never been made. Subsequently, after the decision of the Supreme Court of the United States in the Texas clerk's case (281 U.S. 548), a bill entitled *Brotherhood of Sleeping Car Porters* v. *The Pullman Co.*, was filed in the United States District Court at Chicago. The bill was patterned after the bill in the Texas clerk's case, and prayed for an injunction to restrain the operation and maintenance of the plan of employee representation on the ground that it was a so-called "company union"; that it was illegal, per se, that by reason of its operation and maintenance the employees were being deprived of their rights under the Railway Labor Act and that the company by coercion, intimidation, and influence was violating the provisions of the Railway Labor Act.

Upon the filing of the bill an immediate application was made for a temporary restraining order in injunction and after full argument that application was denied. Subsequently, the case was tried and the decision of the court was rendered on January 15, of this year. I would like to quote very briefly from the court's opinion. With respect to this organization the court said this:

> Moreover, I entertain the view that there is not sufficient evidence in the record to justify a finding that the purported plaintiff is even a voluntary association or organization.

With respect to the plan of employee representation the court said this:

> The plan does not involve a so-called company union, but is a cooperative mode of procedure for the adjustment of disputes through hearings before committees chosen by the employees and management. According to the text of the plan, any employee or group of employees may at anytime present suggestions, requests, or complaints to the local committee. The plan does not require that they shall do so nor require that they otherwise participate in the plan against their wishes. From decisions of the local committee on matters so submitted to it, the plan provides that an appeal may be taken to the Bureau of Industrial Relations and finally to the United States Board of Mediation.
>
> The committees and the bureau are made up of employees and company representatives in equal numbers.

Again quoting a little later:

> The plan specifies that all Federal and State laws respecting defendant's business shall be observed and that there shall be no discrimination because of any employee's membership or nonmembership in any union or by reason of any action taken by him in performing his duties as a committeeman. By a collective contract between defendant and its porters, made dated April 1, 1924, it provides that questions arising under the contract and other matters of importance for the welfare of the employees shall be handled under the plan of employee representation. Similar contracts between the same parties were made February 15, 1926, and June 1, 1929, in each of which the terms of the previous agreement were modified in certain respects but each retains like stipulations adopting the plan as one of the terms of the agreement. These contracts, in each instance, were negotiated and signed on behalf of the employees by representatives elected by such employees by secret ballot and on behalf of defendants by its legally authorized agent.

The CHAIRMAN. I wonder if you couldn't print the entire decision.
Mr. KELLY. I will be very glad to leave a copy of the opinion.
(The opinion is here printed in full:)

IN THE DISTRICT COURT OF THE UNITED STATES—NORTHERN DISTRICT OF ILLINOIS—EASTERN DIVISION—No. 10084

Brotherhood of Sleeping Car Porters v. *The Pullman Co., etc.*

MEMORANDUM

JANUARY 15, 1934.

WOODWARD, District Judge:

I am filing findings of fact and conclusions of law in the above-entitled matter. I have adopted the findings of fact and conclusions of law tendered by the defendant. I have done so because I believe that the findings of fact and conclusions of law so tendered conform with the evidence and with the law.

I believe further that the case could have been dismissed on the authority of *Moffat Tunnel League* v. *U.S.* (289 U.S. 113). Plaintiffs do not bring themselves within equity rules numbered 37 and 38. Plaintiff has no interest in the controversy. No statute has been called to the attention of the court authorizing the plaintiff to maintain this suit.

Moreover, I entertain the view that there is not sufficient evidence in the record to justify a finding that the purported plaintiff is even a voluntary association or organization.

However, I am of the opinion that the merits of the controversy are with the defendant and have made findings and stated conclusions as to the merits of the case.

It results that the bill must be dismissed for want of equity. Defendant's attorneys will tender the necessary orders and decrees to carry into effect the findings and conclusions of the court.

The above-entitled suit coming on to be heard, and the court having heard the evidence and arguments of counsel, and briefs having been filed and the court being advised in the premises, now finds as

FINDINGS OF FACT

(1) The bill alleges that plaintiff is an unincorporated labor union, including in its membership a large number of Pullman porters, and that it sues as a voluntary association in its own behalf and (under equity rules 37 and 38) as representing in a class suit some 11,000 Pullman porters. It is charged that by maintaining a certain plan of employee representation the defendant has exercised interference, influence, and coercion over the self-organization and designation of representatives by its employees, contrary to section 2 of the Railway Labor Act (U.S. Code, title 45, sec. 152), and threatens to continue such conduct unless restrained. The bill prays that further maintenance of the plan be enjoined.

(2) Defendant denies all such charges of misconduct, denies that the plan of employee representation is unlawful, and in addition has interposed objections as to the court's lack of jurisdiction, incapacity of plaintiff to bring the suit, and absence of indispensable parties.

(3) Prayer for a temporary restraining order was denied, final hearing had and arguments of counsel considered.

(4) The text of the plan complained of has by agreement been incorporated in the record, and plaintiff's case is directed principally to its alleged unlawfulness per se. The plan has been continuously in effect since 1920 as to all classes of defendant's employees, numbering more than 20,000. Of this number the porters numbered at various times from 8,000 to 12,000. The rights of all of these employees are involved in the suit. None of them testified and there is no showing that employees affected are in accord with plaintiff's objections to the plan or desire to have it abolished.

(5) The plan does not involve a so-called company union, but is a cooperative mode of procedure for the adjustment of disputes through hearings before committees chosen by the employees and management. According to the text of the plan, any employee or group of employees may at any time present suggestions, requests, or complaints to a local committee. The plan does not require that they shall do so, nor require that they otherwise participate in the plan against their wishes. From decisions of a local committee on matters so submitted to it, the plan provides that appeal may be taken to a zone committee, from which an

appeal may be taken to a bureau of industrial relations, and finally to the United States Board of Mediation. The committees and the bureau are made up of employees and company representatives in equal number. Candidates for such membership must, under the terms of the plan, have been in the employ of defendant for at least 2 years before election. Employee representatives on the committees and bureau are elected by the employees in primary and final elections held in accordance with the plan. Expenses of elections and other expense incident to the plan are all paid by the defendant.

(6) The plan specifies that all Federal and State laws respecting defendant's business shall be observed and that there shall be no discrimination because of any employee's membership or nonmembership in any union, nor by reason of any action taken by him in performing his duties as a committeeman.

(7) By a collective contract between defendant and its porters and maids dated April 1, 1924, it is provided that questions arising under the contract and other matters of importance to the welfare of employees shall be handled under the plan of employee representation. Similar contracts between the same parties were made February 15, 1926, and June 1, 1929, in each of which the terms of the previous agreements were modified in certain respects, but each retains like stipulation adopting the plan as one of the terms of the agreement. These contracts in each instance were negotiated and signed on behalf of the employees by representatives elected by such employees by secret ballot and on behalf of defendant by its regularly authorized agents.

(8) At each of the elections held under the plan form 1924 to 1932, inclusive, for the election of representatives to negotiate contracts or to serve as committeemen, more than a majority of porters and maids then in defendant's service cast their ballots, the percentage so voting ranging from 78 to 97 percent of all employees of the classes named. No instance of interference, influence, or coercion in connection with any of such elections has been shown.

(9) Defendant denies that plaintiff is a duly organized voluntary association with capacity to sue. On that issue plaintiff's evidence is vague. In 1925 a group of 15 men assembled in New York and formulated plans for the organization of a union of sleeping-car porters. Thereafter members of this group went to various cities throughout the country, holding meetings and explaining the plan. Whether these were public meetings or whether admission was confined to persons of a special class or occupation, was not shown, nor was it shown that those in attendance either then or thereafter signed application blanks or otherwise entered into any contractual relationship with other persons or any organization. After the plan was explained at each such meeting, a vote of those present was taken, and it was testified that the vote in each instance was in favor of the proposed plan to organize a union. Finally, in 1929 the group proposing to form the union sent out notice to each of these local groups asking them to elect delegates to meet in a convention in Chicago for the purpose of adopting a constitution. It was testified that such elections were held and that the elected delegates thereafter assembled in Chicago and cast their votes in favor of the adoption of a constitution then submitted to them.

(10) There is no evidence in the record as to plaintiff's membership at or about the time the bill was filed nor subsequent thereto, nor that at any of such times any employees of defendant were members of plaintiff's organization or had authorized plaintiff organization to represent them, for purposes of the Railway Labor Act or for any other purpose.

(11) While there was testimony tending to show that certain Pullman porters were among those in attendance at certain meetings in 1925 and 1926, at which meetings the then proposed formation of plaintiff organization was discussed, there was no testimony showing that such Pullman porters became members of plaintiff organization, or that they were either such members or employees of defendant at the time of suit.

On the above and foregoing findings of fact, the court states the following

CONCLUSIONS OF LAW

First. United States Code, title 29, chapter 6, relating to jurisdiction of courts in disputes affecting employer and employee, places upon plaintiff the burden of showing that it has made every reasonable effort to settle such dispute either by negotiation or with the aid or any available governmental machinery of mediation or voluntary arbitration (sec. 108); that acts of defendant threaten substantial and irreparable injury to plaintiff's property (sec. 107 (b)); that as to each item of relief granted greater injury will be inflicted upon complainant by denial of

such relief than will be inflicted on others interested in the subject matter by granting of such relief (sec. 107 (c)).

The evidence herein does not warrant a finding for plaintiff upon any of such issues. In the absence of such special findings the court is, by the terms of the above act, without jurisdiction to enter an injunction as prayed.

Second. This suit involves an adjudication of property rights of individual employes, namely, their right to be free from interference in their self-organization and in the selection of their representatives (U.S. Code, title 45, sec. 152; *Texas & N.O.R. Co.* v. *Railway Clerks*, 281 U.S. 548). It likewise necessarily involves an adjudication of the contractual rights of the parties to the collective contracts referred to between defendant and its employees, making all parties to such contracts necessary parties to the suit (*Niles-Bement Co.* v. *Iron Moulders Union*, 254 U.S. 77). The Railway Labor Act does not vest in plaintiff as an organization any property right with respect to the employee's right of self-organization, and no property right of plaintiff as an organization is involved here. For these reasons, the employees, individually or as a class, are the real parties in interest and are necessary parties; the plaintiff as an organization is not a necessary party nor a real party in interest.

Third. Plaintiff did not have requisite capacity to present this bill of complaint because the subject matter does not involve its property rights, it is not the real party in interest and is not expressly authorized by any statute to sue on behalf of the real parties in interest, namely, on behalf of defendant's employees. It likewise is without capacity to sue in the name of or on behalf of the employees as a class, being neither a member of the class nor having a like interest in the subject matter. Equity Rules 37 and 38; *Moffat Tunnel League* v. *U.S.* ((1933) 289 U.S. 113, 77 L.Ed. 1039); *Georgetown* v. *Alexandria Canal Co.* (12 Peters 91); *Smith* v. *Swormstedt* (16 How. 288); *San Antonio, etc. Union* v. *Bell* ((Texas) 223 S.W. 506); 21 Corpus Juris, (p. 294), etc.

Fourth. The evidence does not show that defendant has violated rights of its employees under the Railway Labor Act or that it threatens to do so. Plaintiff offered no evidence as to specific acts of interference, influence, or coercion, but bases its case upon the text of the plan of employee representation, and particularly the paragraph thereof providing that committeemen for purposes of the plan shall be selected by employees from among their own number.

The proof does not show that defendant has exerted pressure upon its employees requiring them to participate in the plan. The plan does not require any employee to vote or to submit any grievance to the decision of the committees provided for, nor prohibit membership in a labor union, but on the contrary provides that union membership shall not result in any discrimination. The plan can affect only those voluntarily participating in it.

The evidence shows that a substantial majority of the employees have, by contract entered into on their behalf by their duly chosen representatives, adopted the plan as a mode of procedure for settling disputes arising under such contract. There is no evidence that the contract does not represent the free and voluntary action of those who become parties to it and accepted its benefits. The Railway Labor Act does not restrict or limit the rights of employees to enter into agreements with their employer as to the methods or machinery for settlement of disputes. On the contrary, section 2 of that act provides it shall be the duty of a carrier and its employees to make and maintain such agreements.

Whether a carrier has been guilty of the interferences, influence, and coercion prohibited by the act is in each case a question of fact to be determined upon consideration of the evidence which may be adduced as to such misconduct. *Texas & N. O. Ry. Co.* v. *Railway Clerks* (281 U.S. 548, 558). The presumption is that defendant has conducted its business in accordance with the law. *C. & T. P. Ry.* v. *Rankin* (241 U.S. 319, 327).

The plaintiff has produced evidence of no instance in which defendant has, or is claimed to have, interfered with, influenced, or coerced any employee with respect to any right under the Railway Labor Act, and the plan of employee representation is not on its face *per se* violative of that act.

Fifth. The equities are with the defendant.

Sixth. Plaintiff's bill should be dismissed for want of equity at plaintiff's costs.

Dated January 15, 1934.

The CHAIRMAN. I particularly want to know if you have anything to say about the bill, because we have got to go to the Senate.

Mr. KELLY. Yes; I was just answering some of these things that were said yesterday. There has been so much of this propaganda in the last 8 or 9 years that in view of the fact that it was made here, I want to say something about it.

Senator WAGNER. When it comes to propaganda, I know something about propaganda too. We have some from the other side.

Mr. KELLY. Just a reference to this opinion and then I will be glad to leave a copy of it. [Reading:]

There is no evidence in the record as to the plaintiff's membership at or about the time the bill was filed or subsequent thereto nor that at any of such times any employees of defendent were members of plaintiff's organization or had authorized plaintiff's organization to represent them for purposes of the Railway Labor Act or for any other purpose.

The CHAIRMAN. Of course, you are familiar with their claim that they are afraid to let it be known that they are members of the organization.

Mr. KELLY. This bill contains paragraph after paragraph of alleged action of intimidation, coercion, and influence on the part of the company, and they didn't prove a single, solitary allegation.

The CHAIRMAN. Let me ask you what percentage of the porters voted in their employee-representation.

Mr. KELLY. The average for the last 7 or 8 years is about 94 percent.

The CHAIRMAN. If you have anything to say about the bill, I wish you would say it, because I have got to adjourn this hearing.

Senator WAGNER. I will just ask one other thing. Does election take place right at the plant, these elections take place all over the country.

Mr. KELLY. Our business is divided up into eight different operating zones.

Senator WAGNER. And wherever elections are held is it within the plant or shop?

Mr. KELLY. It is usually on the premises of the company. Now, as to this bill itself, we are in accord practically, generally speaking, at least with the suggestions and views presented by Mr. Clement this morning, with this suggestion, that his substitute for section 3 does not contain any division of the boards. He suggests therefor, sleeping-car company employees, so I would suggest that if his substitute is to be adopted, that employees of sleeping-car companies be included in the third group in Mr. Clement's proposed substitute for these regional boards of adjustment.

I would also like to say, that as Mr. Clements suggested here this morning, that I think the effect of this bill as now worded might deprive many employees who don't want to belong to these so-called "standard" unions of any representation under the terms of the bill now. Under the terms of the bill now, representatives on these boards of adjustment which are provided for must be members of a national labor organization. Many of the employees don't care to belong to such an organization. The bill as drafted makes no provision for taking care of such employees. There is just one more thing I would like to add, Mr. Chairman. The statement was made here yesterday that the Pullman Co. was employing Japanese and Filipinos for the purpose of displacing the colored man as a Pullman

porter. I took occasion in the hearing on the 6-hour day bill before this committee to deny that statement. We have no Japanese and never have had. So far as Filipinos are concerned, we have a few Filipinos who are employed on some lounge cars, observation cars, and restaurant cars. The reason for that was this—and the employment of those men was without any reference to the so-called "Brotherhood of Sleeping Car Porters"—we found that we were having some difficulty in getting porters to operate on those cars. They didn't like to work on those cars, so the suggestion was made several years ago that we try out some of these Filipino boys, many of whom as you know are house servants. So we have today, I think, between one and two hundred of those Filipino boys who are so employed and they have proved to be very efficient and the service has been very good. There is no intention and never has been, on the part of the Pullman Co. to displace the colored man as a Pullman porter, and any statements to that effect are absolutely without any foundation.

The CHAIRMAN. Do you mean that the colored man don't want to work on observation cars now?

Mr. KELLY. They prefer not to work on these lounge cars.

The CHAIRMAN. They don't want those jobs now?

Mr. KELLY. Well, this goes back 7 or 8 years ago when we first started to employ these Filipino boys. I would like also to say of these Filipino boys that I talked with the chief of the immigration inspection bureau in Chicago 1 or 2 years ago as to their status, and he told me that they were entitled to the status of American citizens.

The CHAIRMAN. They are not citizens though.

Mr. KELLY. Well, that was what he told me.

Senator WAGNER. Are we finishing with Mr. Kelly now?

The CHAIRMAN. If he wants to come back—we have got to go to the Senate.

Senator WAGNER. Yes.

The CHAIRMAN. You asked for 10 or 15 minutes, and you have had 25 minutes. If you have anything else you want to put in, I wish you would submit it in writing.

Mr. KELLY. No; I have nothing more.

Senator WAGNER. You don't object to the provisions on page 5 of the bill with reference to section 3, I think it is, or these different provisions of the bill to prevent corporation interference, domination, and so forth?

Mr. KELLY. I don't object to those provisions, but I think—as suggested by Mr. Clement—I think it ought to be "dominating influence" and I think it ought to apply to everybody and not be restricted to the carriers; I think it ought to apply to the labor organizations just as well as to the employers.

Senator WAGNER. But couldn't you enjoin them now in court? You have been pretty successful enjoining them in court heretofore, haven't you?

Mr. KELLY. I never enjoined anyone.

Senator WAGNER. I am speaking about employers generally.

Mr. KELLY. Well, I don't know whether you can enjoin them now under the anti-injunction act or not.

Senator WAGNER. Well, you can for intimidation or any act of violence.

Mr. KELLY. The labor injunction act states about half a page of things that a court must find as findings of fact before the court has any right to issue any injunction.

Senator WAGNER. I think there is a provision in here that prevents financing by the company, isn't there?

The CHAIRMAN. Yes. Mr. Clement discussed that, and he said he agreed to it.

Senator WAGNER. All right.

Mr. KELLY. I think it is a perfectly legitimate expense under a plan such as we have. The concept of these relations ought to be on a basis of good faith.

Senator WAGNER. The position I have always taken is that each side is entitled to the same treatment.

The CHAIRMAN. This hearing will be adjourned until Wednesday morning at 10:30 o'clock, in this room.

(Whereupon, at 12:05 p.m., the committee adjourned until 10:30 a.m. Wednesday, Apr. 18, 1934.)

TO AMEND THE RAILWAY LABOR ACT

WEDNESDAY, APRIL 18, 1934

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D.C.

The committee met, pursuant to call, at 10 a.m., in the committee room, Capitol, Senator Clarence C. Dill (chairman) presiding.

The CHAIRMAN. The committee will come to order. We will hear Mr. Cass this morning.

STATEMENT OF C. D. CASS, GENERAL COUNSEL OF THE AMERICAN TRANSIT ASSOCIATION, TOWER BUILDING, WASHINGTON, D.C.

Mr. CASS. Mr. Chairman, my name is C. D. Cass, general counsel American Transit Association, with offices in the Tower Building, Washington, D.C.

The CHAIRMAN. We have a lot of witnesses this morning, Mr. Cass, and I am anxious to get through as fast as we can.

Mr. CASS. This is a rather complex subject, as of course you recognize.

The CHAIRMAN. Do you come under the short-line railroads?

Mr. CASS. No, sir.

The CHAIRMAN. Do you want to be excluded from this bill? Is that your position?

Mr. CASS. Electric railways have always been excluded under the provisions of the Railway Act.

The CHAIRMAN. And they are not in this bill?

Mr. CASS. They are being brought under this bill by a different sort of exclusion than has been contained in the present Railway Act and the old Railway Labor Act, and it is a question that is of considerable importance to our people.

The CHAIRMAN. You want to have the present method continued?

Mr. CASS. Yes.

The CHAIRMAN. For what reason?

Mr. CASS. I think that the reasons that they give are that they want to expand the jurisdiction of the Railway Labor Board to include a lot of these electric properties that are not now under the jurisdiction of the board.

The CHAIRMAN. Well, go ahead. Would it be possible for you to condense your statement?

Mr. CASS. I think I can shorten the process by simply making the statement as I have it here.

The CHAIRMAN. Very well.

Mr. CASS. The American Transit Association includes in its membership the principal part of all electric railway mileage in the United States.

There is but a comparatively small segment of our electric-railway industry, taken as a whole, that is concerned with this bill. That part consists of the independently operated electric railways engaged in interstate commerce and reporting to the Interstate Commerce Commission. The bill, of course, does not touch the large body of electric railways engaged in purely urban operation—those electric railways commonly known as street railways.

In order to make clear the relation of this proposed bill to the independently operated interstate electric railways I want to call your attention to some history regarding the present Railway Labor Act enacted in 1926, and its predecessor, the Railroad Labor Act that was brought into existence by the Transportation Act, 1920.

In the original statute setting up the first Railroad Labor Board, independently operated interstate electric railways were excluded from the jurisdiction of the Board in the following language, found in subsection 1 of section 300 of the Transportation Act, 1920:

> 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.

At the time this exclusion language was written into the law of 1920 there was approximately 16,000 miles of electric railways reporting to and under the jurisdiction of the Interstate Commerce Commission. Those figures are taken from a report of the Commission for the year ended December 31, 1917, and are the best figures available, because the Commission issued no report regarding electric railways for the years 1919 and 1920.

The report of the Commission for 1917 did not contain a statement of the number of employees in the service of the electric railways at that time, but using a ratio of employees per mile of road derived from the report of the Commission for the year 1925—which was the first year that the Commission's report set out the number of employees in service—and applying the ratio thus derived to the miles of road operated as reported by the Commission in 1917, there were at that time more than 80,000 employees on the 16,000 miles of electric railway under the Commission's jurisdiction.

After the creation of the old Railroad Labor Board by the act of 1920, the steam-railroad brotherhoods brought a case before it in the summer of 1920, based upon labor disputes with some ten or more electric railways. In December of 1920, in decision no. 33 (docket 26–A) the Railroad Labor Board declined to accept jurisdiction of the disputes, on account of the exclusion language regarding electric railways which I have heretofore quoted.

A short excerpt from the decision will state the contention of the electric railways regarding the practicability or necessity of placing these independently operated electric carriers under a Board created to settle disputes between the large steam railroads and their employees. I quote from the decision mentioned:

> It is plain that Congress has dealt in discriminating language with interurban electric railways throughout the Interstate Commerce Act and the Transportation Act, 1920, and has consistently treated them differently from steam lines.

Congress has done this because there is a material difference, generally speaking, between steam and electric roads in the matter of equipment, nature of service, and standards of employment. With a few exceptions one service is general, the other is local.

This decision of the Railroad Labor Board settled the question of jurisdiction of the Board under the old original act, because it was not appealed and no additional cases were ever brought.

When the present Railway Labor Act was passed in 1926, substantially the same exclusion language of electric railways was contained therein. The language was somewhat changed, but the intent and meaning was the same—the change being designed to protect the steam railroad brotherhoods in their membership on electrified sections of steam railroads. The language of the exclusion contained in the present Railway Labor Act is:

Provided, however, That the term "carrier" shall not include any street, interurban, or suburban electric railway unless such a railway is operating as a part of a general steam railroad system of transportation, but shall not exclude any part of the general steam railroad system of transportation now or hereafter operated by any other motive power.

This revision of exclusion language from that contained in the old Railroad Labor Act was the result of conferences and agreement between the electric railways and counsel for the steam railroad brotherhoods.

At the time of the adoption of the exclusion language in the present Railway Labor Act, according to the report of the Interstate Commerce Commission for the year ended December 31, 1925, there were, in round figures, 14,000 miles of electric railway reporting to the Commission, with 70,944 employees.

So then, in 1920, with 16,000 miles of electric railway and more than 80,000 employees reporting to the Commission, and in 1926 with 14,000 miles of electric railway and something over 70,000 employees reporting to the Commission, no necessity was shown, of sufficient importance, to include these electric railways and this large number of employees under the jurisdiction of the original Railroad Labor Board or of the present Board of Mediation.

Since 1926 the history of these interstate electric railways has been one of abandonment of large sections of mileage with the resultant reduction in the number of employees. The last annual report of the Interstate Commerce Commission for electric railways covers the year ended December 31, 1932. At that time there was still in existence 7,391 miles of road, employing 25,497 persons. Let me emphasize these comparative figures: Miles of road, 1917, in round figures, 16,000; in 1925, in round figures, 14,000; in 1932, in round figures, 7,300. Employees in 1917, more than 80,000; in 1925, a little more than 70,000; in 1932, a little more than 25,000.

It should therefore, it seems to me, be a reasonably fair conclusion that if there were no necessity for including more than 80,000 employees and 16,000 miles of electric railway under the jurisdiction of the Railroad Labor Board in 1920, and no necessity for including more than 70,000 employees and 14,000 miles of railroad under the jurisdiction of the Railway Board of Mediation in 1926, there ought to be no necessity at this time of including a mere 7,300 miles of road and 25,000 employees under this proposed new act.

The proposed bill, S. 3266, on page 2, lines 6 to 12 inclusive, purports to contain language continuing the exclusion of electric rail-

ways that appears in the present Railway Labor Act. However, a careful reading of this language will reveal that an adroit change has been made in the substitution of the word "the" in line 8 for the article "a" as it appears in the present Railway Labor Act.

In other words, the present Railway Labor Act provides that the term "carrier" "shall not include any street, interurban, or suburban electric railway unless such a railway is operating as a part of a general steam railroad system of transportation, etc.", whereas the language of the bill, in lines 7, 8, and 9 is that the term "carrier" "shall not include any street, interurban, or suburban electric railway unless such railway is operating as a part of the general steam railroad system of transportation, etc."

I understand that Mr. Eastman, in his evidence before your committee the other day, offered what he termed a typographical correction of this language, restoring the article "a" for the word "the" and leaving the language read exactly as it now reads in the present act. However, Mr. Eastman advocated a further amendment to this exclusive language. At the end of line 12 on page 2 of the printed bill he suggested adding the following:

> The Interstate Commerce Commission is hereby authorized and directed, upon request of the Mediation Board or upon complaint of any party interested, to determine, after hearing, whether any line operated by electric power falls within the terms of this proviso.

The effect of this amendment would be, of course, to place the determination of the question as to whether or not an electric railway falls within the exclusion language, in the hands of the Interstate Commerce Commission, and the language of the proposed amendment is so broad as to require the Commission to determine the question of inclusion or exclusion upon a mere complaint of any party interested. In other words, the filling of a complaint by one preson employed by any one of these electric railways would require the Commission to hold a hearing and determine the question.

This may seem to be a happy solution of a controversial question, but, in my judgment, instead of being a solution of the problem at all, it very highly complicates the questions involved.

I say this because of the conflicting jurisdictions in regard to labor organizations representing employees of this class of electric carriers. The steam railroad brotherhoods are by no means exclusively employed on the properties of independently operated interstate electric carriers. As a matter of fact, so far as my information goes, the steam railroad brotherhoods are relatively in the minority insofar as representation on these properties is concerned.

The major portion of all employees on these electric railways, that we are considering, who belong to outside labor organizations, are members of the Amalgamated Association of Street and Electric Railway Employees of America. This is an affiliated organization of the American Federation of Labor.

Quite a number of these properties have employee representation plans of their own. A much greater number probably do not have union affiliations at all. We may say, therefore, and I think accurately, that as to union affiliation or nonaffiliation, most of the properties are unorganized.

Then as to those employees who are organized—the first major class would be those belonging to the American Federation of Labor

union, which, as I stated, is the Amalgamated Association of Street and Electric Railway Employees of America. Second of major importance would no doubt be the employees' representation plans—and third and last of the organized employees would come the various steam railroad brotherhoods.

It should therefore be perfectly apparent that a law placing these electric railways under the provisions of the Railway Labor Act would be in effect a settlement by congressional enactment of the jurisdictional disputes, that are now and always have been in existence on these properties, in favor of the minority class of employees engaged in this service. I say this because no employee not belonging to the steam railroad brotherhood organization could possibly hope for representation on the National Adjustment Board. It may be taken without argument, I think, that when the National Adjustment Board is created the labor representatives on its four divisions will be made up of members of the 21 standard steam railroad brotherhoods. If this be true, and I think it is without doubt, it simply means that the American Federation of Labor union, the employees' representative labor organizations, and the nonunion employees would all be left without representation on the adjustment boards.

Furthermore, under the proposed Eastman amendment a decision of the Commission would be made entirely without regard to the union affiliation of the employees of the property that was involved in the hearing before the Commission. The Commission would determine whether or not a given property was being operated as a part of a general steam railroad system of transportation, and if it was it would thereupon be subject to the provisions of the Railway Labor Act; or, it would determine whether or not a property was a street, suburban, or interurban electric railway; if it was not it would thereupon be made subject to the provisions of the Labor Act.

Suppose, therefore, that the Commission found a property not to be an interurban electric railway and therefore not excluded by the language in section 1, thereupon becoming subject to the provisions of the Railway Labor Act. Then it was found that the employees on that property were all affiliated with the American Federation of Labor union. The decision indirectly would result in a dismemberment of the American Federation of Labor union and the establishment on that property of the brotherhood unions. I cannot believe that Congress should take such a partisan step as this in favor of one or another of labor organizations.

It should be pointed out in connection with this matter also that the electric railway industry of this country is now operating under a code of fair competition, and that a number of interurban electric lines subject to the jurisdiction of the Commission are now subject to the jurisdiction of the National Labor Board under the National Recovery Administration. For example, two of the roads that Mr. Harrison cited in his evidence on Wednesday April 11, are operating under the provisions of the transit code, and therefore are subject to the jurisdiction of Senator Wagner's labor board. One of these railroads—the Oklahoma Railway—has been before the National Labor Board in a labor controversy that came up from Oklahoma City, and Senator Wagner's board arbitrated the dispute, and I may say with considerable gratification that the Senator's labor board

held with the company instead of with the union on the points in controversy.

An additional example of the situation is the Pacific Electric Railway Co. in California, which is being operated under the provisions of the transit code. On this property there are four types of employees in so far as unionism is concerned. One part belongs to an employee-representation plan; another part belongs to the American Federation of Labor union; another part belongs to various steam-railroad brotherhoods; and a fourth part belongs to no labor organization.

Suppose one disgruntled brotherhood man filed a complaint with the Interstate Commerce Commission under the proposed Eastman amendment, and the commission found that the Pacific Electric was not an interurban or was being operated as a part of a general steam-railroad system of transportation. In either event it would be subject to the provisions of the Railway Labor Act. Thereupon the steam railroad brotherhoods would be placed in the ascendancy on this property and would no doubt destroy all the other forms of organization there.

This question of what is and what is not an interurban electric railway is not at all simple. Two cases involving the question have gone to the Supreme Court of the United States in the past few years. In one of these cases, known as *Piedmont & Northern* v. *United States*, found in 280 U.S., at page 489, a decision of the commission was upheld by the Supreme Court, in which the Piedmont & Northern was prohibited from extending its line without a certificate of convenience and necessity as is required under section 1 of the Interstate Commerce Act.

Paragraph 22 of section 1 excludes from the jurisdiction of the Interstate Commerce Commission in regard to extension of line: "Interurban electric railways not operated as a part of a general steam railroad system of transportation," and the Commission in this case held that the Piedmont & Northern was not an interurban and therefore was required to obtain a certificate of convenience and necessity; and the Supreme Court upheld the Commission's ruling.

The other case that went to the Supreme Court involving the question of what is or is not an interurban electric railway was that of the Chicago, North Shore & Milwaukee Railroad Co., an electric line operating between Chicago, Ill., and Milwaukee, Wis. This case is cited as *United States* v. *Chicago, North Shore, & Milwaukee Railroad Co.* (288 U.S. 1) and arose over the right of this electric railway to issue securities without the consent and authority of the Commission as provided in section 20a of the Interstate Commerce Act.

At the request of the Commission the Department of Justice of the United States brought an action for injunction against the North Shore to prohibit it from issuing securities without obtaining the consent of the Commission.

Section 20a of the act excludes from the jurisdiction of the Commission interurban electric railways unless operated as a part of a general steam railroad system of transportation. The Supreme Court of the United States held in this case that the North Shore was an interurban and therefore was excluded from the Commission's jurisdiction.

On these two meager precedents it would seem almost impossible for the Commission to decide any case that might be submitted to it

which decision would not be subject to challenge in the courts. There is a wide difference between the Piedmont & Northern decision and the North Shore decision, and in this wide field between the conditions on these two properties there is ample room for a tremendous amount of litigation.

There is another angle to this problem that ought to be called briefly to your attention, and that is the fact that of the total of 157 electric railways all told which might become involved in these highly controversial questions, less than half of them have more than 100 employees. I have gone through the report of the Interstate Commerce Commission on electric railways for the calendar year ended December 31, 1932, and I find that of the 157 electric railroads reported, 13 have less than 10 employees, 21 have between 10 and 20 employees, 30 have between 20 and 50 employees, and 25 have between 50 and 100 employees. This makes a total of 89 out of 157 having less than 100 employees. In other words, more than half of all electric railways reporting to the Commission in 1932 employed 100 or less persons each. As a matter of fact, many of the properties listed on the 1932 report are now out of existence.

In addition to these rather illuminating figures, many of the 157 electric railways involved are owned and operated by a general steam railroad system of transportation and therefore are now subject to the provisions of the present Railway Labor Act.

Also, of the 157 total of all electric railways reporting to the Commission, many of them with the largest number of employees, are properties that perform a very small amount of interstate business and a very large amount of purely street-railway business. These particular properties are combination properties performing both street-railway service and a small amount of interurban service. If the number of employees on these combination properties were deducted from the total of 25,000 employees shown, there would be left a comparatively small number of employees involved on properties that were independently operated, which could be brought under the provisions of the Railway Labor Act by a decision of the Commission that did not involve a settlement of the jurisdictional dispute, which I have heretofore mentioned, in favor of the steam railroad brotherhoods.

In other words, what I am trying to say is that there are comparatively few of these independently operated interstate electric railways on which the jurisdiction of the steam railroad brotherhoods is paramount. As a matter of fact, I doubt if there is a single one of these properties on which the steam railroad brotherhoods are organized and represent a major part of the employees of such property. But be that as it may, it is obvious that any time the Commission holds one of these electric railways under the provisions of the Railway Labor Act, its decision will involve a settlement of any jurisdictional disputes between rival labor organizations that might be in existence on such property, and in every instance where the electric railway is held to be subject to the provisions of the Railway Labor Act, the dispute itself will be resolved by governmental agency in favor of the steam railroad brotherhoods against either the American Federation of Labor union or an employees' representation plan.

Furthermore, this whole scheme of labor-disputes-adjustment machinery is set up in this bill for the purpose of taking care of the

relationship of employer and employee between the great steam railroad trunk lines and their workers. No provision is made for representation on the National Adjustment Board of the little electric railroad, and it should be apparent that in the absence of positive requirement that these little lines be represented, the positions on this adjustment board will be filled by representatives of the trunk line steam railroads.

I am not criticizing this, because I think this is as it should be. Their interest in this matter is paramount and it should not be subordinated to the comparatively small problems of these little electric railways. I mention this merely to indicate that there is no place on the Adjustment Board in any of its divisions for either a representative of the small electric railroad—and all of them are small compared to the steam railroad trunk lines—or a representative of the classes of labor predominantly employed by these little electric lines. Therefore, all of the matters of the adjustment of labor disputes will be in the hands of representatives of the strong class I steam carriers and the representatives of the 21 steam railroad brotherhoods. Scant attention would be paid to disputes involving employer and employees on these little properties. And furthermore, the decisions in regard to these matters would be based upon conditions and experience obtained on the trunk-line railroads.

As well stated in the first Labor Board's decision on the jurisdictional question which I originally cited in this statement, the conditions and character of service vary so much on these small properties from the conditions and character of service on the large properties, that fair settlement of difficulties on such properties demands the application of experience derived from the knowledge of the facts and circumstances surrounding these small operations.

It should also be pointed out briefly that the stoppage of transportation on any of these little properties would in nowise affect the national transportation system. The primary purpose behind this whole movement is to prevent the stoppage of service on the great steam railroad trunk lines. The stoppage of service on a great many of these little properties would not be felt nationally any more than has the abandonment of more than half of the independently operated interstate electric carriers in the past few years.

This all points to the fact that there is no sound reason for complicating an already complex situation or unfairly tying these little properties into labor adjustment machinery designed to function smoothly in respect of the large trunk-line railroads.

Of course, this effort of the steam railroad brotherhoods to obtain jurisdiction over these electric railway properties, even though delayed since 1920, may from their viewpoint be justifiable, but it is hard to understand why there is such paramount importance attached to an effort involving less than one half the mileage and less than one third the employees that were involved when the first labor act was passed in 1920.

Just as a final high light on this picture, I want to add that the report of the Interstate Commerce Commission concerning electric railways from which I have heretofore quoted, shows that the properties as a whole failed by more than 9 million dollars to earn their operating expenses, charges, and taxes during that year.

There is substantially no interurban property in this country today that is paying its way. As a matter of fact, over the last 8 or 10 years these properties have been operated almost solely for the benefit of the employees. There might be counted on the fingers of your hands the properties that have earned enought to pay any sort of dividend. The stockholders and bondholders on dozens of them have received nothing. It is not at all difficult to believe that any added load resulting from an encouraged drive for unionization and onerous working conditions or increased wages will be the means of accelerating the dissolution and abandonment of this class of carriers. When you consider that these electric lines have shrunk from 16,000 miles in 1917 to a little more than 7,000 miles in 1932, and that the employees have been reduced from more than 80,000 in 1917 to about 25,000 in 1932, little more need be said in regard to the ability of these carriers to withstand additional trouble. We request this committee to repeat in any new labor act that is reported the identical language excluding electric railways that is used in the presently existing Railway Labor Act.

The CHAIRMAN. Now, Mr. Cass, the electric roads are fast passing out of the picture?

Mr. CASS. Yes; and if this move to put them under the Railway Labor Board is carried out it will accelerate that passing.

The CHAIRMAN. You say they are excluded in different language. What language? What do you mean by that?

Mr. CASS. I say that the exclusion language in the present Railway Labor Act is different from the exclusion language in the original Railway Labor Act.

The CHAIRMAN. But they are included in this bill?

Mr. CASS. They are included in this bill by the amendment; first by the language of the bill, and then by the amendments that were offered by Commissioner Eastman.

The CHAIRMAN. If they were not in in 1917, when they had 80,000, I don't see why you want to put them in when they are only 25,000.

Mr. CASS. I am very glad to hear you say that.

The CHAIRMAN. It seems to me rather ridiculous, if for all these years they have not been in and no serious results have taken place, and now when there are only 25,000 to undertake to put them in, and growing less all the time, I cannot see the importance of spending much time on it. I do not know what the committee will want to do at first, but go ahead. That is the way it impresses me.

Senator THOMPSON. Let me ask in that connection, these roads that you represent and the steam roads are different in this, are they not, that the steam lines are generally engaged in interstate commerce and the others are not? The others are local and are controlled largely by State law?

Mr. CASS. Yes; I think that is pretty generally true, Senator. The electric railways reporting to the Interstate Commerce Commission are of varying size and character, but in a general way they are mostly local in their operations.

The CHAIRMAN. You say the bill now as it is written does not include them?

Mr. CASS. Yes; I say it does, sir.

The CHAIRMAN. What did you say about the amendments?

Mr. CASS. I say that the amendments change the character of the inclusion again. This has been changed so often that it is difficult to keep track of it.

The CHAIRMAN. No, this has not been changed at all.

Mr. CASS. I mean in the proposals.

The CHAIRMAN. Oh, well, anybody can come in with proposals.

Senator THOMPSON. What is there in this bill as it is now written that brings your organization within its provisions?

Mr. CASS. If you will turn to page 2 of the bill, in lines 6 to 12, inclusive, you will find exclusion language there with reference to electric railways. In line 8, the last word in the line is the word "the". That is an adroit change from the present exclusion language, from the article "a". The present exclusion language reads: "unless such railway is operating as a part of a general steam railroad system of transportation." They have adroitly changed that word, the article "a" to the article "the".

The CHAIRMAN. It should not be changed.

Mr. CASS. Commissioner Eastman in his statement the other day——

The CHAIRMAN (interposing). Of course, you do not contend that the men operating electric engines on the Milwaukee Railroad, which is probably the most striking example we have, and on the Illinois Central and will be on the Pennsylvania—you don't contend that they should not come under this?

Mr. CASS. No; not at all. The very language itself includes that. But Mr. Eastman the other day proposed to make a typographical correction of that language there from "the" to "a", but he added an additional amendment, which I think complicates the whole situation and still includes a lot of these electric carriers. I would like to call your attention to the manner in which that was done.

Mr. Eastman proposes an amendment at the end of line 12, on page 2, after the words "motive power." He proposes this amendment:

> The Interstate Commerce Commission is hereby authorized and directed, upon request of the Mediation Board or upon complaint of any party interested, to determine, after hearing, whether any line operating by electric power falls within the terms of this proviso.

The CHAIRMAN. They do that now, don't they?

Mr. CASS. No; not at all. They have no jurisdiction over the subject now.

The CHAIRMAN. But the Board of Mediation follows their decisions.

Mr. CASS. That may be true, Senator, but the Board of Mediation or the Interstate Commerce Commission has never been requested or had occasion to pass upon this subject.

The CHAIRMAN. Only a few days ago I had a letter from some employees or somebody interested in a railroad in Los Angeles, and they wanted the Board of Mediation to take up certain matters. I took it up with Mr. Winslow, and he defended himself for not doing it on the ground that the Interstate Commerce Commission had defined that road as a road that did not come under the classification provided by law. So that Mr. Eastman's proposal is simply to give authority of law to what is now being done.

Mr. CASS. Assuming that that is true, I want to call your attention to the complexities of the question, so I will turn to that page.

The CHAIRMAN. Who would decide about this matter if the Interstate Commerce Commission did not?

Mr. CASS. I don't think it is necessary for anyone to decide, Senator, and if you will permit me to finish my statement I think I can convince you.

The CHAIRMAN. What happens is that they are doing it by that method, whether by law or not.

Mr. CASS. No, Senator; you are misinformed.

The CHAIRMAN. No; I had the case up the other day.

Mr. CASS. They are not deciding the question as to whether an interurban is an interurban under this section.

The CHAIRMAN. No; but they are deciding whether they have jurisdiction, on the basis of what the Interstate Commerce Commission has decided, as to whether that road comes under the Interstate Commerce Act.

Mr. CASS. But the Board of Mediation has not taken jurisdiction over any of these electric railways since the old original Labor Board decisions.

The CHAIRMAN. No; because they say that the Interstate Commerce Commission has not found these roads coming under its jurisdiction.

Mr. CASS. But the Interstate Commerce Commission in other cases not directly applicable to the Labor Act has found one of these railroads to be not an interurban.

The CHAIRMAN. What you want is to have these roads excluded, as they now are.

Mr. CASS. Just exactly the same, and if there is any proposal to insert this additional amendment of Mr. Eastman's, I certainly think that this record ought to show the complexities that it will raise.

Senator LONG. What is Mr. Eastman's proposal now?

Mr. CASS. Mr. Eastman proposes to put all electric lines in. Mr. Eastman proposes to add the language that I read; I don't know whether you were here, Senator.

Senator LONG. I guess I had not come in.

Mr. CASS. He proposes to add on page 2——

Senator LONG (interposing). I know where it is.

Mr. CASS. To add on page 2, line 12 of the bill, the words:

the Interstate Commerce Commission is hereby authorized and directed, upon request of the Mediation Board or upon complaint of any party interested, to determine, at the hearing, whether any line operated by electric power falls within the terms of this proviso.

Senator LONG. I don't see why that has to be done.

The CHAIRMAN. It is being done anyway.

Mr. CASS. The effect of this amendment would be, of course, to place the determination of the question as to whether or not an electric railway falls within the exclusion language in the hands of the Interstate Commerce Commission, and the language of the proposed amendment is so broad as to require the Commission to determine the question of inclusion or exclusion upon a mere complaint of any party interested. In other words, the filing of a complaint by one person employed by any one of these electric railways would require the Commission to hold a hearing and determine the question.

This may seem to be a happy solution of a controversial question,

but, in my judgment, instead of being a solution of the problem at all, it very highly complicates the questions involved.

I say this because of the conflicting jurisdictions in regard to labor organizations representing employees of this class of electric carriers. The steam-railroad brotherhoods are by no means exclusively employed on the properties of independently operated interstate electric carriers. As a matter of fact, so far as my information goes, the steam-railroad brotherhoods are relatively in the minority insofar as representation on these properties is concerned.

The CHAIRMAN. Thank you very much, Mr. Cass. We will now hear Mr. Gwyn.

STATEMENT OF LOUIS R. GWYN, VICE PRESIDENT OF THE RAILWAY EXPRESS AGENCY, NEW YORK, N.Y.

Mr. GWYN. Mr. Chairman and gentlemen, my name is Louis R. Gwyn. I am vice president of the Railway Express Agency, with headquarters at 230 Park Avenue, New York, N.Y.

The CHAIRMAN. Did you say you were vice president of the employees or the company?

Mr. GWYN. Of the company. I have been an employee of this company and predecessor companies for 42 years, and I am not much older than that, so you can see that I went into the business at a very early age.

For the last 16 years, Senators, my principal duty has been to deal with our various units and to handle questions relating to wages and working conditions.

In our employment we have now between 30,000 and 35,000 employees. Our pay roll runs $4,000,000 to $5,000,000 a month. In good times we will just about double that.

We are wholly owned by the unions. We have no company union. I am not at all excited about the features of this bill that have to do with company unions. We do business with the Brotherhood of Railway Clerks and the International Brotherhood of Teamsters, the International Association of Machinists and the Brotherhood of Blacksmiths, and we have got along with them pretty good.

The thing that bothers me is this, that back in 1920 the original transportation act was passed setting up this labor board in Chicago, centralizing these grievances, and after about 6 years there was great dissatisfaction with the functioning of the labor board. So, the railroads of the country, together with the representatives of the unions, conferred and they decided that the best way to handle these disputes was the method set up in the present Railway Labor Act.

I took occasion yesterday to look over the testimony, and I observed that Mr. Richberg and Mr. Robertson, representing the unions, and various gentlemen representing the railroads, appeared before this committee and they stated that this Railway Labor Act was the real thing; that the way to handle disputes was not to call in a third party who didn't know anything about it, but to settle your disputes man-to-man fashion, across the table, and they promised that if this Congress would pass that law just as it stood, it was the real thing. Now, I can't understand why, if that was true then, it is not true now.

The CHAIRMAN. They say that they can't get regional boards appointed. That is the claim now.

Mr. GWYN. That point, Senator, is a very important one. There was difficulty on certain properties in getting an adjustment board established, and then I think on other properties there was some disposition to refuse to arbitrate. Those things, however, were foreseen and those things can be corrected without a complete new act.

Now, so far as our company is concerned, we went along with the law. We established an adjustment board immediately with the Brotherhood of Railway Clerks. We offered one to the teamsters and they said they didn't want it; that they would rather settle their disputes informally.

I drew up an agreement with Mr. Wharton, for the machinists, for an adjustment board and the board has never sat. There never was a dispute. We never appointed the board. But the agreement is drawn up.

The blacksmiths, we had so few that they are not really in the picture. The majority of our employees are members of the Brotherhood of Railway Clerks.

The CHAIRMAN. What about your messengers?

Mr. GWYN. They are in the Brotherhood of Railway Clerks. In 7½ years, our adjustment board has considered 2,044 cases and we have disposed of 70 percent of them by agreement. There is a board of 4 union men and 4 expressmen, and we wrangle about the cases. Sometimes we get mad. But we have settled 70 percent of our cases. The remaining 30 percent either went to mediation or arbitration.

We have had two arbitrations on miscellaneous grievances during that period. We have a third arbitration in formation now. If Mr. Morgan and I can ever get time to attend to our duties, we will conduct that arbitration, but, of course, I am spending so much time in Washington—and I see him sitting down there—we haven't any time to do this arbitration business. However, we have got all these remaining cases and it will be a clean-up, and we will get those cases disposed of.

The thing that I see about this measure that is proposed here is that you are going to substitute formal proceedings for informal proceedings. With the proper spirit on both sides these cases can and will be disposed of. If you lock up a jury and tell them they have got to bring in a verdict, they usually do it, but if you say you are going to have a thirteenth juror in there, it is all up to the thirteenth man. That is just human nature. I don't say that as a reflection on the union fellows, because they are good boys, nor upon the expressmen, but there is a natural tendency if you bring in an umpire, then everything gets into the region of controversy and nobody wants to assume responsibility. Now, I notice here we have had a maximum of 365 cases in a year and a minimum of 148 of those adjustment cases.

The CHAIRMAN. The whole country?

Mr. GWYN. The whole country; yes, sir.

The CHAIRMAN. How many employees have you?

Mr. GWYN. We now have about 35,000. We have had as many as—oh, I recall the time when we had 80,000, but in normal times we have about 70,000.

Senator LONG. You have had about 1 percent complaints?

Mr. GWYN. Yes. Now, these complaints, you understand, are not complaints that the management is brutal or inhuman or anything of that sort; they are genuine disputes about the application of a rule. You have got to make some allowances for the number. For example, I recall in one instance we had about 100 disputes all turning on the same question. You have those group cases.

But what I can't see, Senator—we have tried to be good boys; we never had any unions in the express business until we came under Government control, and Mr. McAdoo told us: "Well, these unions are the real thing and you have got to get in bed with them." All right; I made up my mind then that if I had to get in bed with them I was going to get married and was going to do everything that the married state implied, and I have done that. I have never permitted one of our officials to discriminate against a union man, and I think that all the union fellows will say that I may be hard-boiled but I am fair.

The CHAIRMAN. What parts of this bill do you object to, what phases of it? What is your view? What ought to be done?

Mr. GWYN. I think, Senator, the first thing you ought to let the present law alone until you can get more light on the subject; but if you are going to pass a bill I wish you would leave the express company out of it; but if you are going to put us in, why do you throw me to the wolves in this cats-and-dogs-fish-peddler section there? I couldn't possibly be a representative in that third section. What do I know about train dispatchers or telegraphers, and what do they know about our business? Shouldn't the man who passes on a question know something about it? These railroad fellows know the railroad business. I don't pretend to know the railroad business.

I know the express business. I would like to have a separate section for the express company, if you are going to pass something. You have got 4 sections, but you could have 10 just as well. It doesn't make any difference. I have got no objection to that section, but I do object to being put in a class where men who do not understand the express business will pass on our cases, and if we did have a representative on that board we would have to pass on cases concerning which we knew nothing. Does that sound reasonable? [Laughter.]

The CHAIRMAN. Well, I am not going to pass on that. I wanted your position. You said in the beginning that you recognized there were some weaknesses in the operation of the present law; that you foresaw them at the time the law was up for consideration previously.

Mr. GWYN. Yes, sir.

The CHAIRMAN. What method would you use—what would you suggest that we should use to meet the weaknesses of the present law?

Mr. GWYN. I think Mr. Clement in his testimony suggested the language by which adjustment boards should be made compulsory.

The CHAIRMAN. Regional adjustment boards made compulsory?

Mr. GWYN. Yes, sir. Adjustment boards should be made compulsory, and of course, the system of, you might say, compulsory arbitration—I have no objection to that. The present act specifically says that you don't have to arbitrate. I think Mr. Clement in his well-thought-out presentation has covered those points.

The CHAIRMAN. Are there any questions by the committee? Thank you very much, Mr. Gwyn.

Mr. GWYN. I thank you, gentlemen, for your courtesy in hearing me.

The CHAIRMAN. We will now hear Mr. Cannon of the Refrigerator Car Service. Is Mr. Cannon here? [No response.] Then we will hear Mr. McConnell.

STATEMENT OF JAMES I. McCONNELL, TOPEKA, KANS., SECRETARY-TREASURER ALLIED INDEPENDENT RAILROAD LABOR ORGANIZATIONS OF AMERICA

Mr. McCONNELL. Mr. Chairman and gentlemen of the committee, my name is James I. McConnell. I live at 2716 Miller, Topeka, Kans.

The CHAIRMAN. Whom do you represent?

Mr. McCONNELL. I represent the Allied Independent Railroad Labor Organizations of America. Incidentally, I am system chairman for the electricians and system general secretary and treasurer of the Association of Rock Island Mechanical Power Plant Employees. I am an employee of these labor organizations; a full-time employee, if you please. As an officer in the independents, I am authorized and delegated to represent, and therefore present the views of labor organizations representing the shopmen, consisting of machinists, boilermakers, blacksmiths, sheet-metal workers, electricians, carmen, their helpers and apprentices; power-plant employees and shop laborers, which labor organizations represent these shopmen on the following railroads: Santa Fe, Burlington, Southern Pacific, Texas & New Orleans, Wabash Western Lines, Northern Pacific, Great Northern, Rock Island, Denver, Rio Grande & Western, Frisco, Cotton Belt, International & Great Northern, Missouri, Kansas & Texas.

This representation approximates now about 60,000 men, and in normal times it would represent over 100,000.

The CHAIRMAN. We had a man here the other day that said he represented the shop employees of the Santa Fe. How many of your men are there?

Mr. McCONNELL. That was Mr. Todd. He represents, as I will explain further on, a group of clerical employees who have an independent organization.

The CHAIRMAN. Only clerical employees?

Mr. McCONNELL. Yes, sir.

The CHAIRMAN. I thought he said he represented shopmen. I thought he represented the employees of the Santa Fe generally, the independent organizations on the Santa Fe generally.

Mr. McCONNELL. I think not. These gentlemen have delegated their power to me.

The CHAIRMAN. Now, can't you get down to the matter shortly and tell us what it is you want about this bill?

Senator LONG. If you can shorten it now we would like to have you do it. If you don't represent all of these people you represent enough of them so that we would like to hear from you.

The CHAIRMAN. I would like to get what it is you want to change in the bill.

Mr. McCONNELL. Mr. Chairman, we agree with the general principle as set forth in the bill, that there must be a more definite system

of adjustment set up than there is at the present time. We feel that there must be some system by which the employee can have his day in court or determine his equity in his rights. The particular part of the bill that we object to is the setting up of the boards.

We feel that the rights of the independent labor organizations have been entirely overlooked in the set-up of the proposed boards, and we therefore suggest and request that 6 divisions be created instead of 4—the 4 outlined in the original bill to remain undisturbed; the fifth division to have jurisdiction over disputes involving employees in the maintenance of equipment department generally known and generally represented by the shop crafts of the independent labor organization; and the sixth division to have jurisdiction over disputes of employees regardless of their occupational classification, who are represented by other independent labor organizations which would not come properly under jurisdiction of the shop crafts. The fifth and sixth divisions would be two additional divisions and would be selected in the same manner as prescribed in the selection of the other divisions.

We recommend section 3, first provision, paragraph 8 (p. 10), be changed so that the board will consist of 56 members, 28 of whom shall be selected by the carriers and 28 by such labor organizations of the employees, national in scope as have been, or may be, organized in accordance with the provisions of section 2 of this act.

We recommend that paragraph C, lines 11, 12, and 13, page 11, be stricken out, and we also recommend that paragraph E be amended, line 24, page 11, striking out the words "the Secretary of Labor" and inserting the words "the National Mediation Board" therefor.

We also recommend that section 3, paragraph F, page 12, be stricken out and the following substituted therefor:

The CHAIRMAN (interposing). Before you take that up, I note that you object to the provision of the law that prohibits the right of a carrier to contribute to the funds of the labor organization.

Mr. MCCONNELL. No; we do not object to that prohibition.

The CHAIRMAN. You do not?

Mr. MCCONNELL. No; except in the handling of local grievances. We feel that that should be excluded, that about 80 percent, Mr. Chairman, of the grievances that arise, arise at a local point. They are handled by local chairmen at the time the carrier or its agents, generally the foreman, brings about a condition that aggrieves the employees, and we feel that that feature of the bill should remain in.

The CHAIRMAN. Are you opposed to that feature of the bill that prohibits these railways from paying the officers, the employees who are officers of the union?

Mr. MCCONNELL. No, sir; we are not opposed to that.

The CHAIRMAN. Is your union, the officials of your union, financed by the railroads?

Mr. MCCONNELL. No, sir.

The CHAIRMAN. By dues of your own members?

Mr. MCCONNELL. Yes, sir. And the payment for all general expenses of the organization is made by dues.

The CHAIRMAN. But you think that the bill as now worded is so rigid that the employees in settling local grievances could not use company time in settling them. Is that your objection?

Mr. MCCONNELL. Correct.

Then we recommend that the language in lines 11, 12, and 13, section 3, page 11, reading: "but no labor organization shall have more than one representative on any division of the board", be stricken out.

The CHAIRMAN. You want that stricken out?

Mr. MCCONNELL. Yes. There is no necessity of that. If you have good men you might have them all from one organization or two in one organization and three in another. Why not have them on the board?

We also recommend that paragraph E be amended, line 24, page 11, striking out the words "the Secretary of Labor" and inserting the words "the National Mediation Board" therefor.

We also recommend that section 3, paragraph F, page 12, be stricken out and the following substituted therefor:

In the event a dispute arises as to the right of any national labor organization to participate as per paragraph C of this section in the selection and designation of labor members of the Adjustment Board, the National Mediation Board shall within 30 days investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with section 2 hereof, and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board and the finding of the National Mediation Board shall be final and binding.

This places in the hands of the National Board of Mediation the settlement of this particular type of dispute, and where we believe it rightfully belongs.

The CHAIRMAN. Primarily you are taking the Secretary of Labor out and putting the Mediation Board in to do this work?

Mr. MCCONNELL. Correct. And it is all in that jurisdiction and why should it not be there?

We also recommend that section 3, paragraph H, line 13, page 13, be amended, striking out the word "four" and inserting the word "six."

We also recommend that under paragraph H there be created and added thereto divisions 5 and 6, the fifth division to read as follows:

The fifth division of the National Board of Adjustment as herein provided for shall consist of 14 members, of whom 7 shall be selected by the carriers and 7 by the nationally organized independent organizations of the employees, and to have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers; electrical workers, car men, helpers, and apprentices of all the foregoing; coach cleaners, power-house employees, and railroad-shop laborers, on railroads where the above groups are represented by independent organizations.

The sixth division of the National Board of Adjustment as provided for herein shall consist of 6 members, of whom 3 shall be selected by the carriers and 3 by the nationally organized independent organizations of employees, and to have jurisdiction over disputes involving clerical and other office, station, storehouse and warehouse employees, and freight handlers; maintenance-of-way employees and miscellaneous employees, as well as all other classes represented by independent railroad labor organization on railroads where any groups are represented and not specifically mentioned in division 5, and when such groups are represented by independent organizations.

The CHAIRMAN. Are you taking these out of the other boards and putting in the two new boards?

Mr. MCCONNELL. Yes. We wish to call attention to the last portion of the section 2, fourth provision, page 6, lines 9 to 13, which specifies that the company shall not deduct from the wages of employees and dues, fees, or assessments, or other contributions payable to the members of labor organizations, or to collect or to assist in collection of any such dues, fees or assessments, or other contributions.

We wish to point out that many of these independent organizations now have the voluntary deduction plan in the payment of dues. It has proven a convenience to the employees in many ways. Most of the organizations which use this system have inaugurated it at the suggestion of their membership. It is a prerogative of self-organization and should not be prohibited if the members and the governing body of any organization are desirous of payment and collection of their dues in this way, providing, of course, that they may obtain approval and consent of the carrier, and the cost in connection with the collection of dues by the carrier is properly compensated for by the organization.

The CHAIRMAN. In other words, you want to permit the representatives of the employees, the men, to agree that the railroads may withhold the dues if they come to that agreement? You don't want to be prohibited from it?

Mr. MCCONNELL. That is right. If the governing body be wholly determined by the employees themselves, and then, second, if the management would agree to it.

The CHAIRMAN. In other words, you don't want it made impossible for them to agree, if they should decide to?

Mr. MCCONNELL. Yes, sir. I also call attention to the fact that some of the so-called "standard" organizations have advocated this system of the collection of dues, and in some instances have been made a controversial matter. We believe that it should be left to the terms of mutual determination.

I wish to endorse the amendment offered by Mr. F. B. Todd, of Topeka, Kans., in recommending the amendment to section 3, second provision, substituting his proposal as a whole for the one contained in this bill. This provision provides for the organization of regional boards of adjustment if the carriers or group of carriers and their employees or group of employees should so desire, and is, I think, a little broader in a sense than the present provision, Mr. Chairman. This would give any lawful organization an opportunity to agree with the carrier as to methods of handling local matters and yet afford the application of such compulsory provisions of the bill as may be necessary in effecting final settlement.

We also wish to point out that in the proposed bill there is no provision or allocation of votes in the selection of representatives on the four divisions as provided for in the original bill as between these independent labor organizations and the so-called "standard" organizations, and unless there is an adoption of the fifth and sixth boards, as outlined above, there could not be a mutual selection by labor organizations.

The CHAIRMAN. What original bill do you refer to?

Mr. MCCONNELL. I mean the bill as introduced by you.

The CHAIRMAN. By request of the labor organizations?

Mr. MCCONNELL. Yes. We believe that the amendments set forth in our statement would be helpful and conducive to the best interest of a great group of employees and would enable them to have representation on these boards, to which they are justly entitled, and would further enable them to handle the disputes as between the employees and the carriers satisfactorily.

The above has been made on behalf of the employees represented by independent labor organizations in the belief that those in authority in our Government will regard and recognize their full rights.

The CHAIRMAN. What percentage of the employees of these railroads in these different crafts are in your organization? The total number is 60,000, but what percentage of the total number working in these crafts are in your organization?

Mr. MCCONNELL. I would say, for instance, on the Rock Island, we have about 92-percent membership now, Mr. Chairman; on the Southern Pacific about 78-percent membership.

The CHAIRMAN. How about the Northern Pacific?

Mr. MCCONNELL. The Northern Pacific—I haven't the late figures on that, but as I remember, in December they reported about a 95-percent membership.

The CHAIRMAN. The Great Northern?

Mr. MCCONNELL. The Great Northern report about a 95-percent membership. You understand we have always had some that did not belong.

The CHAIRMAN. It seems to me that is a very large membership of the shop employees, of these men you have considered here in your shopmen, machinists, boilermakers, blacksmiths, sheet-metal workers, electricians, car men, helpers, and apprentices, shop laborers.

Mr. MCCONNELL. Yes, sir.

The CHAIRMAN. Do you cooperate with Mr. Todd's organization?

Mr. MCCONNELL. Yes. They are not affiliated with our allied independents, because the allied independents so far cover only shopmen.

The CHAIRMAN. You heard Mr. Clement's arguments against the National Adjustment Board. What do you think about those arguments?

Mr. MCCONNELL. I do not agree with Mr. Clement, in that I believe that there should be some system of national boards whereby decisions can be made that will affect the country as a whole. I do not object, and I believe that we should organize regions or groups as provided by mutual agreement under Mr. Todd's amendment.

Senator NEELY. What connection, if any, does your organization have with the railroad executives or the railroad management?

Mr. MCCONNELL. None whatever.

Senator NEELY. Do the railroads contribute passes or pay your transportation or your organization in any way?

Mr. MCCONNELL. They only give us transportation as provided for in our schedule, and our schedule provides, most of them do, that our employees and representatives shall have the same rights to transportation as others do, and I understand that generally on all railroads they give the system general chairman, irrespective of length of service, a system annual pass, and that does not necessarily apply to our organization, alone, as I understand it, but to all.

Senator NEELY. Does the railroad management in any way seek to nominate or elect your officials?

Mr. MCCONNELL. No sir.

Senator NEELY. Or influence the selection or election of them?

Mr. MCCONNELL. Not to my knowledge. They have never attempted to do that in any way. I can say that in particular on the Rock Island, where I work, where I hold my seniority as a mechanic, that in the election I counted the ballots myself as one of the employes.

Senator NEELY. Why is your organization not affiliated with the standard brotherhoods?

Mr. McCONNELL. Because our membership does not desire it.

The CHAIRMAN. How long has this organization been in existence as the allied organizations?

Mr. McCONNELL. The allied? About 2 years. We saw some time ago the need of directing a national policy as to what the collective group felt was needed.

Senator HATCH. Are standard unions permitted on some of these roads that you represent?

Mr. McCONNELL. Yes; if they can get them; if the men in that class desire it.

Senator HATCH. Do the railroads sponsor it, favor it, the standard unions?

Mr. McCONNELL. They neither favor nor disfavor, to my knowledge. It is a matter of the employee's choice.

Senator HATCH. Do you think that is a free choice?

Mr. McCONNELL. Yes; I do.

Senator HATCH. You think it was a free choice of the shopmen on the Santa Fe Railroad?

Mr. McCONNELL. You mean what?

Senator HATCH. In not belonging to the standard union.

Mr. McCONNELL. I so judge.

Senator HATCH. They were not organized until after the strike of 1922.

Mr. McCONNELL. In my brief I set out the reasons for that organization, Senator, because the Railroad Labor Board adopted a resolution on July 3, 1922, which stated that these other organizations had failed to function, and suggested to the employees that they organize a system; and also in that resolution which was adopted they directed that this information be transmitted to the employees.

The CHAIRMAN. Thank you, Mr. McConnell. We will now hear Mr. Frankland, representing the shop, round house, car yards and terminal mechanics.

STATEMENT OF WALTER FRANKLAND, NEW YORK CITY, REPRESENTING THE SHOP, ROUND HOUSE, CAR YARDS, AND TERMINAL MECHANICS OF THE NEW HAVEN SYSTEM, BOSTON & MAINE, AND OTHER EASTERN LINES

Mr. FRANKLAND. Mr. Chairman and gentlemen, my name is Walter Frankland. I am at present secretary-treasurer of the Allied Independent Associations of Lines East.

The CHAIRMAN. You represent the same organization that Mr. McConnell, except that Mr. McConnell is the western representative and you are the eastern representative?

Mr. FRANKLAND. Yes, sir.

The CHAIRMAN. You represent the same classes of employees?

Mr. FRANKLAND. Yes, sir; the same classes of employees.

My residence is New York City and I am an employee of the New Haven Railroad.

After listening to the remarks here last week and today I have endeavored to make my brief in such manner as will not take up any more time than is necessary, but I do want to say this at the outset, that we heartily endorse those amendments that have been put forward here both by Mr. Todd and by Mr. McConnell of the western district.

The CHAIRMAN. Is there an organization corresponding to Mr. Todd's in the eastern district of the clerical employees?

Mr. FRANKLAND. Not to my knowledge; no, sir.

These associations for whom I am authorized to speak have a membership of 30,000, comprising shop, roundhouse, car yards, and terminal mechanics, their helpers and apprentices of the following roads:

New Haven System, Boston & Maine, Maine Central, D. L. & W. R. R., Lehigh Valley, C. R. R. of N.J., Pere Marquette, Wabash (eastern lines), and the Washington Terminal.

These associations are the outcome of the July 1, 1922, folly, when hundreds of men were led out from their work, some never to return. The associations are dues-paying organizations, with constitutions and bylaws drawn up and agreed and ratified by the employees of these associations. They each and everyone have entered into and agreed by vote, in a large majority, contracts and agreements in the manner prescribed by law, and are still in effect and binding upon both parties, and this bill, S. 3266, tends to abrogate these contracts which have proven satisfactory to these employees from their inception.

The members of these associations are now asked, after nearly 12 years of amicable relations with their respective managements, to experiment with a change they do not desire, a change they did not seek or request. In this almost 12-year period there has not been the least sign of trouble or sound of discontent by this class of railroad employees on the independent organized railroads of the entire country and up to date, unless it has developed in the last week or two, not a single grievance case remains unsettled against 500 or more unsettled cases pending settlement on the so-called "standard organized railroads", who are in a small minority for this class of railroad employees, there being 52 railroads having so-called "standard organizations" against 184 independent associations.

I might state here, incidentally, Mr. Chairman, that the men that I represent are progressive men. We fully realize that you gentlemen are here to go into this bill for that one purpose only, for progress, and we are in no way endeavoring to stop that progress.

The CHAIRMAN. What is the comparative number of men in the organizations?

Mr. FRANKLAND. In the organization which I represent, Mr. Chairman, there are 30,000.

The CHAIRMAN. But you say 52 have standard organizations and 184 independent. What are the relative percentages of the number of men?

Mr. FRANKLAND. The independents today, I think, are about 69 percent.

The CHAIRMAN. Of the men employed in these crafts?

Mr. FRANKLAND. Yes; in this class of employment throughout the entire country. About 69 percent are independents.

Under general purposes of this bill, S. 3266, it is very explicit that no funds of the carriers shall be expended by them to maintain, or help in any manner the employees organizations. This has been acknowledged by all labor organizations and employers to be impossible to adhere to. Work could not be brought to a successful conclusion while John Doe the machinist, or of any other craft, has a

grievance, whether good or bad. He is absolutely worthless to himself and all those around him until that grievance is cleared up. This means, and is recognized on all railroads that the craft committeeman must stop work and endeavor to settle the grievance through the foreman, general foreman, master mechanic, or shop superintendent, and while all this is going on, the committee is not receiving actual cash, nevertheless the railroad is paying for his absence from work endeavoring to settle the grievance. This is the only proven way to keep contented members and craftsmen.

Also, dealing with this question under the proposed bill, it forbids the check-off system of paying dues. This is a decided convenience to our members, who have asked for this convenience by signing of their own free will the desire to deduct dues from their wages, and these signatures are on file in the offices of our organizations. This has proven one of the most beneficial agreements that the employees have negotiated with their managements, and wherever this system is used on the railroads I represent it has been done at the request of members of these associations. In this connection I respectfully call your attention to a definition handed down by Mr. Donald Richberg, who was counsel for the American Federation of Labor at the time, 1931:

> The check-off of dues cannot be legally justified except by express consent of the employee whose wages are thus expended. Unless his individual consent has been given without any pressure from any employer agent, such a check-off is clear evidence of violation of the law.

Wherever the check-off is used we have on record the employee's signature given in the manner prescribed in the aforementioned definition. However, we have some members who object to this method and who pay their dues to the local secretary at the point employed, for we do not require that the check-off shall be a condition of membership. This system is also used by the so-called "standard" organizations, and was one of the terms of settlement of a miners strike some years ago, and as far as I have been able to ascertain is still practiced. The particular railroad that I am employed by is being paid the expense incurred from the check-off system and negotiations are now in the making to do likewise on other railroads.

The sponsor of these amendments has stated that the proposed bill, S. 3266, has been discussed informally with railroad labor executives and representatives of the carriers and although both the sponsor and the managements have been notified of our existence, this class of independent railroad employees has been entirely ignored and never allowed their rights as American citizens to express their desires or wishes in the matter; but the organizations representing by far a small minority, can be described in plain American language as being little else than the "tail wagging the dog." This one thing alone in the opinion of our members was the most un-American and unconstitutional method of doing business ever heard of, and was another process of telling these same Americans they had no right to think for themselves.

This bill, under its sections, proposes to set up national boards, which, because of the minority of this class of employees which I represent and which happens to be known as one of the so-called "standard" organizations, it, by its wording, prohibits the majority

from being the judges of its own destinies. You would do well to note the number of cases in which these so-called "standard" organizations have failed in the eyes of both their members and ours to be able to settle, while as I have stated before, these independents have been able to settle satisfactorily to all concerned.

Under section 3 of the proposed changes, namely, the National Board of Adjustment, we, the independents, have had boards of adjustment since the year 1922, both local and system, comprising an equal number of duly elected representatives of the employees, and an equal number of representatives appointed by the carriers; and, during this period we have never found it necessary to seek the services of the Mediation Board as prescribed in the present act of 1926.

We are not so much concerned about national boards, as has been proposed in bill S. 3266, provided, however, the organizations whether independent or so-called "national", and who are in a majority for the class of employee they have been elected by these employees to represent, are given the same equal rights at hearings that may be before any such national board.

Under the present Emergency Railroad Act, consummated in Chicago, 1932, although the independents for this class of employees were by far in a majority, again they were not accorded any voice in the matters before this conference. Therefore, unless the legislation proposed in bill S.3266 is enlarged so that the rights and privileges of both independents and those considered national in scope are safeguarded, and which in our opinion can be accomplished with few changes to the proposed bill, we feel we have been again denied our rights as American citizens.

The CHAIRMAN. Do you think under the wording of this statute that you will get representation on the National Adjustment Boards under this proposed bill?

Mr. FRANKLAND. Under this proposed bill? No, sir; we will not.

The CHAIRMAN. Do you consider yourself a national organization?

Mr. FRANKLAND. We are not a national organization.

The CHAIRMAN. You and Mr. McConnell represent railroads on both sides of the country?

Mr. FRANKLAND. Yes; but we are endeavoring to become a national organization and have been for the past—well, the past 2 years—and he has for the past year; and the peculiar thing that has been brought about, to my mind, in this connection is that these men, both East and West, are so far distant from one another that they have never met one another before until this last year, and yet when the cards are placed on the table and the opinions of the rank and file of these men so far distant from one another, who have no opportunity to contact one another and to express and exchange views, it was a peculiar thing to find how they all believed the same and had the same kind of troubles one with the other.

The CHAIRMAN. How long have you been with this organization?

Mr. FRANKLAND. I was with the New Haven Railroad and went out on strike on the first day of July 1922 and picketed the lines for 2 months.

The CHAIRMAN. In what craft were you?

Mr. FRANKLAND. As a machinist. And I returned to my work at the Van Ness shops on the 19th day of October, of the same year

after I had been left at the gate holding the bag, and with a full determination never to belong to any organization any longer. I have been a good dues-paying member of that organization, had fought for its principles, and in my opinion we were let down and let down miserably.

I went back, as I say, in October with a full determination never to join any organization, but when I did get back there, various of the old-time members of the organization who had come to me insisting that I go and run for office of some kind, and I was elected as a trustee in January of 1923.

The CHAIRMAN. Of the new independent organization?

Mr. FRANKLAND. Yes, sir. I was there about a month when I found that conditions—and I am speaking facts and truths now, Mr. Chairman—conditions were such that in my opinion it wasn't any organization at all, and from that time on I tried to gather those men, all that I possibly could, over the New Haven System, to start an organization, if we were to have an organization that would be on our own footing.

The CHAIRMAN. That is, free from railroad influence?

Mr. FRANKLAND. Absolutely free from any influences of the railroad whatsoever. And we did that.

The CHAIRMAN. You don't agree, then, with the view presented here by some witnesses, that railroads can pay your salary as representatives of the men, and still you be representatives of the men?

Mr. FRANKLAND. No, sir; we pay our own way. Further than that, as testimony has been given here by Mr. Clement, very often meetings are called where these so-called "standard organizations" are brought into conference, and due to the fact that the railroad itself has called those committeemen into conference, they have paid their way, or at least have footed their bills. We don't even do that on the railroad that I am employed on; sir. If the railroad calls us into conference, whether it is for their benefit or whether for ours, we pay our way and draw our checks for it and have a bank account in a legitimate way. We have done that since March 1923.

Senator NEELY. Who founded your organization?

Mr. FRANKLAND. I believe, to be truthful with you Mr. Senator, that the association was formed as the result of an organization that was known as the "Sherman Engineering Corporation."

Senator NEELY. What was the Sherman Engineering Corporation?

Mr. FRANKLAND. I would say, in plain language, in plain railroad language that every railroad man understands, and which I personally understand, it was an organization of "dicks and spies." [Laughter.]

Senator NEELY. It certainly has a high origin, then?

Mr. FRANKLAND. It certainly did.

Senator NEELY. Who were some of the moving spirits in the organization, in the formulation of this organization?

Mr. FRANKLAND. Oldtime American Federation of Labor men, the Brotherhood of Carpenters and Joiners and our rebuild shops, machinists at our rebuild shops, and the various crafts and other points of the railroad. I tried to point out, or infer at least, in my testimony here some of the things that I found when I got in the organization myself, beginning in January of 1923, that didn't look good to me.

Senator NEELY. Are the standard brotherhoods represented in the operation of the New Haven, by which you are employed?

Mr. FRANKLAND. Yes, sir; in some classes of employees—in fact, in the majority of the employees.

Senator NEELY. Are there any so-called "company unions" operating on the New Haven?

Mr. FRANKLAND. No, sir.

Senator NEELY. In connection with the New Haven?

Mr. FRANKLAND. No, sir.

Senator NEELY. What proportion of the membership—what proportion of the employees of the New Haven belong to your organization and what proportion to the standard brotherhoods?

Mr. FRANKLAND. At the present time 95 percent. The only place that they have anybody belonging to the American Federation of Labor is at our South Boston passenger car yards, where they have a few, our rebuild shop and our South Hampton engine shop.

Senator NEELY. What percentage of the men employed by the railroads?

Mr. FRANKLAND. Oh, all crafts? Well, I couldn't tell you that. I wouldn't be in a position, outside of the mechanical force, to be able to tell you.

Senator NEELY. How do the wages and hours of service and the working conditions of the members of your particular organization compare with the wages and the hours of service and the working conditions of the members of the standard brotherhoods in the same territory and in the same line of work?

Mr. FRANKLAND. In respect to wages I believe, that the employees of this class on the New Haven have enjoyed longer hours during the past 3 years of depression that we have gone through than any other railroad in the country, and that has been brought about through the relations that we have built up one with the other, both with management and men.

Senator NEELY. How do the general working conditions of your members compare with the working conditions of the members of the standard brotherhoods in the various localities?

Mr. FRANKLAND. I believe, sir, they are far better, for the simple reason that we don't have piecework, bonus work, or anything else like that on our railroad. That is another thing that our organization got rid of. We fought until we got rid of it.

Senator NEELY. You were a member of one of the standard brotherhoods before you helped to organize this organization, perfect this organization?

Mr. FRANKLAND. I certainly was; yes, sir.

Senator NEELY. Have you been an official of the new organization ever since it was established?

Mr. FRANKLAND. Since January 1923.

Senator NEELY. What salary do you get?

Mr. FRANKLAND. I receive $85 a month. I work every day in the week excepting on such occasions as this, and wherever a grievance may require my services away from my job, then I am paid by my organization to go there and sit on whatever board may be sitting to decide.

Senator NEELY. You mean you receive a salary of $85 a month from your organization in addition to whatever salary you may draw from the railroad company for the work you do?

Mr. FRANKLAND. Yes, sir; as treasurer.

Senator HATCH. Did you say 69 percent of the men now employed in these crafts were in independent organizations?

Mr. FRANKLAND. Yes, sir.

Senator NEELY. And in addition to those independent organizations there are the so-called "company unions"?

Mr. FRANKLAND. Yes, sir; if you want to use that term, so-called "company unions."

Senator NEELY. To distinguish them from others like yourselves?

Mr. FRANKLAND. Yes, sir.

Senator NEELY. Do you have any idea what percentage are employed by the company union?

Mr. FRANKLAND. To use the express term, in my opinion, in the way that I would explain it, the only company union, so far as testimony has been produced here, in the eyes of the majority of the people has been the Pennsylvania Railroad, and they have stated that there are 30,000 employees in it.

Senator NEELY. I thought you might have other information.

Mr. FRANKLAND. No, sir; I have not.

Senator NEELY. Did you have any personal difficulty with the standard brotherhood or the American Federation of Labor before you began to participate in the formation of this new organization?

Mr. FRANKLAND. None whatsoever, sir. The only thought I had, after I had fought for them and their principles in 1922—I may be wrong, but my own personal opinion was when I walked out of my job on Saturday at 10 o'clock, on the first day of July and was left at the gate——

Senator NEELY (interposing). What do you mean by that expression?

Mr. FRANKLAND. I mean just this: That I can point out to you over this eastern seaboard on various railroads men who went out like me.

Senator NEELY. No; but let us talk about your case. You say you were left at the gate. I want to find out if you have any personal grievance against the standard brotherhoods. That is what I am interested in.

Mr. FRANKLAND. For the simple reason that I stayed there until I found that the cause was lost, and others before me, making up their minds that the cause was lost had returned to various railroads, including the New Haven Railroad, something that we said we never would do, and some of those same men from various railroads that went out on strike are now employed by the New Haven Railroad and other railroads of the country. I have met those same men.

Senator NEELY. But what is the specific offense that the brotherhoods committed, or anybody connected with the American Federation of Labor committed, that impelled you to say that some organization left you personally at the gate? What do you mean by that?

Mr. FRANKLAND. For the simple reason that I believe in the first place we should not have been led out to strike.

Senator NEELY. Do you think the American Federation of Labor or the brotherhoods made a mistake?

Mr. FRANKLAND. Absolutely. But so far as having any grievance with them——

Senator NEELY (interposing). Is that the only grievance?

Mr. FRANKLAND. That is the only thing I have personally.

Senator NEELY. And that is the reason you don't participate with them, because you think they made a mistake in declaring a strike in 1922?

Mr. FRANKLAND. Absolutely.

Senator NEELY. If the brotherhoods had not made that mistake from your point of view in 1922, you never would have participated in the formation of this organization?

Mr. FRANKLAND. I should have been still continuing on.

Senator NEELY. Is that the only mistake they ever made?

Mr. FRANKLAND. Well, as far as I am concerned.

Senator NEELY. For which you hold them responsible?

Mr. FRANKLAND. As far as I am concerned, yes; and that was the big mistake. That was a big mistake because I lost senority and everything else that went with it.

Senator NEELY. You expect them to be perfect? You don't think they had a right to make one mistake?

Mr. FRANKLAND. No, sir; I wouldn't say that any organization is perfect, nor should we expect them to be perfect, but when you pay your dues into an organization and such talent as has been employed by that organization uses it to the extent to which they used it in 1922, it doesn't seem as though the amount of money that you paid for it is worth while.

Senator NEELY. And the organization, the allied independent railroad organization, if it would make a mistake you would leave it?

Mr. FRANKLAND. I doubt whether I would. I am still fighting. I hope to continue to fight.

Senator NEELY. In other words, your attitude is more generous to the present organization than the standard brotherhoods?

Mr. FRANKLAND. No, sir; I wouldn't say that I think that. I think the independents here present in this room know that I am no more generous with them than I have been in the past. If they are not right we are not going to have them.

Senator NEELY. What were your wages immediately before the strike in 1922?

Mr. FRANKLAND. My wages were then 78 cents per hour.

Senator NEELY. What were your wages immediately after you entered the service as a member of this new allied independent organization?

Mr. FRANKLAND. Seventy-nine cents an hour.

Senator NEELY. An increase of 1 cent an hour?

Mr. FRANKLAND. Yes, sir.

Senator NEELY. Was that due to the fact that you were a member of this new organization and it was more powerful than the old one?

Mr. FRANKLAND. I could not say that.

Senator NEELY. Or because the prosperity of the country had increased since 1922?

Mr. FRANKLAND. I couldn't say that, because I wasn't there at the time they negotiated that agreement in August 1922, so I don't know.

Senator NEELY. Well, the industrial and financial and economic affairs of the Nation were at a very low ebb in 1922.

Mr. FRANKLAND. Yes, sir.
Senator NEELY. They did improve about the beginning of the year?
Mr. FRANKLAND. Yes, sir.
Senator NEELY. When did you return to work after the strike?
Mr. FRANKLAND. October 19, 1922.
Senator HATCH. Did you have to surrender your membership in the first organization as a condition to returning to work?
Mr. FRANKLAND. No, sir; but it was automatically dropped.
The CHAIRMAN. Now, we will hear Mr. Powers of the Commercial Telegraphers Union. Also, is Mr. Burton here this morning; Mr. Burton of the Western Union?

STATEMENT OF FRANK B. POWERS, INTERNATIONAL PRESIDENT, COMMERCIAL TELEGRAPHERS UNION OF NORTH AMERICA, CHICAGO, ILL.

Mr. POWERS. Mr. Chairman, I am international president of the Commercial Telegraphers Union of North America, address 113 South Ashland Street, Chicago, Ill. I am also speaking for the International Brotherhood of Electrical Workers.

As you know, Senator, the communications industry sought to have the Communications Act amended to include labor provisions, and at your suggestion we dropped that idea and got together on a new title for this Railway Labor Act. We proposed that the title of the Railway Labor Act be changed to "Railway and Communications Labor Act" and that the act be divided into two parts, title 1 for railway and title 2 for communications.

Title 2 we have made just as brief as possible, because it is more or less a new field in this industry, and it will just take about 5 minutes. The general purpose is to insure stabilization of employment, and continuity of service; to advance cooperative relations as between labor and management; to guarantee collective bargaining and to provide means whereby management and the employees, through representatives of their own choosing, shall confer on problems dealing with wages, hours, working conditions, and the positive side of service, there shall be created a national council for industrial relations for the communications industries.

Definitions: The term "carrier" means any person engaged in communication by wire, cable, or radio, as a common carrier for hire; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.

The term "employee" includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of condition of his service).

National Council for Industrial Relations: (1) The function of the National Council for Industrial Relations shall be to effectuate title 11; (2) one member of the National Mediation Board, as provided in title 1 of this act, shall be designated Director for Industrial Relations, under title 11; (3) the Director for Industrial Relations may, when necessary, set up regional councils for industrial relations; (4) all councils shall be composed of equal numbers of employers, or their representatives, and of employees, or their representatives, decisions shall be unanimous; (5) conferences as between labor and management shall be mandatory; (6) When disputing parties elect to submit

disputes to councils, they shall do so on written forms, agreeing to abide by decisions rendered; (7) no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from forming, organizing, or assisting a labor organization of his own choosing; (8) it shall be deemed inimical to public interest for any communications industry to use funds of the industry to organize, aid in organizing, or to maintain company organization of employees.

The Mediation Board, gentlemen, is not mentioned in this, but so far as we can see, if any case is not settled, the Mediation Board under title 1, sections 4, 5, 6, and 7, could be applicable to this title.

The CHAIRMAN. What is the method now used by the employees of communication companies to settle their grievances and disputes?

Mr. POWERS. The communications industry, 75 percent of it, that is the Western Union, that is a company union and they settle grievances through that company union, which is more or less one-sided.

The CHAIRMAN. By "company union" you mean a union whose officers are paid by the Western Union?

Mr. POWERS. I am not certain whether they are paid by the Western Union or not. I know they are still employees of the company.

The CHAIRMAN. Are the members of that union dues-paying members?

Mr. POWERS. They are. They have the check-off system. The employees are invited, and the invitation is positive, to sign a waiver to have their dues deducted every month and very few employees have got the nerve to say no.

In the Postal they have no organization that they recognize, and therefore the employees are absolutely helpless so far. We are rapidly organizing them and we hope to have machinery to handle grievances under the N.R.A.

The CHAIRMAN. Are you planning to have your grievances settled through the code of the N.R.A. arrangement, or do you want it under this?

Mr. POWERS. Senator, for 7 months we have tried get to those telegraph companies under an N.R.A. code, and we are still being stalled. The meeting was to be held again today, but they are still holding off and I don't know whether we ever will get a code under the N.R.A. for the telegraph industry, and for that reason we would like to have some kind of protection here.

The CHAIRMAN. Do the members, or do those who are telegraphers with the communications companies belong to the same union with those on the railroads?

Mr. POWERS. No, sir; the commercial telegraphers and the Order of Railroad Telegraphers are two separate organizations, but both are affiliated with the American Federation of Labor.

The CHAIRMAN. How many members are there in your organization?

Mr. POWERS. In the Western Union and the Postal we have proxies covering 7,200. As to members we have few men that are dues-paying members, a very small fraction of that, because these people don't make enough money to pay dues. We represent all classifica-

tions, from messenger boys up, and we don't collect anything from messenger boys, unless they practically force it on us.

The CHAIRMAN. What is the average salary of the commercial telegrapher?

Mr. POWERS. In 1932, the last figures available, $92 a month, including higher officials, even including one official that gets $82,000 a year—$92 a month.

The CHAIRMAN. But that doesn't give me the prices of the men down here operating the key in the Capitol or in the office.

Mr. POWERS. The figures, for 1932, for messenger boys, the average was $32 a month. That is just from memory. The operators make around $82 to $85 a month.

The CHAIRMAN. What hours do they work? How many hours?

Mr. POWERS. During the panic they have not worked more than—the combined figures on telephone and telegraph together show 36.6 hours for January 1934. So they are not making full time.

The CHAIRMAN. They are paid by the hour?

Mr. POWERS. They are rated by the month, but they are usually paid by the hour.

The CHAIRMAN. How much an hour?

Mr. POWERS. It ranges from—excluding messengers, it ranges from 37 cents up to not over 75 cents for the skilled men.

The CHAIRMAN. I was impressed by the fact that when the communications bill first came up the president of the Western Union wanted the labor organizations of the communications companies placed under that bill, and then later said he wanted to be heard on this bill, and now he doesn't want to be heard, and I am wondering if there has been a change of plan, a change of viewpoint on the part of the officials of the Western Union.

Mr. POWERS. I cannot say as to that, Senator, but I do know that the Western Union appeared before the N.R.A. code hearing and protested that the N.R.A. did not have jurisdiction; that the Interstate Commerce Commission did, and it is my information that the Western Union is the organization that is blocking the final establishment of the code of fair practices and competition under the N.R.A. I was surprised myself to see that Mr. White wanted a provision covering labor in this act or in the Communications Act, because—well, I don't know what his idea was. I haven't heard.

The CHAIRMAN. Has there been any particular effort made on the part of the employees of these telegraph companies to have their salary, their wages, increased?

Mr. POWERS. The company union of the Western Union made an alleged agreement the other day that was announced in yesterday's papers, calling for a 5 percent increase in wages. Outside of that I don't know of any attempt on the part of the employees to get more wages, because we are not thoroughly enough organized in the Postal to go in and ask for a conference, although we are just about at that point, and we hope to be able to get better conditions in the Postal.

The CHAIRMAN. Do you work for the Postal?

Mr. POWERS. I am paid by the organization. I have no seniority with any company.

The CHAIRMAN. How long is it since you have worked for any company?

Mr. POWERS. 1921.

The CHAIRMAN. You have been representing the commercial telegraphers since then?

Mr. POWERS. Yes, sir.

The CHAIRMAN. Have you discussed this proposal with Mr. Eastman?

Mr. POWERS. I have not, Senator. I discussed it with Mr. Harrison of the railroad standard organization, and as long as we have it in a separate title he said it was O.K. with them.

The CHAIRMAN. Why do you use the term "industrial relations" instead of "communications" or something of that kind?

Mr. POWERS. There is no particular reason, Senator.

The CHAIRMAN. I thought maybe you had some special reason.

Mr. POWERS. No, just merely a skeleton to work on is all.

The CHAIRMAN. Thank you very much, Mr. Powers. I understand Mr. Cannon is not here, the one that represents the refrigerator car?

A VOICE. I have not seen him, Senator. I don't think he intends to appear.

The CHAIRMAN. Has Mr. Burton come in? [No response.] These gentlemen were very anxious to be heard, and I pushed other witnesses along so that they could be heard. We might have given some of the other witnesses more time.

STATEMENT OF R. K. CORKHILL, TOPEKA, KANS., SYSTEM GENERAL CHAIRMAN OF THE ASSOCIATION OF MAINTENANCE OF WAY AND MISCELLANEOUS EMPLOYEES, ATCHISON, TOPEKA & SANTA FE RAILWAY LINES

Mr. CORKHILL. Mr. Chairman, my name is R. K. Corkhill, Topeka, Kans. I am system general chairman of the Association of Maintenance of Way and Miscellaneous Employees, Atchison, Topeka & Santa Fe Railway System lines. I speak particularly for my own organization, but I believe our interest in this bill is identical with every other railway labor organization not affiliated with the 21 so-called "standard unions." All we ask is a fair law, a law that will afford all rail workers the same measure of protection regardless of their organization affiliations or other classifications.

We endorse the basic principles of this legislation but as independently organized employees we seriously object to the whole pattern of the bill insofar as the labor representative feature is concerned because it is evident that it was designed to set up certain so-called "national organizations," as the sole representation of rail labor, and to the virtual exclusion of all others, regardless of their merits or ability to serve their constituents. This we believe to be class legislation, and contrary to the American plan.

Because of a tendency to classify all rail labor organizations not embraced by the 21 so-called "standard organizations" as "company unions", and on account of statements made at this hearing please permit me to point out that there are in fact, "independent" organizations representing many thousand rail workers scattered over the country which are and always have been just as free from "company" domination as they are free from the domination of the so-called "standard unions", and should not in fairness be classified with either. As a matter of fact no classification or discrimination should be made under the law.

The organization I here represent embraces all employees in the Maintenance of Way and Structures Department on Santa Fe System lines comprising approximately 10,000 men at this time. The organization was founded in May 1925, under the direction of The Railway Labor Board. This organization has carried on without company influence or support, and to the entire statisfaction of its members. The organization has been subjected to the inquiries of the coordinator's office along with all other labor organizations not under the wing of the "standard group". We have been advised by the coordinator that our manner of conducting the affairs of the organization is satisfactory, and that we are eligible for representation on coordinating committees where the interests of our members are involved.

As a matter of fact, our organization has always been operated on the same basis and for the same purpose as other labor organizations. The reason for this organization's inception was lack of other satisfactory representation and it has answered the purpose of its members. If forced to return to the "standard organization" now on account of discriminatory legislation our members stand to lose materially in both wages and dues, if we may judge by our neighbors on adjoining railroads. The only reason for the continued existence of this organization is better representation at less cost than is possible through the standard organization and this can easily be proven by results to date.

We hold no brief for the company union but the independent organization which is functioning to the advantage and satisfaction of its membership is entitled to live. We believe in fair competition and if the standard group cannot stand on their own feet without the assistance of discriminatory legislation it is indeed unfortunate for the wage earners of the railroads. It is a question which is the most undesirable, company or Government paternalism. We believe that neither one of them are advantageous to the best interests of the Nation and should be discouraged.

We are told that in drafting this bill the interests of labor was consulted and that it is satisfactory to labor leaders which is probably true insofar as the standard organizations are concerned, but to the best of my information the interests of the many rail workers represented by the independents have not been consulted. We believe in fairness to all concerned that this should have been done, but as previously stated we are fully in accord with the basic principles of the bill and recommend its adoption provided all lawfully operated labor organizations are afforded the same rights and privileges under its provisions.

While the company union should be discouraged it is hoped that our legislators will not take alarm from the assertions of the so-called "standard union group" or take their statements with respect to the worthlessness of all other plans of representation with the exception of theirs too seriously. It is hard to believe that all of the courage and ability to represent the workers of the country successfully lies within the confines of the American Federation of Labor, and the standard railroad labor organizations. In fact, if measured by actual results it is evident that there are many other satisfactory labor organizations outside of these groups functioning to the advantage and satisfaction of their members.

Amendments have already been offered on every phase of the bill by those most vitally interested and I feel sure that it would be to no

advantage to offer further definite suggestions of one kind or another, but I wish to go on record most emphatically in behalf of a square deal for the many thousands of rail workers throughout the land who will gain nothing but will probably lose materially if deprived of their present plans of representation or if they are handicapped in any way through discriminatory legislation in this bill. Permit me to join with the several other representatives of the independents who have appeared before this committee appealing for full and equal rights under the law. We are depending on the broad knowledge and insight of our legislators to give us a bill which we hope will be permanent legislation functioning to the advantage and benefit of all concerned and without discrimination for or against any particular class or group.

The CHAIRMAN. I have here a letter from Mr. Harry E. Armstrong, of the Mechanical Department Association of the Burlington Railroad, suggesting certain amendments to this bill. I will put the letter in the record at this point.

(The letter referred to follows:)

MECHANICAL DEPARTMENT ASSOCIATION
OF THE BURLINGTON RAILROAD,
GENERAL OFFICES 812 FEDERAL TRUST BUILDING,
Lincoln, Nebr., April 9, 1934.

The Honorable C. C. DILL,
Chairman of the Interstate and Foreign Commerce Committee,
Washington, D.C.

DEAR SIR: As a member of the large group of Railroad Shop Craft Employees' Associations represented by independent labor organizations, usually referred to as "company unions", wish to bring to your attention the following in connection with Senate bill 3266 which is Mr. Eastman's amendment to the Railway Labor Act.

Under section 2, paragraph 4, employees are divided in crafts for the purpose of selecting representatives. This subdivision of employees of a railway system will create more discontent than under the present arrangement, and we feel that the majority of the shop craft employees of each railroad should decide who their representatives shall be, and not subdivide the employees into crafts as provided for in this bill.

In section 2, paragraph 9, it provides a means of settlement of disputes of employees of a carrier as to who shall be their representatives, but is so worded that a small number of the employees could create a dispute as often as desired, even though they were very much in the minority. This would be similar to a condition that would give the constituents of a Member of Congress the privilege of raising a dispute after he had been elected and served a short time as to whether or not he should still continue to be their representative, and raising the dispute would require another election to determine conditions at that particular time.

In all classes of labor there are always those who are dissatisfied and want some kind of change. Under section 2, article 4, employees are given the right to organize and choose representatives by a majority vote, and the minority should not be allowed to create a dispute after the majority have expressed a preference for the representatives. Section 3 of the Railway Labor Act as amended provides for the establishment of a National Board of Adjustment whose labor members must be selected from organizations national in scope.

Why limit membership on these adjustment boards insofar as railroad shop craft employees are concerned to one organization, the one that is nationally organized? At least two thirds of the railway shop craft employees are members of the independent labor organizations which confine their activities to one railroad or one railroad system, and all of these shop craft employees would be denied the privilege of selecting any labor representative to serve on division 2 of the National Adjustment Board on account of not being nationally organized.

In reading over this proposed amendment this seems to be the outstanding point to force all these railroad employees, now not members of nationally organized organizations, to join such an organization, which does not seem to be the spirit of other sections of the amendment which provides that employees may join the organization of their choice without influence or coercion.

This amendment to the Labor Act will provide plenty of coercion to be used against members of independent labor organizations in compelling them to join organizations national in scope in order to get representation on the National Board of Adjustment. If Congress wants this National Board of Adjustment, the independent railway labor organizations should be given the same privilege in proportion to their members as those organizations national in scope.

Mr. Eastman states of the present Board's set-up to handle disputes as provided in this bill "there has been a gross tendency to deadlock the boards when set up." This could be true of the National Adjustment Board or its subdivision created under this amendment after which a referee would be selected by the division to make a decision, or failing to select a referee, the Mediation Board would select one for the division. Under this set-up, if one member, the referee will have to make the decision. Why not make the Mediation Board the referee with authority to render decisions and do away with the National Adjustment Board and save untold expense to the Government. Let each party to a dispute present their case to the Mediation Board for a decision, which decision should be final and binding on both parties to the dispute. In this way much expense and valuable time would be saved to all parties concerned.

This whole amendment to the Railway Labor Act seems to be written with the view of turning all railway labor disputes over to a board whose members are from an organization national in scope, without giving any consideration whatsoever to the large majority of shop-craft employees on different railroads who do not care to affiliate with such an organization. We have no objection to any bill that gives equal opportunity to all labor organizations, but are very much opposed to any bill which favors some particular organization, and as this bill provides only for adjustment board members to be chosen for an organization national in scope, we feel that it is very unjust to the hundreds of thousands of railroad employees who are not now affiliated with these national organizations.

May we ask your committee to give all railway labor organizations that represent railroad employees the same consideration as those national in scope?

Yours truly,

HARRY E. ARMSTRONG,
Grand Secretary-Treasurer.

I also have a statement here from Mr. Randolph, who appeared the other day in behalf of the railroad porters. He asked to have this inserted in response to certain statements made by Mr. Kelly, of the Pullman Co. I will insert that in the record at this point.

(The statement referred to follows:)

STATEMENT BY A. PHILIP RANDOLPH, NATIONAL PRESIDENT OF THE BROTHERHOOD OF SLEEPING CAR PORTERS, IN REPLY TO THE TESTIMONY BY MR. GEORGE A. KELLY, GENERAL SOLICITOR FOR THE PULLMAN CO., RELATING TO THE PULLMAN PORTERS AND MAIDS UNDER THE PLAN OF EMPLOYEE REPRESENTATION OR PULLMAN CO. UNION

Mr. Chairman, permit me to say in reference to the testimony before this committee by Mr. Kelly, general solicitor for the Pullman Co., that his attempt to picture the plan of employee representation as an holy and perfect arrangement for the settlement of industrial disputes, by seeking to give blessing and Government authority to company unions through the citing of the Second Industrial Conference, called by the late President Woodrow Wilson, is a naive and unwarranted presumption. That President appreciated the social and economic value of the role of the bona fide trade and industrial union, such as the American Federation of Labor and other independent unions as achieving constructive industrial relationships between employers and employees, is shown by his appointment of the late Samuel Gompers, then president of the A. F. of L., to represent the United States Government at the Versailles Peace Conference in the setting up of the International Labor Office of the League of Nations.

Mr. Kelly says that the report of President Wilson's Second Industrial Conference stated that the best plan or organization to create and maintain peace in industry was an organization that was based on confidence, cooperation, and conference. While this is true, it does not follow, ipso facto, that the company union achieves confidence, cooperation, and conference. Certainly, the Pullman Co. union does not. On the contrary, through coercion, intimidation, and interference it creates suspicion, distrust, and resentment among the porters and maids.

Moreover, industrial peace is only desirable when it is synonymous with industrial justice. As to the Pullman Co. union, it only settles such unimportant questions as, for instance, urging upon the management the purchasing of a new water cooler for the porters' quarters, or the selecting of a certain type of roses for a dead porter's funeral.

The general solicitor for the Pullman Co. admitted that the Pullman Co. union did not originate with the Pullman porters and maids or any of the employees, but that it was submitted to them by the company. He did not add, however, that it was forced upon the porters and maids. They had no choice in the matter. The porters were made to know by the Pullman Co.'s clever methods that adroitly conceal its hand, that they had to take the plan of employee representation or leave the job.

Mr. Kelly also admitted, in answer to Senator Wagner's question, that under the plan of employee representation, the selection of representatives is restricted to employees actually working for the Pullman Co.; which strikes at the very heart of the principle of the right of the workers selecting and designating representatives of their own choosing, and is a violation of the letter and spirit of the Railway Labor Act, as interpreted by the United States Supreme Court decision in the case of the *Brotherhood of Railway Clerks* v. *The Texas & New Orleans Railroad*, the Emergency Railroad Transportation Act of 1933, and the spirit of the labor policy of President Roosevelt's administration.

The representative of the Pullman management, in answer to a question by the Chairman, namely, "Do you pay their representatives' (referring to company union officials) salaries the same as the Pennsylvania?", said that when employee representatives are on committees and are taken out of regular line duty, they are paid for the time they spend in the committee work, including expenses, but it is well to add for further light that, as an inducement to the porters to work on company union committees, this payment for time with expenses is in addition to the regular wages of the porters and maids. Besides the company paying the representatives of the plan of employee representation it prints all of the booklets, with rules and regulations in the Pullman printing shops, sends out all notices of elections and wage conferences, prints, and distributes the ballots to the various districts for the elections of the company union, and at the so-called "wage conferences" of the plan of employee representation, the company wines and dines the representatives and gives them big cigars, in order to establish psychological as well as economic control over them.

Senator Thompson asked Mr. Kelly if there was a pending dispute at this time between his company and its employees. Mr. Kelly said no, and yet he states, in attacking the Brotherhood of Sleeping Car Porters, that the company won a decision against our union from Judge Woodward. For the information of this committee may I say that there is a dispute between the porters and maids and the Pullman Co. which has existed for some 9 years or more, which expressed itself in the porters planning and setting the date for a Nation-wide strike in 1928, which the Pullman Co. made elaborate preparations to defeat, and it is this dispute that necessitates this reply to Mr. Kelly.

Of course, Mr. Kelly said that he could not recall a dispute, unless it is a minor claim for short payment. May I say that there are many short-pay claim disputes too, and they are not minor. The porters' time sheet is so complicated that it takes a Philadelphia lawyer to figure out what wages are coming to the porter pay day, and hence the porters are losing millions in short pay, and they cannot correct this condition under the company union.

The question was asked by Senator Wagner whether it requires the consent of the management to amend the constitution of the employees under the plan of employee representation. Mr. Kelly answered: It is a matter of agreement. The fact is it does. The constitution or rules and regulations under the plan of employee representation cannot be amended except by the consent of the Pullman Co.

Mr. Kelly attempts to dispose of the Brotherhood of Sleeping Car Porters by saying that we failed to make a showing of membership to the Board of Mediation. The truth is that the Board of Mediation, through Mediator Edwin P. Morrow, only took up the case of the Brotherhood against the Pullman Co. after the Board had sent an investigator from Washington to the Brotherhood's office in New York City to check up on our claim of membership. The investigator remained in the Brotherhood's office for 3 days and made his report, following which Mr. Morrow attempted the mediation of the dispute in the Congress Hotel in Chicago. He urged that the Pullman Co. arbitrate the dispute, as the records of the Board will attest, and the Pullman Co. refused, saying that it already had a contract with their porters under the plan of employee representation. Mr.

L. S. Hungerford, general manager, acted for the company. This would appear that the Brotherhood did make a showing of membership to the Board.

Our answer to Mr. Kelly's statement that the District Court of Chicago denied the Brotherhood's petition for an injunction and his effort to capitalize it against the Union is that we consider the decision of Judge Woodward unsound, and we are appealing the decision to the Circuit Court of Appeals and to the Supreme Court, if necessary, a task which could not be well attempted by an organization without any membership.

It is alleged by Mr. Kelly that under the plan of employee representation no decision of the Bureau of Industrial Relations has ever been appealed by a porter. Of course not. He has neither the time, money, or opportunity. Besides, he is wise enough to know that such a challenge of the company by a lone porter would mean his job. It is well known that in the company union wage conference of 1926 the porters Bennie Smith and Edwards, who refused to sign the agreement, were promptly fired, and no one needed the gift of a seer to understand the reason why. These porters were the first and last to refuse to sign an agreement of the plan of employee representation.

Mr. Kelly claims that under the plan of employee representation in the election of representatives, from 93 to 95 percent of the porters vote. He could well claim more, for the ballot boxes are kept in the Pullman offices in all of the districts in the country, and porters are hounded, harrassed, bullied, and browbeaten by the company union poll clerks and agents, together with threats, indirect, of course, by the superintendents, shifting well-known Brotherhood porters to poor lines, putting some on the extra board where little work is secured, and invading the homes of porters and hospitals to get them to vote for the company union. When porters don't vote a red check is put by their name for future victimization. And, too, all of the voting machinery is on Pullman property.

Relative to the introduction of Filipinos into the Pullman service, Mr. Kelly said, in answer to the chairman's question: "Do you mean that colored men don't want to work on observation cars now?" "They prefer not to work on these lounge cars. But it is a matter of common knowledge that the Pullman Co. put Filipinos on the cars right after the porters began organizing into the Brotherhood of Sleeping Car Porters. It is also known among the porters that they were threatened with displacement by the company with Filipinos, Japanese, Chinese, or white men, if they persisted in joining the union, but always in such a grape-vine manner as to be the voice of Jacob but the hand of Esau. It is utterly unfair and unreasonable to say that colored porters don't want work on lounge cars, observation cars, or club cars, when porters are now drawing checks pay days as low as 27 cents after their insurance is taken out by the company, an insurance they are forced to take. Besides, colored porters are still operating club, observation, and lounge cars over the New York Central lines on which Filipinos have not been placed. It is rather strange, to say the least, that after 50 years or more operating club, observation, and lounge cars, porters should suddenly decide that they would rather walk the streets as furloughed or extra porters than to work on those cars. It is stranger still that the Pullman Co. would permit a porter the freedom to determine what type of work he shall do in the service, when they won't permit him to determine with his own free will what type of organization he shall join. May I say that the porters have absolutely no prejudice against the Filipinos. Negroes with their Scottsboros could not well have. The Brotherhood of Sleeping Car Porters would oppose the company's using other Negroes to keep porters now working in the service from organizing a union of their own or to break down seniority rule such as the company is using the Filipinos for.

"If the Pullman Co., an actual monopoly, in the strategic financial position of being without a funded indebtedness, because of low and sometimes no pay to its porters, and which boasts of having never passed paying a dividend, even during this depression, is so certain that the porters and maids want the plan of employee-representation or company union, let them submit the determination of their choice as to whether they wish the company union or the Brotherhood of Sleeping Car Porters to an election held under the supervision of the Coordinator of Federal Transportation, Mr. Joseph B. Eastman."

The CHAIRMAN. We will meet here tomorrow morning at 10 o'clock to hear Mr. Winslow, chairman of the present Mediation Board, and Mr. Eastman, who wants to take up some of the suggestions that have been made by witnesses regarding amendments to the bill.

(Whereupon, at 11:40 a.m., an adjournment was taken until 10 a.m., Thursday, Apr. 19, 1934.)

TO AMEND THE RAILROAD LABOR ACT

THURSDAY, APRIL 19, 1934

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D.C.

The committee met pursuant to adjournment in the committee room, Capitol, at 10 a.m., Senator Clarence C. Dill (chairman) presiding.

The CHAIRMAN. The committee will come to order. We will hear Mr. Winslow this morning.

STATEMENT OF HON. SAMUEL E. WINSLOW, CHAIRMAN UNITED STATES BOARD OF MEDIATION

Mr. WINSLOW. Mr. Chairman and gentlemen, I appear here as the chairman of the Board of Mediation, frequently referred to as the United States Board of Mediation, headquarters in Washington, D.C.

The CHAIRMAN. How long have you been a member of this board, Mr. Winslow?

Mr. WINSLOW. Since its beginning. About 7¾ years.

The CHAIRMAN. I was desirous of having you give us your impression on Senate bill 3266, and if you have any statement we would like to have you give it.

Mr. WINSLOW. Mr. Chairman, I have not prepared a statement. Could you give me a suggestion probably as to about how much time will be accorded to me?

The CHAIRMAN. I think about 30 minutes. If you need more than that we can extend it a little.

Mr. WINSLOW. Of course, this is a subject of such importance and so vast that I might go on for a long time.

The CHAIRMAN. I realize that, but I was hoping you might confine your remarks to about 30 minutes, and we will then see how it developes.

Mr. WINSLOW. I might leave some time after the formal talk for questions or will you question me as I go along?

The CHAIRMAN. Probably as you go along.

Mr. WINSLOW. The Railway Labor Act under which we are all working now, followed a period of about 40 years of legislation, during which legislation was passed by Congress for the purpose of trying to help stabilize the railway industry, with particular respect to labor.

Up to the time the Railway Labor Act was passed three had been several distinct stages of operation, one known as the period of the Erdman Act, followed by the Newlands Act; then came Federal

control, then came the Transportation Act of 1920, with a provision for establishing the Railway Labor Board. Then came the Railway Labor Act under which the present work is being carried on.

After the war there was a very considerable difference of opinion as to the best method of proceeding in the future. The Railroad Labor Board under the provisions of the transportation act bgan to function. That board was set up with three neutrals appointed by the President, three representatives of railroad labor and three representing carrier interests. That board had power of decision.

It is not my purpose to tell why the Board failed, and whatever I do say must not be regarded as any reflection—and incidentally, I would like to say, Mr. Chairman, and others, that I am here representing my own views with no authority whatever to speak for the Board. The other members have not been nearby where they could come in and give consideration to this bill, and I want to relieve them of any responsibility for anything I may say.

The Railroad Labor Board went out of business. There are a good many reasons which have been assigned for that. My own thought is that that Board failed on the line of the mediation idea, which is the whole internal works of the Railroad Labor Act, because of their power of decision. I think as a general statement, whatever success, which seems to have been considerable, has attended the operation of the Railroad Labor Act, has been due to the fact that its principal operating agency, the Board of Mediation, has had no power of decision; it has been less free to go between the people in interest, with no friends, no foes, nothing to do but get out a peaceful, voluntary, conclusion about whatever dispute arose of interest to those who were involved. Had we been in a position to have exercised decision I think we would have been on the rocks and the whole business would have been blown up long ago.

So I would suggest that whatever there is in this bill before the committee now which would tend to put decision on the part of the Mediation Board, that it be thought over very carefully, and my thought is that it ought to be eliminated wherever it occurs.

The CHAIRMAN. You mean decision that would be compulsory, that would be enforced?

Mr. WINSLOW. Any decision which the Board would have to make as between parties in interest. I am quite willing to give time to this because I take it it is the foundation of the whole success of this undertaking.

I will not try to go in order at the moment. There is a provision in this bill which would make it a duty of the Board of Mediation, or Mediation Board, whichever the term is to be, to get in between parties in interest—they may be labor elements, they may be carrier and labor elements—in the matter of determining who has a right to ballot as affecting the establishment of the right of representation.

I think you can see without much talk from me—though I will be very glad to give it if needed—that if a Board of Mediation should go in and decide that these men here absolutely are the men that are going to vote, the chances are very great, I think almost 100 percent, in favor of having one side or the other become, to speak freely, the enemy of the Board of Mediation, because they have taken a hand between the two contestants. That is not the way to do it.

After that is all over and you get your representation established, there are many instances in which the Board of Mediation would have to go in and mediate on a question depending upon the right of representation, which they themselves had taken a stand on, and it might be extremely embarrassing for everybody, and I would say the same thing would be true wherever there was a proposal to have the Board of Mediation decide anything as between the principals, any attempt to get the decision of the Board.

The CHAIRMAN. Who do you think should have the power to determine the people who shall vote in a determination of representatives?

Mr. WINSLOW. May I speak off the record for a moment?

The CHAIRMAN. You mean you don't want it in the hearing?

Mr. WINSLOW. I don't care who hears it, but I would rather not have in the record what I am going to say now.

The CHAIRMAN. Very well.

(Discussion off the record.)

Mr. WINSLOW. My thought is that the responsibility, first of all, of determining on those who have the right to vote, eligibility by craft, should not be on the Board of Mediation. That is no. 1.

The query comes then, where should it go? I dare say a great many ideas could be wisely expressed on that subject. My own thought was this, that it might be all right to empower the Board of Mediation to appoint a committee, say of three neutrals, who would determine the eligible list by carfts and report that to the Board and have it final as to who's who in the matter of craft division. Then turn over to the Board of Mediation a checking up of that, to see who would go on, based on the formula which had been worked out in the way of craft division.

The difficulty of many of these representation questions lies in the fact that there is a row on as between the various elements involved as to what classes of men go on.

The Board now has two cases which one would ordinarily think would be settled in very short order, but when it dragged along two weeks it was found it had to be held up awhile. The only question is, what men shall vote and who shall not, by craft distinction. They never agree, or rarely ever agree.

The CHAIRMAN. Your suggestion is that a committee might be appointed by the Board of Mediation so that the Board of Mediation would not have the direct responsibility of having to decide who should vote, since the Board itself is later to act upon that vote?

Mr. WINSLOW. So far as the classification goes. Then the Board of Mediation, under the very provisions of this act, could go in and check up, and with the authority of the Government behind it, through such provisions as are in the act it could do what it pleased about checking up with the carrier or with the labor organization; and then, once checked up, any mediation which would go on thereafter would recognize the representatives which had been so selected by the employees. That would be simple and direct, and would not change much of anything in the law.

The CHAIRMAN. Is there any other power of decision regarding the Board of Mediation that you want to comment on in this bill?

Mr. WINSLOW. You are going to the Board of Mediation?

The CHAIRMAN. You were speaking of that. You said the Board of Mediation, you thought, should not be given that power of decision.

Mr. WINSLOW. At the moment I don't think of any other decision that has been provided for.

The CHAIRMAN. Before you take up another subject, I want to ask you this. What has been the record of the Board of Mediation in the settlement of disputes? Have you got that data? Can you give us in round figures something of the percentage?

Mr. WINSLOW. I am sorry, but I am not even able to do that.

The CHAIRMAN. Have they been able to settle a majority of the cases before them?

Mr. WINSLOW. I am not trying to get around it, Mr. Chairman; I am trying to consider how I ought to answer it.

Our work is exactly and entirely one of settling cases. It is a question of disposing of them under the provisions of law which lay out a program for us. Now, if we were to include in the answer to your inquiry, I would say that the Board of Mediation had done its duty and had gone through the steps in the very great majority of the cases that come before it, but that doesn't mean that they were settled by the Board of Mediation, or necessarily anybody else.

The CHAIRMAN. Of course, you mediate in some cases that have not really yet come to the point of an open break, do you not?

Mr. WINSLOW. Well, that is our idea altogether, that we are preventive medicine, so to speak, that we try to stop it. In fact, when it comes to the point where a break appears to be imminent, we have virtually disappeared from the picture and that is taken up under other provisions.

The CHAIRMAN. What do you consider the weaknesses of the present law?

Mr. WINSLOW. I think there are two outstanding ones which ought to be remedied, and remedied definitely and clearly. One is anything pertaining to the right of establishing the right of representation, and the other one is the question of getting an arrangement for the operation of adjustment boards, so that you will get decisions. And by that I mean decisions. The failure of adjustment boards to decide has bedeviled this work from our point of view more than all other agencies put together, and they have spraed out in various directions. It is not simply a matter of not deciding something, but there are various other ramifications that I could go into at length.

As a matter of fact, Mr. Chairman, I believe that if this Railroad Labor Act as it stands were modified in two principal directions, the question of representation and adjustment boards, aside from refinements of one sort or another, there virtually would be no need to do anything, because I think a lot of the trouble which we have been having would be obviated immediately if representation and adjustment board decisions were established and made certain.

The CHAIRMAN. This bill proposes 3 members instead of 5. What do you think of that provision of the bill?

Mr. WINSLOW. I think that if the adjustment-board work contemplated is done, it is a perfectly good number.

The CHAIRMAN. You think three would be sufficient?

Mr. WINSLOW. Yes; I would think so. It is a little embarrassing for me to pass on that, but my judgment is that that would be enough.

The CHAIRMAN. Would you discuss for us your views of the so-called "national adjustment boards" provided for in this bill?

Mr. WINSLOW. I think, Mr. Chairman, you ask me to do something that I feel the least qualified to do. The operations of adjustment boards are merely hearsay, so far as our Board goes. We take what they do or do not do and then go on, with no contact whatever with them in the process of their operations.

The provision in the present act for adjustment boards is in practice about as near a fool provision as anything could possibly be. [Laughter.] I mean this—that on the face of it they shall, by agreement, do so and so. Well, you can do pretty nearly anything by agreement, but how can you get them to agree? No way has yet been found, where difficulties have come up. But the curious part is that they can work entirely within the provisions of law and never agree, so you never get an adjustment board. Side A, for instance, wants a system board. Side B wants a regional board, to illustrate. And they are both subscribing to that provision of law; they both want boards; they are broken-hearted to think that they can't get them [laughter], but they never will agree on the board. So what good is it? It is utterly impractical and absolutely a mess. But if you get something in there of one sort of a board or another which will be so constituted that it can decide something, then they won't have that difficulty.

The CHAIRMAN. In other words, you think there must be some compulsory system to actually create boards that can arrive at a decision?

Mr. WINSLOW. Not only can but must.

The CHAIRMAN. I should have said "must"; yes.

Mr. WINSLOW. I don't mean to be critical, but I want to get the idea across.

The CHAIRMAN. Yes; I see it.

Mr. WINSLOW. And I think the same provisions, in effect, not necessarily exactly, should characterize the work of all boards other than the national or regional, which may be determined on, down to a system board. If you don't do that, you have got the same old mess. They don't decide anything, and up they come to the board of mediation again, and they haven't taken care of those questions.

My thought is that it might be very well, and probably the best thing to set up your regional or national, as it may be determined, and then allow for any other kind of a board which the employees and the railroads could agree upon. But I wouldn't let them go wild with that. I wouldn't trust either of them. [Laughter.] I am speaking now to my friends, I want you to understand, regardless of class. This is Uncle George to his nephew here. [Laughter.] I wouldn't trust either of them. There are a thousand and one reasons why they have to play their game and play their hand with the cards they have, of course. I don't blame them a bit for that, but if they are going to be allowed the privilege of having boards other than the big system boards which are contemplated, there ought to be a provision which would make sure that any deadlock cases before what we will call "subordinate" or smaller, side boards, would still be settled somewhere, and that might be done by a neutral on every board in the country, but that will be pretty expensive and probably unnecessary. But if there were a provision allowing these boards to function in an off-hand kind of way, that will be well enough, but I think there ought

to be a provision which would make it necessary so that all deadlock cases in, shall I say, the second-rate class of boards—the second class of boards—should be referred up to an appropriate subboard of the national or the regional.

The CHAIRMAN. There would be some superior board that would have the power and would be compelled to exercise that power in deciding cases?

Mr. WINSLOW. For instance, railroad A and employee no. 1. They have a deadlock case. As it is now we don't have any means for breaking the deadlock but it would have to come over to the board, and would under this proposed law. I would say that if they deadlock there, that deadlock case must be referred to the appropriate high "cockalorum" board which might be established. So then you will get a decision on everything

The CHAIRMAN. Now, I have asked you a good many questions. I ought to let you go ahead with things you want to discuss.

Mr. WINSLOW. Well, I haven't started, but I will rush over them. I am very glad to answer questions.

You want to bear in mind that the Railroad Labor Act as it is now and as it is contemplated, in the main is based on voluntary conclusions reached by the parties in interest. I think, to repeat, that that is why it succeeded, because it has been worked on that plan and there has been nobody in the mediation work to tell them that they must do this or they must do that, and there are features in the law which made it a little troublesome but not very serious after all.

We have had a lot of trouble—or rather, the undertaking has had trouble—because of the arbitration feature. The law says they shall, and then they say "never mind, if you don't it is all right all the same." And some of them do and more of them don't, and when you are all through you don't get many arbitrations. I think if you had this adjustment board working, however, with decisions assured, there would not be anything like the refusals to arbitrate which we get now, because those matters would be out of the picture.

I will hit on these ideas as they come. I will have to do it in a hit-or-miss way, Mr. Chairman. In the bill which is before you there is a set-up for a national board with subboards. I think probably the idea of the operation of the board in the consideration of cases is clear enough, but there is one line which appeals to anyone who has to operate under this law. There is not much attention paid to the right of contracting bills or the authority to pay them, who shall pay them, the establishment of a fund for paying them. There is no evidence or provision for determining, for instance, who would hire quarters if they had to be hired in Chicago, and so on. So I would make the general suggestion, that the bill be combed pretty carefully to make sure that wherever an expense is provided for in words, there also be a provision to see who will take care of it and who has the responsibility, and so forth, all the way through, wherever that occurs.

There is another matter which could not be well discussed, I think, in a short time. I am not at all sure about any unanimity of opinion on it, either, on the part of the two sides in these labor matters. I do think that the whole situation will be relieved if a way could be found to define crafts. There are several references to crafts in this new bill, and yet, as I have been looking it over, I have not been able to find what is in one craft and what is in another, and no way of

establishing them. If they were established it would affect the question of selection of representatives. It would affect the work of the adjustment boards many times, and I think it would help any arbitrators who got on cases involving that carrier. And taken all in all, I think it would do more to overcome what, to my mind—and I am speaking right out in meeting—what to my mind is a most unfortunate situation in the labor side of this business.

I am referring to these jurisdictional disputes. They are sticky things any way you go at them. Anyone that has anything to do with those jurisdictional disputes ought to wear gloves, I think, whether they are in the dispute or outside of it. But I speak as an outsider. There is neither head nor tail to a lot of these questions which come up involving this jurisdictional matter. I take it perhaps it cannot be otherwise, as things are going, and I would not complain or find fault with anybody who finds himself in that position, but a good many organizations are finding themselves in that position, and of course, there is an enmity within the brotherhoods which ought not to be.

Now, whether or not it is the job of the Government to undertake to do something to straighten out this jurisdictional matter I don't know, but I do know it is mighty hard for the men who are at the head of those organizations, who are mighty able, conscientious men, trying to do the right thing all down the line. It is equally hard for the men who run the business of the railroads when they want to make contracts and this and that and the other. They think they have got a contract made with everybody, every craft that ought to go in, only to wake up some morning and find that a case has been brought against them because they recognized somebody or did not recognize somebody. It may work either way. I do think that that craft business if it could be fixed would be a very helpful thing.

The CHAIRMAN. Have you any suggestion as to how it can be done?

Mr. WINSLOW. No, sir; it is too complicated for me to tackle right off the reel, but I would not mind studying it if I had any occasion to.

The CHAIRMAN. Do you think some provision of law might well be inserted authorizing the creation of a sort of joint committee between the railroads and the men for craft division, to be approved by the board?

Mr. WINSLOW. Well, as long as we are having a free discussion and I am confessing here, I will tackle that one, too—no; I don't think so. I want to say why.

The CHAIRMAN. Well, I am only thinking out loud now.

Mr. WINSLOW. You are helping me more than you realize, because I find out what the doubt is in some other fellow's mind. I might get smug with my own ideas if I didn't get checked up once in a while.

Here is the trouble. This law was created by representatives of the majority of the great carriers of the country and the great mass of labor organizations of the country. It was predicated on an agreement to do the same thing by everybody. The spirit of the law was made as important as the letter, and in many cases on the testimony of witnesses it would seem to be more so. They did get that law over, and if I am not in error, when they brought that to the Congress of the United States they simply said: "This is where we are. We have agreed so far. We believe this is worth trying." They

didn't guarantee 100 percent but they indicated they were coming nearer to it than ever before, and everybody believed them and they said to Congress: "Now this is very general but we hope it is right. Don't change that law, because the Lord knows where you will go if you change a word in any provision of it. You may get mixed up over it." So Congress—I speak with devotion to congressional recollection—Congress took their word for it, for once, and put a bill through without any changes. The whole onus of carrying this law out in the spirit as well as the letter was just dumped into the laps of labor and the railroads at their own request, and if they didn't like it it was nobody's fault but their own.

The CHAIRMAN. They said that before the committee.

Mr. WINSLOW. They said that, and more than that. I am very much within bounds in what I have said. However, that was a splendid, altruistic idea which has worked out in practice, I think, better than one would suppose. I would like to see that idea go on.

Mr. Eastman, I think, said the other day that some part of his recommendation was an experiment worth the while. I think this whole business of peace on earth, good will to men, and brotherly love, which these men speak about every time they write a letter one to the other, ought to be continued and encouraged by Congress and all the people in the country. They have made a splendid start on this thing and they have overcome in 7 or 8 years the bulk of the mess that they had for 40 years. On their own representation now why not push them along and give them further chance. So I say don't force one of these penalty things on them, but I haven't any objection at all to staying here and getting you to stay here, or anybody else who will, to help these fellows get together on this thing and see if you can't work that out. I think they can work it out. I think the organization, if they will cut off some of this extreme jurisdictional ambition, I will say, could work that thing out, and if they got to that point where where they could, I think they would work it out with the carriers. I don't imagine that the carriers care particularly what the tag is on their employees, just so they will know what it is and where it is. It is a very troublesome question.

The CHAIRMAN. Your idea then would be to allow them to work this out without any compulsory decision on the part of a third party?

Mr. WINSLOW. I would not feel that, for my part, I had enough wisdom or insight into the details of development to make a suggestion to a committee of Congress for a law.

The CHAIRMAN. Well, you have had a good deal of experience in Congress.

Mr. WINSLOW. That is one of the reasons why I don't want to muss into anything without knowing something about it.

The CHAIRMAN. You had a good many helpful suggestions in the days when you were working on this matter.

Mr. WINSLOW. Well, that is all right, too.

Senator THOMPSON. I would just like to ask you a question, Mr. Winslow. I don't know whether I got the full force of your remarks. If I did, it was this: That you feel that the railroads and the laborers should have further time or they should present to Congress a bill?

Mr. WINSLOW. No; I didn't mean that. My purpose is to get into the heads of both of them the idea that we believe they have done a fine work in coming together and working in harmony for the same

end, and they have done so much that way that we feel encouraged to put up the next thing that comes and let them do that.

This business of crafts, to my mind, ought not to become a subject for congressional action unless in a great extreme. I think it is a family affair that can be worked out, and I appreciate the fact that I have been dragging the thing in, but as long as it came up I thought I would go on with it.

I notice that there was some reference made somewhere about having various other industrial interests brought into this labor act, such as aircraft and automobile business, pipe lines, telegraph and telephone. Do you care to hear a word about that or not?

The CHAIRMAN. The only one that has been suggested here in the hearings has been the telegraph.

Mr. WINSLOW. Well, we have had the aircraft and the automobile business worrying the life out of us. But I will boil it down.

My own thought is that this bill, for the purposes of this bill, whether for tomorrow or for a considerable time in the future, ought to be with regard to the interests of railroads and nothing else. If the other transportation agencies which work on wheels more or less would be taken in, I think the subject would be one for particular study and not be simply dumped on to this law. That takes care of that one.

Now, I have a few things here, Mr. Chairman—not many. There appeared in a draft presented by the carriers for an adjustment board idea, as I got it, and have it in mind, that no definite number of members of these subboards, or perhaps general boards, should be established by law. That doesn't hit me right at all, particularly as in that agreement, as I read it, it says the number shall be fixed by agreement, and when you do that you just put it in the same slough of despond that it raises something that I won't mention with the present provision, where it has to be done by agreement, and they never agree. I can see some force, however, in providing an opportunity for people, as a matter of expense or what not, to have a different number from what might be said in the law, so my way of going at that would be to fix the number in the law and then provide that by agreement they can have some other number. That will be all right because they have to go back to something; they don't stop the works.

You asked me about the relative merits of regional boards and the national board. All I have said about it, as I remember it, is that we haven't had any chance to know just how those boards operate. We simply know the results or the failure of results. So that any impression that would come from me would have to be most general and almost of the same value as the views of a layman.

In all this work it is necessary to "have a heart", as the saying goes nowadays. I think any system which will bring an undue financial burden on anybody involved, the Government included, should be held up in consideration, with a view to determining whether it is worth the while.

So that one point I would have in mind as a consideration would be, perhaps not the main one, the question of the ability of everybody who might be involved in the expense of one system or another, to meet it.

As I get the matter of the provisions, the national board would mean four separate boards; the other would mean four regional boards, and each one of those would have four boards, which would mean 16 boards. Now, those jobs are not done at no cost. They are mighty expensive, and I think that ought to be taken into consideration.

The question of a national board is one which has been discussed, I think, for many a day. It is a very difficult thing to determine—at least, for me. I do notice, however, that when we get into the mediation of cases, frequently, it very frequently happens that the contention of one side or both falls on the practice in the immediate locality, or even down to the particular branch of a particular railroad. The employees are not slow at all in claiming an advantage, claiming a point, based on the fact that it is peculiar to this railroad. Those same representatives of employees will go over here and they will work against that same practice that was down here, on the ground that here is a different practice and that practice ought to prevail up here. That leads me to think that the locality of consideration and a knowledge of the local concern is something that ought to be taken into account.

A national board would seem to me to be more academic, more judicial, perhaps, than otherwise, and I think the national board would have more trouble in handling all the cases which came from everywhere than the local boards or the regional board would have in handling the same number of cases.

Then again, with the Board set up on the numbers that have been provided here, even with the subdivisions or the investigating committees of two, you will have, if you get all the grievances that we have known about and heard about, and those which we hever hear about, there will be some little job there for a national board to handle and get rid of them in the same generation; and I am rather inclined to think that, as long as they are always hollering to have prompt consideration, it will be a pity to enact a law if by virtue of that enactment you have contributed to delay rather than to progress, and I think it is an important matter for your consideration.

I do not feel competent to go very much beyond that in those particular points.

Senator THOMPSON. Did you in your answer commit yourself as between national boards and regional boards?

Mr. WINSLOW. As between the two?

Senator THOMPSON. I say did you by your answer? I thought you hinted that way, but I didn't think you went across.

Mr. WINSLOW. I think you are jutified in having that idea. I think I did myself. [Laughter.] But I haven't any personal lack of courage in tackling that matter, Senator, but I am wondering if as a mediator dealing with these people that have differences of opnion, I ought to go that far away from what I have been talking about, as to come down here with a positive conviction.

Senator THOMPSON. I withdraw the question.

Mr. WINSLOW. It is all right with me, only I want you to appreciate why I don't feel like answering it.

Senator THOMPSON. I withdraw it.

Mr. WINSLOW. I want to be always a mediator, even on this occasion.

Senator THOMPSON. That is right.

The CHAIRMAN. Are there any other questions by the members of the committee?

I would like to hear more from you, Mr. Winslow, but we want to hear Mr. Eastman this morning.

Mr. WINSLOW. I would like to have just one more little word, Senator, very brief. I feel the embarrassment of it, but nevertheless I am supposed to speak about it.

This bill before the committee provides for changing the name of the board, instead of wiping one out and setting up another. That has been done in years past but it has been done naturally because they have different lines of legislation. Here is a board that has been 7½ years functioning. It has come to be known all over the country by those who deal with it, and some others, as a board of mediation. It has established precedents. It has a record of judgments in cases, and everybody knows what they are, and it would seem to me that it would be much better to have that board continued. Reduce the number if you please. That is well and good. That is all right. But have the board continued so that it can have the advantage, for purposes of efficiency in the future, of all the good things that it has established, and all the bad ones can be changed from time to time, as they have been in the past from time to time, no matter what the board is.

That doesn't make any difference, but to wipe one out when it has a good record and everything is serene about it and change it over, would seem to me—and now, I would like to have you feel that I have breadth of mind enough to get out of the personal aspect of it—it would seem to me to be a reflection on the quality of that work and the success of it with the employees and with the carriers. I observe that when the employees filed bills, one bearing your honorable name and the other that of Mr. Crosser in the House, they didn't make any suggestion of change in that Board, and I presume they didn't want to run the risk of having it start new with a new broom and do great things on the first day the new board would come in. They probably didn't want that. I notice that the carriers in the submission they made to you, likewise favored the retention of the Board. Now, I think a new board under the new name can do just as good a job as the old board, as far as make-up goes, but they start without a single record. We have built up records; we have built up minutes and our own regulations, our cases are known by number and by character all over this country. Now, those things have all got to go off into a storehouse for a while, and then be brought out one at a time, and for my part I don't see any good in it. If the idea is to continue the old board without breaking up that part of it, the only necessary change in the law would be to make the necessary correction of title of the Board through the law, plus a reduction from 5 to 3 plus a change in the date of the expiration of the present terms, which ought to be in Feburary instead of January, which is made necessary by the fact that Congress doesn't come together until January, and it might leave a vacancy in the Board. You all know that perfectly well.

That is all I will say, unless there are some questions I can answer.

The CHAIRMAN. The presentation you have given us has been very helpful, Mr. Winslow. I would like to ask you several more questions

but I want to hear Mr. Eastman this morning. For that reason, if there are no other questions you will be excused. Thank you very much.

Senator NEELY. Mr. Chairman, before Mr. Eastman begins, if Mr. Frankland, who testified yesterday, is present I should like to call him for just a few questions.

The CHAIRMAN. Is Mr. Frankland, who testified yesterday, here? Will you come forward, Mr. Frankland? Senator Neely wants to ask you some questions.

STATEMENT OF WALTER FRANKLAND—Resumed

Senator NEELY. Mr. Frankland, yesterday you indicated that you felt some resentment toward the standard brotherhoods, and you stated that that was because the brotherhoods had ordered a strike in 1922?

Mr. FRANKLAND. That was my own thought; not speaking for the men I represent.

Senator NEELY. How did the condition arise whereby that strike was called at that time?

Mr. FRANKLAND. In other words, Senator, you mean how would the condition arise in order to call the strike?

Senator NEELY. Yes.

Mr. FRANKLAND. I have no knowledge of that whatsoever.

Senator NEELY. Wasn't the question submitted to a vote of the employees?

Mr. FRANKLAND. It was not submitted to me.

Senator NEELY. Didn't you have an opportunity to vote on it?

Mr. FRANKLAND. I was never given a ballot nor did I ever see a ballot.

Senator NEELY. You didn't have an opportunity to vote on it?

Mr. FRANKLAND. No, sir.

Senator NEELY. That is all.

The CHAIRMAN. Now, Mr. Eastman, you appeared before the committee at the opening of the hearing, and I have asked you to come back and discuss some of the proposals.

Before Mr. Eastman testifies, is there anyone here this morning, anyone else who wishes to be heard at these hearings? I would like to know.

Mr. HARRISON. Mr. Chairman, if you have some time left, I would like to be heard, to answer a few questions that developed, that have been developed in the hearing, but if there is not time available I would like to have the privilege of filing a written statement in answer to the questions.

The CHAIRMAN. That may be done. Is there anyone else?

Mr. C. J. McGRAPH, general counsel of the Brotherhood of Railroad Trainmen. Mr. Chairman, notwithstanding that Mr. Harrison may have an opportunity to make a verbal statement, we would like to be assured that if we feel the conditions warrant it, we may have an opportunity to file a written statement for the purposes of the record.

The CHAIRMAN. That will be accepted and printed in the record. You may proceed, Mr. Eastman.

STATEMENT OF JOSEPH B. EASTMAN, FEDERAL COORDINATOR OF TRANSPORTATION—Resumed

Mr. EASTMAN. Mr. Chairman, I have been over the testimony at these hearings, which you have been kind enough to send me, and have endeavored to consider all of the amendments to the bill which have been presented. I have a written statement here which discusses those amendments in a concise way. I understand that you wish to hurry along this morning, and if I may have the privilege of having the entire statement copied in the record, I shall confine my reading to comments which seem to me to be of particular importance.

The CHAIRMAN. You may go ahead with your statement, and what you do not present before we have to adjourn this morning, we will print at the close of your testimony.

Mr EASTMAN. I shall discuss, first, the amendments to S. 3266 which have been proposed by the railroads

Section 1, paragraph first: The railroads wish to strike out the words "any company" in line 10 of page 1. This amendment would confine the bill to the employees of express companies, sleeping-car companies, and railroads. It would eliminate companies, like refrigerator-car companies, which operate facilities or furnish service forming a part of railroad transportation Most of the illustrations given by Mr. Clement to support his objections to the words "any company" relate to construction work. The language in the bill would not cover outside companies engaged in such work for the railroads, as I read it. He is right in believing that it would cover trucking companies performing terminal service for the railroads. However, he approves of the wording of the present act, and that includes "other transportation facilities used by or operated in connection with any such carrier by railroads". It is plainly broad enough to cover terminal trucking.

The CHAIRMAN. As I recall it, he claimed that it would affect their building of bridges and affect their contracts for all kinds of work. Is that your understanding of the definition?

Mr. EASTMAN. Well, as I read the definition in the bill, as I have said here, I do not think it would cover such construction work. However, I am about to propose an amendment.

While I believe that the railroad objections are largely without basis, the chairman has made a valid criticism of the definition of "carrier" now in the bill, because it requires reference to another act. I can also see difficulties in bringing in trucking operations and certain other operations performed for railroads by outside companies, because of possible conflicts with N.R.A. codes. It is difficult to know just where to draw the line. I am inclined to believe that for the present it would be well not to go beyond carriers and their subsidiaries engaged in transportation. So changed, the definition would read:

> The term "carrier" includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad.

That, I may say, is some of the language in the Interstate Commerce Act.

The CHAIRMAN. Is there some difference, however? Isn't this reference here to parent, subsidiary, and affiliated, new?

Mr. EASTMAN. Yes. I am confining this now to the railroad subsidiaries because of the possible conflict with N.R.A. codes if we get into the outside field. Going on with that—

and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such carrier.

Now I come to section 1, paragraph 2: The railroads wish to amend lines 13 to 14 on page 2 so that the term "Adjustment Board" would mean any one of the boards of adjustment provided for in this act, instead of the National Board of Adjustment alone. While the bill does not prevent the setting up of regional or system boards of adjustment, the only board which it creates is the National Board of Adjustment, and the proposed amendment would lead to nothing but confusion, unless section 3 were changed as the railroads propose. As I do not favor the latter change, I oppose this amendment on page 2.

Section 1, paragraph 6: The railroads wish to amend the definition of "representative" by adding in line 23 of page 3 the words "severally or collectively". They say that it will "afford equal opportunity to every employee, collectively or individually."

This amendment must be read in connection with other proposed changes, hereinafter noted, which introduce the words "groups of employees". These changes would lead to all manner of confusion, controversy, and internal strife among employees.

The theory of collective bargaining is that employees cannot deal on equal terms with the employer unless they organize. They must deal collectively rather than individually. They may subdivide into crafts or classes, if desired, but whether the organization represents all of the employees or a craft or class, it should be set up by the majority, just as our National Government is set up, or a State or municipal government. Recently the idea has emerged, and apparently it is the idea behind these railroad amendments, that organizations representing the minority as well as the majority ought to be recognized. In any class or craft, therefore, part of the employees might be represented by a national union, if this idea prevailed, part by a company union and still another part by a communist organization.

This idea, in my judgment, is based on the principle "united we stand, divided we fall". It can only cause trouble and confusion. The minority ought to have every opportunity to air their views. As one who has dissented frequently in the past, I am strong for that; but yet I believe in the rule of the majority. Government cannot be subdivided into factions—and the labor union is really a form of government. Any class or craft of employees cannot deal effectively in parts with an employer. Our Civil War was fought over a similar issue, and I see no good reason for encouraging the theory of secession in labor organization. If the majority of the employees want to have a company union, that ought to be the representative organization, and I do not favor compelling the company to deal also with a national union representing a minority. The same principle applies when the situation is reversed.

The words which the railroads propose to insert in line 23 ought not to be inserted.

The CHAIRMAN. You heard Mr. Winslow this morning discussing this question of who should be allowed to vote?

Mr. EASTMAN. Yes.

The CHAIRMAN. I suppose you have not covered that in this statement, have you?

Mr. EASTMAN. No; I have not.

The CHAIRMAN. I wonder if you could give us your ideas on that.

Mr. EASTMAN. I think that if the Mediation Board feels that that is an issue that it ought to decide, that some such plan as Colonel Winslow has suggested might be desirable. I am not sure that the particular plan which he has suggested is the best. I have not given much thought to that. I have no doubt that some plan can be devised to take care of that. It might be taken care of on the principle of arbitration, having each of the conflicting elements appoint a representative and then let them agree upon a neutral to decide it, or have the Mediation Board appoint a neutral.

The CHAIRMAN. And let that committee decide?

Mr. EASTMAN. Yes. I think that thing can be worked out. I pass to section 2, the opening paragraph. The carriers wish to amend the third stated purpose of the act by adding words in line 14 of page 4 so that, instead of reading "the matter of self-organization to carry out the purposes of this act", it will read "the matter and methods of self-organization, collective bargaining, and adjustment of disputes and grievances to carry out the purposes of this act." The change is supposed to be for clarification. It seems to me to introduce merely unnecessary verbiage. I can see no good reason for it.

Section 2, paragraph 2: This paragraph, on page 5, is an exact reproduction of a paragraph now in the Railway Labor Act. The railroads propose to amend it by reference to groups of employees. I am opposed to such amendment for the reasons already stated.

Section 2, paragraph 3: This paragraph, on page 5, now provides that "representatives, for the purpose of this act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other". The present Railway Labor Act contains substantially the same provision, and the words "interference, influence, or coercion" were interpreted by the Supreme Court in *Texas & New Orleans Railroad Co.* v. *Railway Clerks* (281 U.S. 548, 568). The court said that "interference" with freedom of action and "coercion" refer to well understood concepts of the law. In other words, the cause, no doubt. It went on to say—and I am now going to read you the definition of the word "influence" becaue I think it is important:

> The meaning of the word "influence" in this clause may be gathered from the context. *Noscitur-a sociis*, *Virginia* v. *Tennessee* (148 U.S. 503, 519). The use of the word is not to be taken as interdicting the normal relations and innocent communications which are a part of all friendly intercourse, albeit between employer and employee. "Influence" in this context plainly means pressure, the use of the authority or power of either party to induce action by the other in derogation of what the statute calls "self-organization". The phrase covers the abuse of relation or opportunity so as to corrupt or override the will, and it is no more difficult to appraise conduct of this sort in connection with the selection of representatives for the purposes of this act than in relation to well-known applications of law with respect to fraud, duress, and undue influence.

The only word of any uncertainty, therefore, namely the word "influence", has been interpreted by the Supreme Court in terms which admit of no misunderstanding. The railroads now propose to qualify this word by adding the adjective "dominating". If this addition is intended, as they suggest, to make no change in the meaning given to the word "influence" by the Supreme Court, what possible reason can there be for the addition? It would be argued to the court, and with much force, that Congress must have intended some change in meaning, for otherwise it would not have added the qualifying adjective.

I may say here that Mr. Clement testified that no change in the meaning of the Supreme Court was intended. The fact that he so testified would not deter a lawyer one minute from making the claim in court that something was intended by that word "dominating". I think all the lawyers here know that.

The CHAIRMAN. It would not deter the Court from deciding that Congress intended something more than Mr. Clements said either.

Mr. EASTMAN. No; what Mr. Clements said would have no bearing on it whatsoever. It would not even be admissible.

The CHAIRMAN. The courts have repeatedly said that we must take words in their natural meaning.

Mr. EASTMAN. Yes. The word "dominating" would require further interpretation. It is submitted that the Supreme Court has already given a meaning to the word "influence" which is in all conscience sufficiently narrow and restricted, and that no occasion exists for limiting it further.

The railroads go further and propose to extend the prohibition against interference, influence, or coercion by either party over the designation of representatives by the other to any "person, or organization or corporation, or his or its officers or agents." The purported reason for this change is "to place the same responsibility upon organizations as upon management, in keeping with the general trend of the time." The fact is that the bill now imposes the same responsibility upon the men as upon the managers. The purpose is to protect collective bargaining, so that the two parties will meet on equal terms and neither party will be in any way on both sides of the trade. As the Supreme Court said in the case just cited, "collective action would be a mockery if representation were made futile by interferences with freedom of choice."

The managements must not interfere with the selection of representatives by the employees, and the employees must not interfere with the selection of representatives by the managements. The bill so provides. It does not spell out or penalize the prohibition to the same extent for the employees as for the companies, because the danger of interference by the employees with self-organization of the companies is remote. There can be no objection, however, to supplying this deficiency, if that is thought necessary.

What the railroads now propose, in effect, is to prohibit employees from unduly influencing the organization of their own side.

The CHAIRMAN. That is, they are evidently trying to prevent outside organizers, isn't that the purpose?

Mr. EASTMAN. The influence of employee against employee. What constitutes such undue influence? When employees are dealing with employees, the situation is quite different from what it is when com-

panies are dealing with employees. Companies have power over the means of livelihood of employees, and that is where the danger lies. Advise from a boss may easily become coercion, if the impression is in any way conveyed that failure to follow the advice may threaten the standing of the employee with the company. It is like advice from a man with a six-shooter pointing at your head.

Employees have no such power over each other. When it comes to the organization of employees, it is entirely appropriate and proper that argument and electioneering should be allowed. Contending factions may misrepresent in their arguments, just as Republicans and Democrats do, but each side may be relied upon to expose the misrepresentations of the other.

The CHAIRMAN. You ought not to have left out socialists. [Laughter.]

Mr. EASTMAN. No; I should not.

Upon analysis, the only way in which employees can exert undue influence is by threats, violence, or intimidation. I should suppose that the common law and State statutes afforded a sufficient protection against such undue influence. Before any Federal prohibitions are enacted, need therefor should be shown, and it has not yet been shown.

Section 2, paragraph 4: The point is made that this paragraph, which begins on page 5, is not in the present Railway Labor Act. This is true, but it is based on a principle which is declared in that act, and it is substantially the same as provisions now in the amended Bankruptcy Act and the Emergency Railroad Transportation Act.

Most of the amendments of this paragraph which the railroads propose are similar to amendments of other paragraphs which I have already discussed, and I need only register opposition. In lines 5, 6, and 7 on page 6, however, it is proposed to strike out language prohibiting a carrier from "assisting or contributing to" any labor organization and from "performing any work therefor." The curious situation is presented, therefore, that the railroads are insisting on a right to give financial assistance to labor organizations which the organizations, with the single exception of a company union on the Pennsylvania Railroad, have indicated to you that they do not want. Apparently they fear the Greeks bearing gifts.

The CHAIRMAN. In that connection, you have made some investigation, haven't you, of what are called "company unions" in this country? Have you prepared a report on that?

Mr. EASTMAN. Well, in the first report which I made to the President and Congress in regard to the railroad situation you will find appendix A which gives a summary of the work of the coordinator, and included in there is quite a lengthy description of the investigation of company unions, which lists the conclusions which were reached. If you should look that over and desire further and more detailed information I shall be glad to furnish it. We have any amount of it.

The CHAIRMAN. You mentioned here the company union of the Pennsylvania system.

Mr. EASTMAN. Yes.

The CHAIRMAN. Being the one in which the officers are paid by the railroad, and that evidence is quite full and clear in the hearing, I

wonder if in your investigation you have found other unions that were dominated by railroad influence?

Mr. EASTMAN. Well, in going over the past history of these organizations we found a great many that had been organized with the influence and aid of the railroads, and where they had participated in the formation of the constitution and so on; and also many cases where the railroads were furnishing financial assistance in one form or another to these organizations. All of those conclusions are set forth in that report to which I referred.

The CHAIRMAN. Are the particular organizations set out by name in that report?

Mr. EASTMAN. No; they are not. I may say that that situation has been very materially improved. I made certain suggestions to the railroads, recommendations as to things that they should do, and in the main they have complied with those suggestions—not in all cases.

The CHAIRMAN. What is the status of the Pennsylvania Co., in the light of the present emergency statute? The Pennsylvania Railroad Co. does make these payments, they stated about $150,000.

Mr. EASTMAN. Yes; I think, $300,000 all told.

The CHAIRMAN. Yes; I believe that was the amount.

Mr. EASTMAN. But they do make these payments to the men, and I understand that they defend that by reliance on certain points of law which I mentioned in my first statement. One is that the reference in the Emergency Railroad Transportation Act to the provisions in the bankruptcy act with respect to these company unions did not have the effect of making them apply to all railroads, regardless of whether they were in the hands of the court or not.

The CHAIRMAN. There would not be any question about it in this statute.

Mr. EASTMAN. No; that is one point. And the other point is that the contracts entered into in accordance with the provisions of the Railway Labor Act are protected by a proviso in the emergency act, and that certain contracts exist which do provide for these payments.

Senator HATCH. May I ask, what do you include in the word "company union" when you use that term?

Mr. EASTMAN. I have always used the term to include merely a labor organization which is confined in its membership to a single railroad or railroad system.

Senator HATCH. Whether they receive financial assistance or not, you include those in that term?

Mr. EASTMAN. Yes.

While the proposed amendments would go much further, Mr. Clement laid great stress on the handling of grievances on company time. He says the proposed bill would make this impossible, and that it would add tremendously to the cost of collective bargaining by the employees. I do not understand that the bill would necessarily prevent carriers from allowing employees locally to present their own grievances on company time—a matter of mutual convenience and nothing else. All that is prohibited is "maintaining or assisting or contributing to any labor organization." In other words, the men must bear the expense of representation by any such organization. Quite generally, so far as the standard organizations are concerned, the employees now bear such expense, and they say they

are willing to bear it in all cases. It is appropriate and right that they should bear it, if a proper degree of independence is to be maintained. To the extent that labor organizations depend on gratuities, they lose independence and self esteem.

Section 2, paragraph 6: The railroads propose at the end of line 11 on page 7 to add words in the present act, namely, "and further provided that nothing in this act shall be construed to supersede the provisions (as to conferences) then in effect between the parties." While I do not regard this amendment as important, I do not object to it.

Section 2, paragraph 7: This paragraph, on page 7, relates to the changing of rates of pay, rules, or working conditions. The railroads propose to amend it by adding after the word "employees" in line 14 the words "as a class as embodied in agreements" and to make corresponding changes in the language which follows. The amendment is an improvement, and should be made.

Section 2, paragraph 9: The amendments which the railroads propose in this paragraph, beginning on page 8, are along lines already discussed, and I need register only opposition. The paragraph provides for secret elections, supervised by the Mediation Board, to determine the representatives of employees when the matter is in dispute. Mr. Clement believes it to be "fraught with possibilities of jurisdictional disputes, and trouble to the organizations themselves." On the contrary, I regard a secret ballot properly supervised, as the best possible way of determining what employees want. It is definite and conclusive, and will put an end to strife which would otherwise continue. So far as jurisdictional disputes are concerned, I agree with Colonel Winslow that they are the curse of the labor-union world, and the more they are dragged out into the open and settled, the better.

The CHAIRMAN. This is a point again that we discussed a moment ago, that there probably is need of some method of arriving at some discussion over the dispute.

Mr. EASTMAN. Yes; secret election is the best way, it seems to me.

The CHAIRMAN. That doesn't go to the secret-election question really, it goes rather to determining what men shall vote in certain elections.

Mr. EASTMAN. Yes; that is true.

Section 2, paragraph 10: This is the penalty paragraph, and begins on page 9. So far as the proposed amendments are concerned, they are along lines already discussed, and I need only register opposition. This does not apply, however, to the amendment of the final proviso. In my first appearance before the committee, I favored an amendment of this proviso similar to but more comprehensive than that which the railroads propose.

Mr. Clement is much concerned about this penalty provision, and thinks it would require the presence of attorneys in negotiations between the men and the managements, in order that the railroad officers might have the safeguard of legal advice at all times. There would be no such need.

Statutory prohibitions ought to be enforced, and they can be enforced in only one of two ways either by the process of injunction or by penalties. At bottom, indeed, injunctions are dependent for their force upon penalties for contempt of court. The trouble with injunctions is that it takes too long to obtain them and may be a very expensive process. The Brotherhood of Railway Clerks undertook to

enforce certain provisions of the Railway Labor Act by injunction, and finally won out in the Supreme Court; but the harm had been done and the remedy came too late.

Penalty provisions are often exceedingly useful and desirable. It was found necessary to attach them to various prohibitions of the Interstate Commerce Act, and the results were good. They did more than anything else to stop rebates, for instance. Penalties, and particularly jail penalties, ought not be imposed, however, unless the prohibitions are clear and explicit and easy to obey. But that condition is met here. There is nothing whatever in the prohibitions of the third, fourth, fifth, seventh, and eighth paragraphs of section 2, to which these penalties attach, which need cause any doubt or require legal advice. The only word which might cause difficulty is the word "influence", and that has been interpreted clearly and explicitly by the Supreme Court. Regardless of that interpretation, it is a simple matter for a railroad officer to refrain from influencing employees in any way in their choice of a labor organization. That is all that is involved here.

To abate Mr. Clement's alarm further, he should note that the penalty paragraph contains the word "willful." Experience has shown that it is a difficult matter to secure a conviction with that word in a statute and requires an array of most convincing evidence. If he will read the prohibitions to which they apply, I am sure that he will conclude that he can safely brave the dangers of these penalties without a lawyer constantly at his elbow to give him advice.

In the course of his testimony, Mr. Clement stated that "this penalty clause alone will flood the boards of adjustment out of existence." What he has in mind by this I am at a loss to know. Under the bill these boards have nothing whatever to do with penalties; nor do the penalties in any way discourage the settlement of grievances before they reach the adjustment board.

The CHAIRMAN. Then it is your conclusion that the great handicap which he said this section would cause is not so serious?

Mr. EASTMAN. I don't think so.

The CHAIRMAN. I was wondering when he testified if, without going as far as he suggests, there might be something put in to show the liberal intent of Congress in this matter.

Mr. EASTMAN. You have got the word "willful" in there, and as I say, the Interstate Commerce Commission has had a great deal of experience with enforcing penalties where that word "willfully or knowingly" is in the act, and you have to have a most convincing presentation of evidence to secure conviction with it in there. And furthermore, if I read these provisions correctly they are simple to follow. The only possible word which can cause any difficulty is "influence" and that has already been interpreted by the Supreme Court.

Section 3: The railroads propose a substitute for all of section 3, which provides for a National Board of Adjustment. Before taking up the points of disagreement, it will be well to consider how far there is an agreement. Apparently it is agreed by all that the provision in the present act for boards of adjustment has been ineffective; (1) because the establishment of such boards has not been compulsory, and (2) because there has been no way to prevent deadlocks in those which have been set up. The employees want a National Board of Adjust-

ment, divided into four sections, to be created definitely and certainly; and the railroads, as I understand them, are willing to have 16 regional boards of adjustment set up. Both parties are willing to permit system or other local boards of adjustment to be set up by agreement, so long as the arrangement is otherwise within the terms of the act. Both are willing to have neutral members appointed, and by the Mediation Board if necessary, in order to prevent deadlocks.

If you should favor the regional board plan, the substitute section 3 submitted by the railroads should, in my opinion, be entirely redrafted. As they have presented it, I doubt whether the creation of the proposed regional boards could be enforced. The only possible method of enforcement would be by injunction, and the railroads' draft contains so many uncertainties, dependent upon agreement, that I do not believe that a court could find a firm basis for an injunction. I shall be glad, if it is desired, to submit a draft designed to make the creation of regional boards definite and certain, and also enforcible.

While I have had, as I have indicated, some doubts in regard to the practicability of a National Board of Adjustment, the arguments of the railroads tend to dissipate those doubts rather than to strengthen them. Mr. Clement attempts to show that national boards have failed in the past, but the showing which he makes on this point seems weak to me. He stresses the fact that at the time of its dissolution the Railroad Labor Board turned back some 500 cases unsettled. He omits to mention the fact that the total number of disputes referred to the Board from April 15, 1920, to and including December 31, 1925, was 13,941 and that it disposed of 12,447. The fact that 494 were unsettled on the latter date is by no means a bad record, considering the great variety of such disputes and the troublous character of the last few months of the Board's existence.

Mr. Clement also criticizes the record of the national adjustment boards which operated during the period of Federal control, and says that when they were abolished more than a year after the termination of Federal control, they still had 513 cases on hand undecided. The significant period in the history of these boards is the period of Federal control. After that time they remained in existence for more than a year, but legal questions arose as to the character of the cases over which their jurisdiction extended, and they were hampered in their work by the uncooperative attitude of the private railroad managements. I have taken April 7, 1920, as a convenient date shortly following the termination of Federal control. Between the time of its creation and that date, 2,089 disputes were referred to board no. 1 and it disposed of 1,944, leaving only 145 unsettled. To board no. 2, one thousand five hundred and forty-seven disputes were referred, and it disposed of 1,276, leaving 271 undecided. To board no. 3 630 disputes were referred, and it disposed of 533, leaving 97 undecided. At any given date, of course, a tribunal to which disputes are referred will have on its docket a number of undecided cases. The records of these boards during the period of Federal control were good. After that period, they labored under serious handicaps.

The plan of regional boards, plus possible system boards, which the railroads advocate would be complex and expensive. There

would be at least 16 regional boards for the railroads and labor organizations to maintain jointly, and an indefinite number of system boards. The Mediation Board would be called upon to supply from time to time an indefinite but certainly very large number of neutral members. Under the plan proposed in S. 3266, one National Board of Adjustment, in four sections, would take the place of these 16 regional boards, and the expenses of that National Board, outside of the compensation of the members appointed by the two parties, respectively, would all be borne by the Government.

Throughout Mr. Clement's testimony he rests his objections to a National Board of Adjustment chiefly on solicitude for the welfare of the men. He fears that various crafts will not be represented, that their pride will be injured, and that jealousies will be aroused. He foresees long delays in the settlement of grievances. He does not wish to jeopardize the rights of the men. He indicates that grievances ought to be settled by local or system boards. However, it appears that the employees are not impressed by these fears, and that they are quite willing to run the risks. The only labor organization which has voiced any objection to the creation of a national board is a company union on the Pennsylvania Railroad, a large part of the expenses of which are being met by that railroad.

So far as I can see, the objections which Mr. Clement makes to a national board apply also to regional boards. It is quite evident that he has no heart for the latter. He is willing that they should be established, but only as an expedient to satisfy in part the demand for a national board. What he really wants is to deal locally and paternally with grievances without disturbing elements disassociated from the pay of his company. He wants his employees to be a happy family, but with the management cast in the role of father. If his attitude is typical, it is plain that even regional boards of adjustment would be regarded by the managements in the light of a necessary nuisance, and would be carried on by them without zeal of sympathy.

That being the situation, I regard the National Board of Adjustment as distinctly a more promising experiment. The dangers of overloading such a board would be perfectly clear, both to managements and men, which would be much less true of regional boards. The creation of such a national board as the final arbiter would tend to emphasize the need for disposing of all but the most serious grievances by local adjustment. It would set a premium on such adjustment, because it would be obvious that nothing else would work. The employees would have the best of reasons for desiring to see the national board succeed, because it is what they want and advocate. They would have no such disposition toward regional boards. The managements are not much better disposed toward regional boards than toward a national board; but if lack of cooperation of their part should be responsible for failure, this fact would stand out more clearly if a national board were established. I believe that they are wise enough to perceive that fact.

Moreover, the trend of the times, to which Mr. Clement has referred in his testimony, is in favor of coordination, and a national board would be the best possible coordinating agency. I feel sure that such a board could establish a consistency and degree of uniformity in its decisions which would soon tend to reduce very materially the number of disputes which could not be settled locally. I regard that as a very important point.

For these reasons I disapprove of the substitute for section 3 which the railroads have proposed.

The CHAIRMAN. I want to ask you a question, there. The theory, as I understand, of these national boards, is that if they are in existence and compulsory and their orders are subject to enforcement, it will result in the establishment of the regional boards and the local boards more readily than they are now established; otherwise your national boards will be pretty badly loaded up, will they not?

Mr. EASTMAN. Well, that is a point. I think that either regional boards or a national board could be badly loaded up. And as I indicated in my original testimony, success will be dependent upon how the parties will perform. I think there will be quite as much danger of loading up the regional board as loading up a national board, and on the whole I think there would be more danger, because in the case of the national board that danger is perfectly obvious, and it seems to me that it would set a premium on the local adjustments of disputes and keeping them away from the national board, if the parties want that board to succeed. I don't believe there would be so much likelihood of that in the case of a regional board.

Furthermore, I have the feeling that it is very desirable to have a more uniform settlement of these disputes. These matters that we are now dealing with are grievances. They are not the basic rates of pay or the basic working rules and the interpretation of those rules or grievances which men have, and it doesn't seem to me that it is necessary to have any number of different ways of disposing of those all over the country, and that the national board could soon set certain precedents which would discourage and limit the number of such disputes which would arise, because it would be perfectly clear what the outcome would be if they were preferred to the national board.

Take the questions of discipline, for example. It seems to me that such a national board, if it were wise, ought to make it perfectly clear at the outset that it will not interfere in matters of discipline unless it has an exceedingly good case, and all doubtful cases after it has made that policy clear would not be referred, I assume, to the national board.

The CHAIRMAN. Yesterday, we had suggestion here by representatives of certain independent unions that the number of divisions of the national board should be enlarged. Will you take that up?

Mr. EASTMAN. I am going to discuss that a little later.

Section 5, paragraph 1 (b): The substitute for this paragraph which the railroads propose, in lines 7–9 of page 24, is linked in with their proposed substitute for section 3. As I oppose the latter, I also oppose the change in this paragraph.

Section 6: In line 13 of page 29, the railroads propose to add after the word "change" the words "in agreements." I favor this amendment. They also propose, after the sentence which ends in line 18, to insert a clause taken from the present act in regard to procedure where several changes in rates of pay, rules, or working conditions are proposed at the same time. I do not favor this amendment. The reasons for omitting this clause were given in my original testimony. In addition, I may say that the railroads should be capable or organizing for the handling at the same time of several proposed changes. Such organization should present no difficulties. The labor unions are prepared for such contingencies.

I want to mention the final observations that Mr. Clement made. He concluded his testimony with observations centering around the theme that "any effort to compel a man to join an organization is an affront to civil liberty." With this principle I most heartily agree, and it is a pleasure to have him recognize it so forcefully. He goes on, however, to suggest that throughout S. 3266, "worded in here and worded in there, is a contrary spirit, a spirit or compulsion that men must join certain unions and if they do not join these unions, they are denied representation."

In this latter observation, I am not able to follow him. The first two sections are definitely and certainly built around his own theme that "any effort to compel men to join an organization is an affront to civil liberty." There can be no doubt about that. Nor can anything of the character which he suggests be found in sections 4, 5, 6, and 7. We are left, therefore, to look for this alleged assault on civil liberty in section 3, which provides for a national board of adjustment.

It is quite true that labor representation on this board is confined to organizations which are national in scope. Company unions can have a voice, if they choose to set up a national organization, but otherwise not. However, there are two theories of protecting the interests of employees. One is through organizations national in scope, and the other is through local organizations confined to particular companies. Those who believe in the latter theory are confident that in this way the interests of employees can be protected at lower cost, with less friction and strife, and with better results. A National Board of Adjustment is consistent with one theory and inconsistent with the other. The bill gives full scope for both theories. Such employees as desire to join labor organizations national in scope are given full opportunity to follow out their theory to its logical conclusion. Those who prefer to join local organizations are given a similar opportunity to test out their theory. A National Board of Adjustment is inconsistent with that theory, and they are not required to assume any responsibility for it. They are given every chance to adjust their relations with the individual carriers without interference from the Government or anyone else.

Full freedom of choice is given to all, with the consequence that the results of the rival theories can be put to the test. Mr. Clement is confident that the National Board of Adjustment plan will fail miserably, and that peace and harmony will flow from local adjustments. He should welcome the opportunity to put this thesis to the test of comparative experience. I come now to the amendments proposed by the labor organizations.

Section 1, definitions: On page 3 they propose to insert a new paragraph defining the words "company union." They would define it as a group or association of employees, among other things, "formed at the suggestion, with the aid or under the influence of any carrier or carriers, and so forth." I see no necessity for using the words "company union" in the bill at all, and hence no need for defining them. If I were to give a definition, it would merely be that a "company union" is a labor organization confined to the employees of a single company or system. If the employees want such an organization to represent them, they should have that right, and S. 3266 gives it to them. In fact they may choose any labor organization that they

desire. The vicious thing about many company unions is that they are the product of "interference, influence, or coercion" by the company; but that is definitely prohibited by the bill.

Section 2, paragraph 3: The labor organizations propose a substitute for this paragraph on page 5. It seems to have much the same meaning. I do not object to it, but see no particular reason for the change.

Section 2, paragraphs 4 and 5: The labor organizations propose substitutes for these paragraphs on pages 5 and 6. The essential feature of these substitutes is that they would confine certain of the prohibitions to "company unions." This proposal is vicious, because it strikes at the principle of freedom of choice which the bill is designed to protect. The prohibited practices acquire no virtue by being confined to so-called "standard unions." The proposal goes so far as to condemn and prohibit what has been termed a "yellow-dog contract" when applied to a "company union", but not when applied to any other labor organization. Within recent years, the practice of tying up men's jobs with labor-union membership has crept into the railroad industry which theretofore was singularly clean in this respect. The practice has been largely in connection with company unions but not entirely. If genuine freedom of choice is to be the basis of labor relations under the Railway Labor Act, as it should be, then the yellow-dog contract, and its corollary, the closed shop, and the so-called "percentage contract" have no place in the picture. To make a distinction between company unions and other labor organizations in this respect is absurd. I am opposed to these amendments.

Section 3, paragraph 1 (g): In line 2 of page 13 the labor organizations propose to strike the words "selecting him" and insert "he is to represent." The change is in the interest of clarification and should be made.

Section 3, paragraph 2: The labor organizations propose a substitute for this paragraph on page 20. In my previous testimony I suggested an amendment to this paragraph having the same objective as this substitute. I also mentioned the substitute, which I had seen, and proposed slight changes, in the language. So worded, I do not object to it.

I pass to the amendment suggested by Mr. Todd, representative of certain company unions on the Santa Fe, the Union Pacific, and the Burlington. He proposes an amendment of section 3, paragraph 2, on page 20. The essence of this amendment is to make the provisions of subdivisions (i) to (q), inclusive, of section 3, paragraph 1, applicable to regional or system boards of adjustment voluntarily set up by the parties. These subdivisions include the provision for appointment of a neutral member by the Mediation Board to prevent deadlocks. The Federal Government would thus assume the obligation of selecting and compensating an indefinite number of neutral members for an indefinite number of system boards which may be set up. I do not think it should assume such an obligation. The essence of these arrangements is that they are local and voluntary, and that they operate through the principle of mutual accommodation and good will. It is claimed that they are operating to the satisfaction of all concerned. Certainly the proponents of such system boards have not suggested anything to the contrary. They have not indicated that they need the help of the Federal Government

to save them from deadlocks. I do not think that the Federal Government should be asked to play a part in such local, voluntary arrangements, for it is inconsistent with the theory on which they are formed. If they need neutral arbiters, there are other ways of getting them. Participation of the National Government should be confined to a national plan, or at least should not go beyond a regional plan.

Speaking of other ways of getting neutral arbitrators, I may say that in years past I represented the Boston Elevated Carmens Union, and on several occasions they and other State railway unions in the vicinity have occasion to arbitrate differences with the company. There was no provision of law for such arbitration, as I recall it, and it was necessary for them to agree upon a neutral member. And they always did agree. They had no difficulty in finding a man in the community that both sides were willing to have represent them, and so when you come to a local arrangement of that kind I think there is no difficulty in getting a neutral member to settle deadlocks, if there is any need for such an arrangement.

Mr. Randolph of the Pullman porters wishes to have the words "sleeping-car porters and maids and dining-car employees" inserted in line 11 of page 14 after the words "sleeping-car conductors." I have no objection to this amendment.

Mr. White, for the American Short Line Railroad Association, wishes a proviso added at the end of line 12, page 2, to the effect that sections 2 and 3 of the act shall not apply to "independently owned and operated lines of railroad 100 miles or less in length." I can conceive of no reason why section 2 should not apply to short lines. That section is only a development of provisions now in the Railway Labor Act which apply to all railroads regardless of length, and clearly should so apply.

It is not essential that section 3, which provides for the National Board of Adjustment, should apply to short lines. However, I cannot see any very good reason why it should not apply. The Board would not handle major issues relative to wages, rules, and working conditions. All that it would handle would be minor issues relating to the interpretation of such rules as exist and to grievances of employees under the established rules. If the employees of the short lines are as well satisfied as Mr. White says that they are, there would be no issues for the Board to consider. The act permits and encourages local adjustment of such matters. And if an issue did arise, an interpretation of a rule or a grievance on a short line does not differ in essence from a similar issue on a trunk line.

I find difficulty in comprehending the points made by Mr. Cass for the electric railways. The language in the definition of "carrier" relating to electric railways is exactly what is now in the act. Mr. Cass had a good deal to say about an "adroit" change of the article "a" to the article "the", but this sinister move was in fact a typographical error which I corrected in my first appearance before the committee. He also objects to an amendment which I then suggested, to the effect that the Interstate Commerce Commission shall, "upon request of the Mediation Board or upon complaint of any party interested, * * * determine, after hearing, whether any line operated by electric power falls within the terms of this proviso." Someone has got to determine this fact. In the absence of the

amendment which I suggested, I presume that the duty would fall in the first instance upon the Mediation Board. Ultimately I presume the decision rests with the courts. Why Mr. Cass should feel that it would revolutionize the act to leave the decision to the Interstate Commerce Commission I am at a loss to understand. If it is preferred to leave it to the Mediation Board or to any other body, I certainly shall not object. The commission does not crave the duty. I suggested the amendment because Colonel Winslow thought it would be desirable.

Mr. Frankland and Mr. McConnell, representing independent labor organizations, are outraged because I talked with representatives of the standard unions and of the carriers in regard to the bill, and not with the representatives of their organizations. They call it the "most un-American and unconstitutional method of doing business heard of." As a matter of fact, I did not seek interviews with either the standard organizations or the carriers. They came to see me. The same opportunity was open to the representatives of independent organizations.

Mr. McConnell proposed certain specific amendments. I think that what I have already said to the committee is a sufficient answer to these proposals, with one exception. He desires, apparently, to eliminate any action by the Secretary of Labor under the bill, and to substitute the Mediation Board in such instances. I am indifferent as to this.

The CHAIRMAN. What would be the effect of that, in your judgment?

Mr. EASTMAN. I don't think it is necessary to put the Secretary of Labor in there, except in one case, on the theory that Colonel Winslow voiced this morning that he doesn't want to have the Mediation Board in a position of having to decide any issues between contending parties and the Secretary of Labor is put in at one point in order to certify to him that a certain dispute has merit, before he is called upon to hold an election to determine where the representation lies.

The other instance where the Secretary of Labor is brought in, as I recall it, is if the parties do not appoint members of the adjustment board, then the Secretary of Labor can appoint them. If it is desired to have the Mediation Board appoint them instead, personally I have no objection to that.

The CHAIRMAN. Well, Mr. Winslow's suggestion was at that that might weaken the influence of the board, the neutral boards, in the minds of some of those who would be affected who did not like someone who was appointed.

Mr. EASTMAN. There is this to be said in having a board like a Mediation Board to do that sort of thing, that a Board of Mediation is a nonpolitical organization and has a continuing policy and a continuing membership, whereas the Secretary of Labor changes with administrations, and you may have a Secretary of Labor that has one policy at one time and another that has quite a different policy at another time. For that reason there is some advantage in putting such decisions in the hands of a continuing nonpolitical organization.

A representative of the International Brotherhood of Electrical Workers and Commercial Telegraphers' Union of North America

proposed an amendment to the bill in the shape of a title II which would cover the communications employees. As to this, all I have to say is that I am not familiar with labor conditions in the communications industry, which is outside my jurisdiction as Federal Coordinator of Transportation. If the committee desires to include communications employees, I believe that it should be done in a separate part of the bill, and I suggest that the Secretary of Labor be consulted.

That is all I have to present, Mr. Chairman.

The CHAIRMAN. Are there any questions that any members of the committee desire to ask Mr. Eastman? If not, we thank you very much for this presentation, Mr. Eastman.

Mr. FLETCHER (Association of Railway Executives). Mr. Chairman, may we have the privilege of submitting views in writing to the committee, the same privilege that was accorded to the others?

The CHAIRMAN. Yes; but I wish you would get them in as quickly as possible.

Mr. FLETCHER. By what time?

The CHAIRMAN. By Saturday.

Mr. FLETCHER. We will do the best we can.

The CHAIRMAN. I would like to get these hearings to the printer just as soon as possible.

Mr. FLETCHER. We will do the best we can to get them in.

Senator HATCH. I would like to ask Mr. Eastman his opinion of Colonel Winslow's suggestion to retain the present board, not abolish it and start with a new board altogether.

Mr. EASTMAN. The only change contemplated in the bill is the reduction in the membership of the board from 5 to 3. That is practically the only change. There are slight changes in its duties. He has agreed that if the bill is enacted there would be no necessity, in his opinion, for more than three. I suppose that that change could be made by providing for a continuance of the present board in some fashion, or by reconstituting it as is proposed here. It would seem to me that the latter would be the simpler method of doing it and would arrive at much the same result. I don't think that I have any great objection to doing it the other way.

Senator HATCH. There was no reason for abolishing the old board and starting a new one, except to accomplish the changes that you have been discussing?

Mr. EASTMAN. Yes; it was felt that only three were necessary, and it was also felt that it might be a good opportunity to secure for the board men of the very highest grade. The less number there are, the more opportunity there is, ordinarily, for that.

The CHAIRMAN. Are there any other questions? It is now practically 12 o'clock. Would you like to say something now, Mr. Harrison?

Mr. HARRISON. Mr. Chairman, it is only a few minutes to 12 o'clock, and I could not cover in that short time the matters that I want to take up and possibly it would be better to include all that I have to say in the statement that we have been granted permission to file, and if that is agreeable with the Chairman, we will do that.

The CHAIRMAN. Try and file it by Saturday.

Mr. HARRISON. We shall do that, and we shall not ask to detain the committee any longer.

The CHAIRMAN. Is there anyone else present that wants to be heard? If not, the hearings on this bill are closed.

(Whereupon at 12 o'clock noon the committee adjourned.)

ASSOCIATED WESTERN UNION EMPLOYEES,
Chicago, April 14, 1934.

Hon. C. C. DILL,
Chairman United States Senate Committee on Interstate Commerce,
Washington, D.C.

(Attention Mr. Stephan.)

MY DEAR SENATOR: Thank you very kindly for your letter of April 5 regarding the public hearing on S 3266. We, who represent over 32,000 employees of the Western Union Telegraph Co., were not until recently apprised or aware of the fact that it was or had been proposed that labor in the Telegraph Communications Industry be brought under the Railway Labor Act through amendments to S. 3266, and we have in consequence had very little time to study the provisions of the bill. We feel, however, from the limited study of the bill in the available time permitted, that its various provisions are fundamentally inapplicable to labor conditions that now or may reasonably be expected hereafter to exist in the Telegraph industry.

For the past 16 years, labor conditions in our unit, the largest one in the Telegraph field, have been handled to the satisfaction of employees through our organization. The Associated Western Union Employees, which provides a medium for the handling of individual grievances and through collective bargaining, all matters pertaining to wages, rules, hours, and general working conditions with provisions for arbitration by which both parties are bound. It appears to us that at least some provision of S. 3266 would destroy such proven satisfactory methods.

As we understand it, amendments to the Railway Labor Act as proposed in S. 3266, are deemed necessary because of the vast accumulation of unadjusted, labor complaints in the railway field. This condition does not, however, obtain in our unit of the Telegraph industry, because we have throughout the years handled and satisfactorily adjusted all such complaints promptly.

We do not wish to be understood as interposing any objection to the proposed changes in the Railway Labor Act as such, but we do sincerely feel that the provisions of S. 3266 designed as they obviously were to protect railway labor and provide adequate machinery for the prompt handling of railway labor complaints, cannot, and should not, be applied to the very dissimilar labor situations and conditions in the Telegraph Communication Industry.

If the Government of the United States, acting through the Congress, feels that labor conditions in the Telegraph Communication Industry must be regulated by a governmental regulatory body as a matter of improving labor conditions needing improvement, we respectfully suggest that such regulation be effected through and by the creation, by specific act of the Congress, of a separate and distinct governmental agency dealing only with labor conditions peculiar to and obtaining in the communication field.

Because of our above stated feeling and because we feel confident that your committee will not in the final analysis seriously consider amending S. 3266 to include telegraph labor, we do not wish to take up the valuable time of your committee by appearing before it without constructive suggestions. We therefore do not wish to appear unless and until we are certain that the inclusion of telegraph labor in the amended Railway Labor Act is being considered.

Yours respectfully,

J. G. BURTON, *General president.*

ADDITIONAL STATEMENT ON BEHALF OF THE AMERICAN SHORT LINE RAILROAD ASSOCIATION, BY W. L. WHITE, PRESIDENT

Pursuant to leave granted at the conclusion of the hearings on the above bill, on April 19, we submit the following additional statement in behalf of the American Short Line Railroad Association and its members.

This association again urges the committee to exempt from sections 2 and 3 of this bill the independently owned and operated lines of railroad 100 miles or less in length.

While technically within the provisions of the Railway Labor Act of 1926, the short-line railroads have had no occasion to use the machinery provided therein for the settlement of labor disputes, since no dispute of any consequence has arisen on any of these lines.

The provisions of section 2 are such as to incite strife and trouble among the employees of the short-line railroads where no such trouble now exists, and since all of us are working to the end of eliminating labor troubles on the railroads, it is desirable in the public interest that the short lines be exempted from this section.

The Federal Coordinator of Transportation has stated that it is not essential that section 3 of the act, providing for national boards of adjustment, be made to apply to short-line railroads. In the event a labor dispute should arise on a short-line railroad, the probabilities of settling it amicably by direct negotiations between the interested parties will be greatly reduced if there is a tribunal such as the National Board of Adjustment to which it could be taken by either party. Eliminating the short lines from section 3 would still leave the Mediation Board as a tribunal for the settlement of such disputes, through machinery which it would set in motion. It is well recognized that the more tribunals to which a controversial matter may be submitted the less chance there is of settling such disputes amicably by the parties interested.

If the short lines are exempted from sections 2 and 3 of the bill, no possible harm can be done, whereas if they are not so eliminated the probabilities of labor difficulties on these roads are greatly enhanced.

We, therefore, respectfully submit that the short lines should be exempted as requested by this association.

SUPPLEMENTAL STATEMENT OF GEORGE M. HARRISON, IN BEHALF OF THE RAILWAY LABOR EXECUTIVES' ASSOCIATION, BEFORE SENATE COMMITTEE ON INTERSTATE COMMERCE, HEARING ON S. 3266.

The Railway Labor Executives again find themselves in substantial accord with the position of the Federal Coordinator of Transportation upon S. 3266.

The Coordinator, in his statement of April 19, modified somewhat the phraseology of the definition of "carrier" contained in the bill. We understand that this new definition is intended to carry the proviso subjoined to the original definition, relative to electric railways, and the amendment to that proviso offered by the Coordinator in his statement of April 7. The effect of adding the amended proviso to the definition is to exclude from the scope of the law all electric railways—street, suburban, and interurban—not properly comparable to traffic conditions with steam railways, but to include all railways, of whatever motive power, which are a part of the general steam railway transportation system. The law as it now stands, has this effect; the amendment, however, will leave to the Interstate Commerce Commission the decision upon the classification of any given electric railway.

We feel that the issue involved in this definition has not yet been made clear to the committee. There are many electric railways in the United States which are not distinguishable, excepting for motive power, from steam railways. Every reason for regulating steam-railway labor relations applies with equal force to these major electric railways, although of course street and suburban or interurban railways are in a different class. Labor relations on some of the electric roads are very unsatisfactory; there is danger that unless the Railway Labor Act continues to cover these carriers, controversies may arise which will threaten the continuity of transportation over such railways. The amendment proposed will not change the actual scope of the law, but will clarify that scope and simplify the determination of the applicability of the act to any electric railway.

An effort has been made to give the impression that the electric railway phase of the railway labor problem is negligible. The committee shoul not be misled by partial and misinterpreted employment statistics into the belief that this part of the situation can be safely ignored. It is true, and a matter of general knowledge, that street, suburban, and interurban railways are being replaced by motor bus and truck facilities. But the major electric railways, those which form a part of the general steam railway transportation system, are not declining relative to the steam railways. They are an important factor in the transportation industry and their relative importance is increasing rather than diminishing.

The mileage operated by many of these electric carriers is comparable with that of standard and fully regulated steam railways. Numbers of employees of these electric carriers, in many instances, exceed those on not a few class I steam railroads. From 1925 to 1932, the number of employees on steam rail-

roads declined by 41 percent; on 10 leading electric railways, the number of employees declined by only 29 percent. The largest electric carrier showed a drop of only 35 percent in employment over this period, and 3 of the 10 largest companies actually showed increased employment. Changes on these railways are concealed by totals which include street and suburban electric railways, but the figures for the larger electric lines clearly show the need for continued and clarified labor legislation.

Because of the necessity of drawing a distinction between the two general classes of railway carriers, some governmental agency should be given authority to determine the status of the individual lines. The Interstate Commerce Commission is the best qualified body to apply the basic test, that of the type of business done, in this problem of classification.

INCLUSION OF SHORT LINES

The request of the short-line carriers for exclusion from the operation of the law is, we believe, without real justification. The employees of those carriers are entitled to the full protection of their right to organize. The experience of the railway labor organizations with such carriers indicates that the short-line employees need protection even more than do the employees of major roads. It was urged that the machinery for settling disputes is not adapted to problems of short-line employees, because craft lines are not hard and fast on railroads with few employees. This objection, however, is without merit. On all large railroads there are employees whose positions overlap craft lines. Their grievances are being handled now, and can be handled under the new law, along one or another craft division. The short-line employees are entitled to, and need, full protection; public protection, too, requires that the disputes arising on short lines be handled promptly and efficiently. From both points of view, it would be unsound and unwise to exclude the short lines from any of the provisions of the proposed act.

The representative of the steam railroads in speaking for that group has urged the imposition upon labor unions of all of the restrictions originally proposed in the bill to require the carriers to refrain from conduct amounting to interference, influence, and coercion as applied to employees in the selection of representatives and in the conduct of such representatives.

The Coordinator in his statement made to the committee on April 19, 1934, fully answers this contention of the railroads and completely negatives the necessity or justification for such provisions, and with his views in that respect we are in absolute accord.

The Coordinator proposes, however, in our opinion, in his support of the fifth paragraph of section 2 of the bill, and that section as now written, contains a provision of a radically drastic character, unnecessary and unwarranted in the light of experience in employment relationships and unjust and inequitable in its application. This paragraph, in substance, proposes to outlaw agreements under which persons seeking employment promise as a condition of such employment to join "a labor organization".

The baleful influence which has been exercised by employers in the enforcement of membership in organizations has been found exclusively in its application to company unions. There is a grave necessity for the termination and avoidance of any influence which prompts a person to join an organization over which a carrier exercises influence or control. No such necessity exists, and no justification prevails, for the enactment of legislation which prohibits the making of agreements requiring persons seeking employment to join a certain labor organization when such organization is independently conducted and is entirely free from every element of influence and control by the employer. Such conditions of employment are invariably the result of voluntary agreements entered into by the carriers and the organizations representing large majorities of the class of employees involved. Their purposes are manyfold. In many respects they afford distinct benefit to both the employees and the employers.

The acquisition and retention of such wages and working conditions as now prevail upon the railroads of the United States have resulted from collective bargaining. Effective collective bargaining is possible only when the economic strength of the employees is such as to enable them to exact concessions from their employers. The expression "economic strength" means numerical and financial strength, and anything which tends to increase this strength cannot but be desirable in the interest of the employees as a class.

Why should not employees, or at least a reasonable percentage of those for whose benefit advantageous working rules and fair wages are sought through the

efforts of organizations of employees, be required to agree before they are hired to support the efforts which bring about such favorable conditions?

Mr. Eastman in his statement to your committee said: "If genuine freedom of choice is to be the basis of labor relations under the Railway Labor Act, as it should be, then the yellow-dog contract and its corrollary, the closed shop and the so-called 'percentage contract', have no place in the picture." The fallacy of Mr. Eastman's statement lies in the fact that so-called "yellow-dog" contracts seek to deny to labor any right of collective bargaining, whereas the "percentage" contracts insure collective representation in collective bargaining.

Much has been said in recent months regarding "rugged individualism" and its detrimental influence on society at large. If the spirit of "rugged individualism" is to be fostered and encouraged among laboring men the effectiveness and the very existence of labor organizations are imperiled.

Rates of pay and working conditions as applied to the employees of railroads with which percentage contracts exist are evidenced by agreements in writing, terminable under the Railway Labor Act upon 30 days' notice. To support compliance with the terms of such agreements a substantial majority of the class of employees to which such agreements apply must necessarily belong to the organizations parties to the agreements. It is only by having such a majority supporting such contracts that continued observance of their terms can be assured. It is the only way in which the employers are protected against the invasion of disrupting influences among their employees. It is a means to guard against the insidious undermining of harmonious employment relationships and the destruction of long-established legitimate methods and responsible institutions by communisitic and other ultraradical bodies.

Most, if not all, of the percentage contracts now in existence, are the outgrowth of labor disturbances, inspired and engineered by the unorganized or by the so-called "rump" organizations. It was to guard against repetitions of such occurrences that the railroads and the labor organizations entered into these agreements. Fundamentally the evils and abuses which should and must be eradicated are those which result from the establishment and maintenance of organizations under the tutelage and influence of employers.

If an employer, either because of sentiment, or for good business reasons, is desirous of requiring his employees to be members of an organization over which he does not and cannot exercise influence, the way for him to do so should be left open, at least until such time as the practices which may be and are carried on with such permission are proved to be detrimental to the interest of railroad employees or the public at large. No showing of such detriment has as yet been made. All that need be done to correct the evils which now exist may be accomplished by the adoption of the amendments proposed by the railroad labor executives, with the inclusion of the further provision outlawing the so-called "check-off system." This may be done by adding to the employees' proposed amendment to paragraph 4 of section 2 of the bill, the words now found in S. 3266, page 6, lines 9 to 13, reading as follows: "or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect tor to assist in the collection of any such dues, fees, assessments, or other contributions."

This will have the effect of abolishing what might be more properly designated as the "check-up" system.

TESTIMONY OF COMPANY-UNION OFFICIALS

No testimony offered in opposition to S. 3266, we feel certain, has been more enlightening in its own field than was that introduced through the company-union representatives who have appeared before the committee. Nothing which could have been said by us could have shown so clearly the iniquitous foundation of these company unions as have the frank admissions of their officials. But we wish to add a few facts to avoid the danger of incomplete understanding of the real nature of these extraordinary "organizations."

The method of forming company unions is well illustrated in the testimony of the "official" who said that the Sherman Engineering Co., which he admitted was composed of "dicks and spies", had fathered the organization of shopmen on the New Haven. Private detective agencies, calling themselves "industrial consultants", or "engineering companies", have been active in every section of the country in the campaign to substitute company-controlled organizations for legitimate railway labor unions. There is no evidence that these tactics of industrial espionage and coercion have ever been abandoned on company union roads.

The maintenance of the company unions has been as illegal and indefensible as their original establishment. In many of them, direct subsidies are still given to the officers by the railway managements. But the committee should not get the impression that the elimination of such direct salary payments ends company domination. The check-off system, instituted by many carriers, has only been an astute method of continuing company control of union finances while compelling the employees to pay the bill. The history of the "voluntary" check-off system shows incontestably that the employees have been coerced into meeting the cost of company unions, controlled by the managements for the purpose of defeating the legitimate needs of railway workers. Union dues collecting by the railway managements not only surrenders union pursestrings into management hands, but it also gives to the management a list of employees who are supporting the personnel policy of the railroad. It would be a brave or a foolhardy employee who refused to sign a check-off slip under such conditions, without protection by law or by a genuine labor organization.

In this fact is the explanation of the amazing membership statistics introduced by the company unions before the committee. The truly surprising thing is that 5 or 10 percent of the employees do resist the pressure put upon them. The value of these membership statistics can best be shown by recent secret ballots taken on several railroads to determine employee representation. On one such railroad, the company union of one craft claimed and doubtless had over 90 percent of the eligible employees in its "organization." The secret ballot resulted in the decisive repudiation of the company union and the selection of the standard organization as the representative of the employees.

A Mr. Todd appeared before the committee representing a group of company unions. Mr. Todd is an officer of the company union of clerks on the Santa Fe Railroad. The status of this "union" is clearly shown by the following letter from the Federal Coordinator to Mr. Todd:

JANUARY 24, 1934.

Mr. D. W. TODD,
System Chairman Association of Clerical Employees,
Atchison, Topeka & Santa Fe Railway,
Topeka, Kans.

DEAR MR. TODD: I have your letter of December 28 and telegrams of January 15 and 18 asking whether the Association of Clerical Employees, Atchison, Topeka & Sante Fe Railway System, meets the requirements for participation in the selection of a regional labor committee as contemplated under section 7 (a) of the Emergency Railroad Transportation Act. I regret the delay in responding to your inquiry.

Analysis of the information and documents filed with me by the Atchison, Topeka & Santa Fe Railway Co. in response to my company-union questonnaire of September 7 indicates, among other things, that after the enactment of the Railway Labor Act in 1926, the management of this railroad prepared a petition which it circulated among the employees now represented by your association; that this petition in essence constituted a pledge to the management that the employee who signed it forthwith would create an organization to be known as the Association of Clerical Employees, Atchison, Topeka & Santa Fe Railroad System, for the purpose of negotiating an agreement covering wages and working conditions for the employees who were represented at that time by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express, and Station Employees; and that the management, when it circulated this petition, used its influence to obtain the signatures of the employees concerned.

These facts indicate that the employees represented by your association apparently have not had entire liberty of choice in the matter of labor representation and organization.

It also appears that when the attempt was made to form your association a dispute arose between the railraod company and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express, and Station Employees, over the matter of representation and recognition which dispute has not yet been settled in accordance with the provisions of the Railway Labor Act.

I am unable, in view of these facts, to conclude that your association qualifies for the purposes contemplated under the provisions of section 7 (a) of the Emergency Railroad Transportation Act. However, in view of your desire to see the letter and spirit of the law complied with and in the light of the situation as it now seems to exist, it occurs to me that an election conducted under impartial auspices for the purpose of determining whether your organization or the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express, and Station

Employees should represent the employees in question would be the most satisfactory method for securing the answer to the question which you raise.

Very truly yours,

JOSEPH B. EASTMAN.

A very substantial proportion of the clerks on the Santa Fe Railroad are members of the Brotherhood of Railway Clerks, the standard national organization. The company union has not accepted the suggestion made by the Coordinator for a secret ballot of the Santa Fe clerks; such a ballot, when taken, will show that the employees do not desire to be represented by the company union. It is only through the improper and illegal maintenance of company unions that their officers are able to say that they represent railway employees; they are not in fact representatives of the men they claim to speak for.

On this same railroad, the vice president in charge of personnel is a Mr. W. K. Etter. Mr. Etter is also general chairman of the company union of train dispatchers on that railroad. As vice president of the road, he addresses to himself a letter demanding that he agree to reduction in the rates of pay of train dispatchers; as general chairman representing the employees, he receives and acknowledges the letter, and then advises himself whether or not he is disposed to accede to his own demands. After a desperate controversy with himself, he probably arrives at an amicable settlement of the dispute. Committee members can understand why, under such a system, there are no unsettled grievances, and everything is "harmonious." No parallel to such a situation can be found outside of comic opera.

Few railroads are so open as this in their choice of company-union officials. But vice presidents or personnel managers do choose their own chief clerks, or other trusted confidential men, to act as company-union officials, and the results are precisely the same. That is why, as the company-union officials here boasted, there are no outstanding unsettled disputes on such roads; that is why the Board of Mediation is never called in. It would be very difficult to mediate between Mr. Etter, the general chairman of the train dispatchers, and the same Mr. Etter, vice president in charge of personnel on the Santa Fe Railroad.

Even allowing full weight to the membership claims of the company-union officials here, the facts were grossly misrepresented to this committee. The standard railway labor unions hold agreements recognizing them as representing 63.6 percent of the eligible employees on American Railways. The Brotherhood of Railway Clerks is recognized as representative of 62.8 percent of the employees within its classes. Before this committee, we speak also for those employees, members of our organizations, who are working on company-union roads. Free, fair, and secret representation ballots for all classes of employees on all roads would eliminate company unions entirely; the plain fact is that these so-called "independent" organizations do not properly represent anyone but railway managements.

Suggestions made by company-union officials support this conclusion. They desire to continue conditions which will perpetuate management control of pretended "unions." They desire to continue management payment of company-union representatives. They desire to continue management control of company-union membership lists, through the check-off. They desire to set up boards of adjustment under provisions which will insure management domination. They desire, in a word, to defeat the purposes of the Railway Labor Act and of its proposed amendments.

We wish to restate here our emphatic opposition to any kind of payment of union representatives by railway managements. It is true, in some cases, that at the request of management representatives, and to suit their convenience, local officials of standard organizations may have been holding conferences to discuss grievances on company time. Wherever that practice has arisen, we want to see it discontinued. The proposed amendments will have that effect.

Holding of such short conferences, at local points, on company time is however insignificant in its effect compared with company-union methods. A general chairman of a company union appearing before this committee as a representative of railway employees admitted that for that appearance his salary and expenses were directly paid by the railway company against whom, in theory, he is supposed to be protecting the employees. Such a "union" officer is as much a representative of the railway management, and as little a representative of the men, as Mr. Clement, vice president of the same railroad who also appeared before the committee.

STATEMENT OF MANAGEMENT SPOKESMAN

Management criticisms of the proposed law took the form first, of an implication that railway employees must be protected against being influenced by railway employees, and, second, of a request that regional boards of adjustment, with provision for an infinite variety of other boards, be substituted for the national board of adjustment to be created under the law.

The analysis by the Federal Coordinator of these objections leaves very little to be added. The language now in the act, and which is used in the proposed amendments, relative to "interference, influence, or coercion" has already been interpreted by the courts; to add other language, even though it is in words only what the Supreme Court itself has used, might give rise to the claim that Congress intended in some manner to change the meaning of the law. That, in turn, could only cause unnecessary controversy. We believe it to be equally senseless to require employees to abstain from influencing other employees in their choice of representatives; not only senseless, but definitely unjust. It is the right of any employee to acquaint his fellow employees with the facts about unionism, and to influence fellow employees by facts and argument. To say, or to imply, that such discussion among employees is in any way analogous to arguments addressed by a supervisor to a subordinate is absurd.

Brought face to face, finally, with the prospect of compulsory settlement of grievance disputes, railway managements have urged upon the committee the desirability of regional boards of adjustment instead of a national board. There has been nothing to prevent the setting up of such regional boards under the present law; some of them have been set up. But many railroad managements have refused to participate in creating adjustment boards on a regional basis, and it is only now with the probability of national boards before them that they are ready to accept regional boards. Even under this bill, however, there is nothing to prevent carriers and employees from setting up regional boards if they so desire. A genuine desire for regional boards can be met by agreement under the law proposed.

But to make regional boards compulsory, in the event that other agreement cannot be reached, will fasten upon the employee organizations expenses that will prove absolutely prohibitive. The amendments proposed by the management will simply mean that for large groups of workers the machinery will be inoperative. Consequently, to set up regional boards of adjustment is to defeat the purpose of the act and to continue existing unsatisfactory conditions. Those organizations with largest numbers of grievances, and most able to handle the expense of regional boards, may under the new law agree with the managements to create such boards. But for other groups of employees, to require regional boards of adjustment will mean a complete failure of the law.

One of the arguments advanced in opposition to a national board of adjustment that it takes a dispute too far from its point of origin, is for many types of disputes rather a favorable than an unfavorable factor. Many grievances, notably those having to do with the discipline of employees, can be most satisfactorily handled at a distance great enough to minimize personal elements in the dispute. Further than that, it is true that provision for arbitration of disputes does have a tendency to eliminate direct, negotiated settlement. The danger of substitution of arbitartion for negotiation will be much less as the board of adjustment is removed from the source of the dispute; both parties will have greater incentive for direct settlement of grievances. It is certain that many fewer disputes will be referred to a national board than would go to the several regional boards.

As the Federal Coordinator has truly pointed out, the tendency at the present time is toward a national coordination of our railways. A national board of adjustment can and will prove of first importance in the establishment of a uniform interpretation and application of identical rules in the various parts of the country. There are differences in operating and working conditions, from district to district, which can never be eliminated. But it is equally true that there exist widely different interpretations of identical rules under similar operating and working conditions; such a condition would be reduced to the minimum with national interpretation of the identical rules.

From whatever point of view the question be considered, the proposed amendments making a national board of adjustment compulsory, but with provision for establishing other types of adjustment boards by mutual agreement, is to be preferred over the suggestion of compulsory regional boards.

Two changes have been suggested in the proposed divisions of the national board of adjustment. The Brotherhood of Sleeping Car Porters have requested that the words "sleeping-car porters and maids and dining-car employees" be

added after "sleeping-car conductors" on line 11 of page 14 of the bill. The Railway Express Agency has asked that separate division be created for the handling of express disputes, removing them from the third division of the board of adjustment as proposed.

With reference to the first of these changes, we had no thought that the law was proposed did not apply to sleeping-car porters and maids. They are certainly included. We have no objection to a specific reference to them in this paragraph (h) of section 3. They come naturally, however, within the fourth division; to give effect to the desire of these employees we would suggest the addition, on line 18 of page 14, after the word "divisions", of the words "including sleeping-car porters and maids and dining-car employees".

We do not concur in the request of the Railway Express Agency for a separate division for handling disputes affecting express employees. It is true that the national board of adjustment now in existence in the express industry functions as well as, if not better, than, any other board of adjustment operating under the Railway Labor Act. There are, nevertheless, many grievance disputes upon which this board of adjustment deadlocks, and the present method of arbitration is expensive, long-drawn-out, and generally unsatisfactory. We believe the arbitral machinery proposed in the new law will be a distinct improvement over that now in use.

The reason advanced for creating a separate division to handle express disputes is the belief that the grievances arising in the express industry cannot be wisely handled by those not familiar with that industry, and that express management representatives will be unable to contribute anything to the settlement of disputes affecting railway employees.

We believe the express officials to be unduly modest in this contention. The present national board of adjustment in the industry handles disputes from a wide variety of employees, ranging from train-service employees to teamsters and office clerks. Their occupations are not basically different from corresponding railway employment; national officials of the employees now handle grievances and other disputes for both railway and express employees. There is, in fact, much less difference between railway and express operations and occupations, generally, than there is between the various crafts in the express industry. We feel certain that if a representative is selected by the express management to sit upon the national board of adjustment under the new law will be able to contribute at least his full share to a satisfactory handling of disputes arising in groups not within his own industry.