BROTHERHOOD OF RAILROAD TRAINMEN -

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THE RAILWAY LABOR ACT

The Railway Labor Act plays an important role in daily railroad labor-management relations. The better the individual, and particularly the representative, understands it, the better he will be equipped to intelligently cope with the many complex problems in labor-management relations that arise in our daily work on the railroad. The present Act is the culmination of over sixty years of experience with Federal Legislation in the railroad industry.

Before going more thoroughly into the Railway Labor Act we should deal briefly with some of the various railway labor acts which preceded the present law.

Prior to Federal Legislation in the railroad labor field, the employees, members of the operating brotherhoods, were able to dispose of some of their grievances through union representatives meeting with management on the railroads where management voluntarily or otherwise entered into contracts with these organizations. The great majority of railroad employees, outside of the operating groups, were unorganized prior to 1920 and, of course, grievances were handled on an individual basis, usually on management's terms. Notwithstanding these handicaps, many grievances were settled in line with the standards of labor-management relations as they prevailed on the particular individual railroad. In some instances a form of voluntary arbitration or conciliation was resorted to, embodying the principles as established by the Arbitration Act of 1888. Even when tribunals set up by law to adjust grievances came into existence, many cases were settled without resort to these procedures, depending a good deal, as previously indicated, upon the policy of the management on the railroad in dealing with its employees.

With the coming of Federal Legislation in the railroad labor field, management and labor representatives unable to settle their differences took advantage of tribunals set up by law for the final disposition of their disputes wherever possible.

The first law dealing with Railway Labor Legislation was enacted by Congress in 1888 and was known as the Arbitration Act. It provided for voluntary arbitration and investigation of labor disputes that threatened to interrupt interstate commerce. During the ten years this Act was in existence no dispute was ever referred to arbitration by either labor or management. The investigation procedure provided in the Act, which was supposed to be undertaken prior to the calling of a strike, was actually only used once and that was under circumstances where a strike was already in progress.

The arbitration Act of 1888 was replaced by the Erdman Act of 1898 owing to the complete failure of the original act to be accepted by labor and management as a medium of settling labor disputes. The Erdman Act differed from the Act of 1888 in that it was the first law to place reliance upon mediation

and conciliation by the Federal Government in the settling of railroad labor disputes. It provided for the setting up of a temporary board to deal with each case. The investigation procedures incorporated in the Act of 1888 were repealed; however, the voluntary arbitration feature was retained in the event mediation failed.

The Erdman Act did not prove satisfactory and in 1913 a new Act was adopted by Congress known as the Newlands Act. This Act, for the first time, established a full-time board of mediation and conciliation. Its main reliance was upon mediation in the settlement of disputes. In the event of agreement being reached through mediation, if a dispute arose later as to the meaning or application of the agreement, the board was required to render an opinion when either party to the mediation proceeding requested such interpretation. The Newlands Act improved upon arbitration procedures that could be utilized on a voluntary basis if mediation failed.

The basic fault of the Newlands Act, as was also true of the Erdman Act, was that it did not provide for a regular and orderly disposition of grievances arising out of time claims and discipline matters. Such cases were usually handled when a large number accumulated and pressure was brought to bear for settlement.

The Newlands Act to a limited extent worked successfully in settling a majority of the disputes submitted to the Board of Mediation and Conciliation. However, in 1916 it proved inadequate to head off a threatened nation-wide strike of railroad operating groups demanding an eight-hour day, owing to the railroad Brotherhood's refusal to mediate or arbitrate the dispute. In order to prevent the strike called for September 4, 1916, Congress passed the Adamson Act, which provided for the eight-hour day.

In April, 1917, the United States declared war on Germany. Owing to the general unrest of railroad labor resulting from economic factors brought about by the war in Europe, on December 28, 1917, the President of the United States issued a proclamation taking possession and control of the nation's railroads. A Director-General of railroads was appointed. Under authority of the new Director-General of railroads the right of the employees to organize without interference by management was established for the first time. Railroad adjustment boards were set up with authority to make decisions in all disputes arising out of the interpretation or application of existing agreements. These were important advances that were later to be incorporated in the Railway Labor Act as amended in 1934.

In general, prior to the Federal control of railroads in World War I, mediation or arbitration, as stated, were more or less used as a means of final settlement of controversies. During the Federal control of railroads, adjustment boards were established for the purpose of reviewing grievances and bringing about final disposition. However, with the return of the railroads to private management in 1920, the Transportation Act of 1920 (the Esch-Cummins Bill) was adopted by Congress. The Transportation Act of 1920, among its provisions, established the Railroad Labor Board consisting of nine members; three management, three labor and three representing the public, all appointed by the President of the United States and confirmed by the Senate.

The powers of the United States Railroad Labor Board were limited to investigations and recommendations and it was given no power to enforce its judgment. Public opinion was to be the final arbiter. Mediation was eliminated.

Unfortunately the Board was not well designed to carry out the work of a judicial nature. Congress also gave the Railroad Labor Board the quasi-legislative function of making rules and passing upon demands for higher or lower adjustments in wage rates. These functions were advisory and the Board was without power, under the law, to carry out any of its decisions. In many instances the carriers failed to carry out the Board's awards. This resulted in bitter criticism of the Board by labor which felt the public members were prejudiced in favor of the carriers. Also, after certain wage increases were granted by the Railroad Labor Board in 1924, the railroad managements decided to negotiate wages directly with the employees rather than avail themselves of the services of the Board.

When the Transportation Act of 1920 became law the railroad adjustment boards, set up under the authority of the Director-General of railroads, for the purpose of adjusting disputes arising out of the interpretation or application of agreements, were abolished. The only agency for interpreting and applying existing rules and working agreements thereafter was the United States Railroad Labor Board. However, a few system boards and three regional boards set up by agreement between the train and engine service Brotherhoods and certain carriers came into existence in 1921. The regional boards of adjustment were identified as the Eastern, Southeastern and Western Boards of Adjustment. For example, there was established the Train Service Board of Adjustment for the Western Region on August 25, 1921. It was set up under a Memorandum of Agreement between the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors and the Brotherhood of Railroad Trainmen and most of the large carriers operating West of the Mississippi River. Later the rules or agreements setting up the Train Service Board of Adjustment were amended on April 17, 1928, to conform to the Railway Labor Act of 1926.

The Train Service Board of Adjustment for the Western Region, by agreement, was limited to the consideration of cases arising out of occurrences within one (1) year prior to submission to the Board but subsequent to February 29, 1920. It excluded all disputes arising out of proposed changes in rules, working conditions or rates of pay. In instances where a deadlock existed between the management and labor representatives of the Adjustment Board, upon request of either party to the dispute, the matter could be referred to the United States Railroad Labor Board for final decision. The Train Service Board of Adjustment for the Western Region rendered its last decision on May 7, 1934 and, like the other regional and system boards, ceased to function after June 21, 1934 when the Railway Labor Act was amended.

One of the serious losses to railroad labor under the Transportation Act of 1920 was the failure of the law to continue the policy adopted by the Director-General of railroads with respect to the rights of labor to organize without interference by management. Consequently, carrier sponsorship of company unions, excepting among the operating groups, became widespread.

It should be kept in mind that while the United States Railroad Labor Board and the regional boards have passed into oblivion, nevertheless, some of the decisions rendered by these tribunals, particularly on standard rules which were adopted during the Government operation of railroads in World War I, are followed as precedents in instances where the rules, working conditions, or practices upon which the decisions were based, have not been superseded or become obsolete.

By 1925 it became evident that the Railroad Labor Board, established

under the Transportation Act of 1920, was unsatisfactory to both the carriers and their employees, owing primarily to the lack of mediation procedure. A new Act was adopted by the Congress of the United States on May 20, 1926, known as the Railway Labor Act. This legislation was intended to utilize the successful provisions of former Federal legislation and at the same time avoid the weaknesses that developed in the practical operation of those laws. It, of course, took the place of the United States Railroad Labor Board.

In abolishing the United States Railroad Labor Board the Railway Labor Act of 1926 did not set up any substitute judicial machinery but did provide for national and regional or local boards to be created by agreement. In fact, some of the system boards and regional boards established in 1921 were continued, by agreement, after the Railway Labor Act came into existence, as previously indicated. The weakness of these boards was their bi-partisan structure and lack of provision for neutrals when cases were deadlocked. Under circumstances where final disposition in a case was agreed upon, the decision of the board could not always be enforced. For example, on some boards the same carrier and labor representatives who initially handled the case on the property sat on the board when the case was appealed, making agreement for disposition of the case most difficult. Another difficulty encountered with the system and regional boards was their treatment of standard rules through conflicting interpretations that resulted in additional benefits to employees on one carrier and at the same time took away benefits from employees of another carrier or carriers under the identical rule. These decisions resulted in considerable confusion and unrest among the employees. The need for National Adjustment Boards rather than Regional Boards with provision for neutrals to decide cases when deadlocked became apparent.

The practical operation of the Railway Labor Act of 1926 revealed additional difficulties which were remedied by a series of amendments enacted by Congress on June 21, 1934. These amendments considerably strengthened the Railway Labor Act. Usually the Act is referred to in formal correspondence as the Railway Labor Act, as amended. The air lines came under the Railway Labor Act in the Amendment of April 10, 1936.

The Railway Labor Act as we know it today.

The Railway Labor Act is divided into two parts: Title I and Title II. Title I relates to the common carriers by rail and Title II the common carriers by air.

The most important provisions of Title I to be dealt with in the following pages are:

(1) Section 1, "Definitions"; (2) Section 2, "General purposes" and "General Duties" prescribed by the Act; (3) the Union Shop and Check-off of dues; (4) Section 6; (5) the National Mediation Board and its duties; and (6) the National Railroad Adjustment Board and its functions.

Section 1 of the Railway Labor Act defines the terms "carrier," "Adjustment Board," "Mediation Board," "commerce," "employee," "representative," and "district court":

The term "carrier" includes any express company, sleeping car company, carrier by railroad, subject to the Interstate Commerce Act. It does not include street, interurban or electric railways unless such railway is operating as a part of a carrier subject to the Act.

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

The term "Mediation Board" means the National Mediation Board also created by the amendment to the Act in 1934.

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.

The term "employee" as used in the Act includes every person in the service of a carrier who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission.

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.

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.

While the foregoing definitions (not all fully quoted) are quite clear, in connection with the term "representative" it is important to observe that a representative, as far as the Railway Labor Act is concerned, need not necessarily be an employee of the carrier. For example, a general committee of a railway labor organization may represent employees on more than one railroad. In addition, a labor union representative may represent employees in another craft or class on the same carrier or on carriers other than the craft or class in which a representative may hold employment rights. Similarly, railroads authorize carriers' conference committees to represent them in the handling of wage and rules matters which are being handled on a national or regional basis with employee organizations.

Section 2 of the Railway Labor Act states the "General Purposes" and the "General Duties" imposed by the Act. The "General Purposes" are as follows:

> (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 to 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-organizations; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules or working conditions.

The "General Duties" sets forth a number of requirements in connection with the collective bargaining principles. While the employees, as well as the carriers, are obligated to perform certain duties, the majority of the duties

are directed to the carriers. Some of the duties the carriers are required to perform are enforceable through formal penalties under circumstances where the carrier, its officers or agents, refuse compliance.

The first paragraph of Section 2 provides that the carriers and the employees will exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, to settle all disputes, etc., in order that there will be no interruption to commerce.

The second paragraph requires that all disputes between a carrier and its employees shall be considered and, if possible, decided with all expedition in conference. This provision makes it mandatory that the parties to the dispute will exhaust all remedies before appealing the dispute in the manner provided by the Act.

The third paragraph of Section 2 states that the representativesof the parties are to be designated without interference, or influence, or coercion by either party over the other. In addition, it provides that representatives and employees need not be persons in the employee 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 any one who is not an employee of the carrier.

The fourth paragraph of Section 2 explains in considerable detail the right of employees to organize and bargain collectively without interference from the carrier, its officers or agents. In addition, it sets forth the duties of the carrier concerning the employees' rights to organize and bargain collectively. It is important to note that under this paragraph the Act provides that the majority of any craft or class of employees shall have the right to determine the representative of the craft or class. The granting of free transportation to an employee engaged in the business of a labor organization and permitting such a representative to confer with management while on duty and under pay of the carrier are not prohibited.

The fifth paragraph of Section 2 adds a further protection of the employees' right to join an organization without interference.

The sixth paragraph of Section 2 makes it the duty of the representatives of the carrier and the employees, that within ten days after the receipt of a notice of a desire on the part of either party to confer, to specify a time and place wherein such conference shall be held. It requires that the place specified shall be situated upon the property of the carrier or at a place otherwise mutually agreed upon. It provides the time specified shall allow the designated conferees reasonable opportunity to reach the place of conference which is not to exceed twenty (20) days from the receipt of the notice by either party, unless, of course, the parties have agreements which set up a definite procedure; then the latter will be recognized. The purpose of these provisions is to eliminate delay on the part of either party in arriving at agreement upon a time and place in order to conference the dispute.

The seventh paragraph of Section 2 prevents the changing of rates of pay, rules or working conditions of the employees as a class except in the manner specifically provided in Section 6 of this Act.

The eighth paragrpah of Section 2 requires the Mediation Board to investigate any dispute arising among the employees of a carrier as to the designated representative of the class or craft for collective bargaining. In

conducting the investigation the Mediation Board is authorized to conduct a secret ballot of the employees involved or utilize any other appropriate method of ascertaining the wishes of the employees as to their choice of representative. Upon completion of such investigation, the Board is required to certify to the parties the name or names of the individual or organizations designated as collective bargaining representatives and to so certify to the employer. The management must then deal with the representatives certified by the Mediation Board.

The tenth paragraph of Section 2 details formal penalties against the carrier in the event of failure or refusal of the carrier or its officers or agents to comply with the terms of the third, fourth, fifth, seventh or eighth paragraphs of Section 2.

The Eleventh paragraph of Section 2 provides for the Union Shop and Check-off of Dues. This provision of the Act was the result of an amendment to the Railway Labor Act on January 10, 1951.

Prior to the adoption of the Union Shop and Check-off of Dues, prohibitions against all forms of union security and check-off agreements being entered into were made part of the amended Railway Labor Act in 1934. These prohibitions were enacted in the law against the background of employers' prior use of such agreements and devices for establishing and maintaining company unions, thus effectively depriving a substantial number of employees of their right to bargain collectively through representatives of their own choosing. It is estimated that in 1934 there were over 700 labor agreements between the carriers and unions alleged to be company unions covering non-operating employees. These agreements represented over 20% of the total number of labor contracts in the industry.

Owing to this situation the railroad labor organizations agreed to the statuatory prohibitions against union security agreements as set forth in the Fourth paragraph under "General Duties," Section 2, after failing in an effort to limit these prohibitions to company unions. In other words, labor organizations accepted the more general prohibitions which deprived the national railroad Brotherhoods of seeking union security agreements and check-off provisions in order to prohibit company control of employee organizations.

Since the enactment of the 1934 amendments to the Railway Labor Act, company unions disappeared largely as a result of the United States Supreme Court Decision (1936) in the case of the Virginian Railway versus System Federation No. 40, Brotherhood of Railway Carmen of America (291-U.S.-529; 81 Lawyers Edition 389; 300-U.S.-515; 81 Lawyers Edition 789). The Court held in this case that the so-called company union was not organized in accordance with Section 2 of the Railway Labor Act.

It should be pointed out that the closed shop, the union shop and the dues check-off were common under the Wagner Act. When the Taft-Hartley Act came into existence, it prohibited the closed shop but it permitted the union shop and the check-off on written permission of the employees. Since railroad labor was no longer threatened by company unions as a result of the Supreme Court ruling in the Virginian Railway Case, the standard railroad Brotherhoods and unions sought the right to extend the union shop and dues deduction to the railroad industry, culminating as previously mentioned, in the January 10, 1951 amendment to the Railway Labor Act permitting the union shop and check-off of dues.

The Union Shop and Check-off amendment is contained in Section 2,

"General Duties" Eleventh Paragraph, Subparagraphs (a), (b), (c) and (d). Subparagraph (a) authorizes the carrier and the labor organizations duly designated and authorized to represent employees in a particular class or craft to enter into an agreement requiring as a condition of continued employment that within sixty days following the beginning of such employment, or the effective date of the agreement, all employees shall become members of the labor organization representing their craft or class. It also provides that this provision is not applicable under circumstances where an employee is not eligible for membership on the same terms and conditions as are generally applicable to other members.

Subparagraph (b) deals with the Dues Deduction Agreement which authorizes the employee to assign his wages in favor of the organization authorized to enter into such agreement. It further provides that such wage assignment authorizations shall be voluntary on the part of the employee; however, once entered into, such wage assignment is not revocable in writing until after the expiration of one year, or upon the termination date of the applicable agreement, whichever occurs first.

In a recent decision of the United States District Court, District of Minnesota, Third Division, in the case of the BLF&E, plaintiff, vs. Northern Pacific Railway Company, defendant, the Court held that written assignments of wages to pay membership dues "shall be revocable in writing after the expiration of one year" applies to employees who retain their membership in the union to which the assignment was made.

In a decision of the United States Supreme Court, identifed as Marion S. Felter, on behalf of himself and others similarly situated, vs. Southern Pacific Company and Brotherhood of Railroad Trainmen, et al., the majority opinion of the Court, in dealing with the question of dues deduction agreements, held that the carriers and labor organizations are authorized to bargain for arrangements for check-off of dues by the employer on behalf of the organization, sufficient latitude being allowed in the terms of such arrangements, but not past the point such terms encroach upon the freedom expressly reserved by the Congress to the individual employee to decide whether he will authorize a wage assignment. Similarly, it denies the right of the carriers and labor organizations to negotiate agreements which would restrict the employee's complete freedom to revoke an assignment in writing directed to the employer after the expiration of one year. In other words, the individual employee, in revoking a wage assignment after the expiration of one year is not necessarily required to use forms for such revocation agreed to between the employer and the labor organization in whose favor the dues were originally deducted.

In the case of the Switchmen's Union of North America vs. the Brotherhood of Railroad Trainmen and Southern Pacific Company, the United States Court of Appeals for the Ninth District held that a wage assignment for the purpose of deducting dues could only be made in favor of the organization which was the duly designated representative of the craft the employee is working under. To permit the deduction of dues in favor of another organization coming within the scope of Subparagraph (c) in which the employee maintains membership but which is not the craft representative, the Court held is in violation of the carrier's obligation to deal exclusively with the bargaining representative as to all matters pertaining to the craft for which such labor organization is the exclusive representative.

Employees in engine, train, yard and hostling service hold seniority in more than one class or craft. Such employees, in order to meet the requirements of the service or in the exercise of seniority, often work in a craft or

class for which a union other than the one in which they hold membership is the bargaining representative. In recognition of intercraft mobility and in order to make it unnecessary for individuals in the train operating crafts to belong to more than one union, Subparagraph (c) was included.

Subparagraph (c) provides that membership in a labor organization shall be satisfied when the employee in engine, train, yard and hostling service acquires or holds a membership in any one of the labor organizations national in scope organized in accordance with the Act (Section 2, Subparagraphs 3 and 4) and admitting to membership employees of the craft or class in which the employee is engaged. This paragraph further prohibits the deduction of dues from wages of an employee in favor of an organization in which such employee does not hold membership.

The provisions of Subparagraph (c) also make it permissible to provide in any agreement that an employee who is not a member of an organization for his particular craft or class shall become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to such employee. When an individual hires out as a new employee in engine, train, yard or hostling service after the effective date of any Union Shop Agreement he must within 60 days acquire membership in one of the organizations authorized under this provision to represent employees in the operating crafts with this important exception:

If the organization he chooses is not the bargaining representative for the craft in which the employee is engaged, the organization he joins must be recognized as national in scope in order to comply with Subparagraph (c).

Employees not covered by Subparagraph (c) are required to join the organization designated as the bargaining representative of their craft.

It is important to notice that the provisions of Subparagraph (c) contain the term "may be required." It does not make it mandatory that the employee who is a non-member of any organization on the effective date of the agreement join the organization duly designated as the bargaining representative for the craft or class in which employed, unless the agreement so stipulates. As an illustration, when the Union Shop Agreement was drawn up between the Brotherhood of Railroad Trainmen and the Southern Pacific Company covering the craft or class of trainmen, the language of this agreement was purposely phrased so as to permit an employee who was not a member of the Brotherhood of Railroad Trainmen on the effective date of the Agreement, July 22, 1955, to acquire membership in either the BRT, ORC&B, or the SUNA and satisfy its terms.

Union Shop Agreements made under the Taft-Hartley Act are subject to State laws, however, the Supreme Court of the United States on May 21, 1956, in the case Railway Employees Department, American Federation of Labor, et al., vs. Robert L. Hanson, et al., in effect ruled that the Union Shop Amendment of the Railway Labor Act is superior to and prevails over State laws that may be in conflict with its provisions.

NATIONAL MEDIATION BOARD

The Board of Mediation, originally created under the Railway Labor Act of 1926, was abolished when the Act was amended on June 21, 1934, and in its stead the National Mediation Board was created.

The National Mediation Board is composed of three members appointed

by the President with the consent of the Senate, not more than two of whom shall be of the same political party. The term of office is for three years. The Chairmanship rotates each year. Members of the National Mediation Board are removable from office by the President for inefficiency, neglect to duty, malfeasance in office, or ineligibility, but for no other cause. The headquarters of the National Mediation Board of located in Washington, D. C. A quorom, in order to transact business, consists of two members.

Any one of the members of the National Mediation Board may take part in mediation proceedings. This is often done where important matters are involved, particularly where the organizations and carriers are handling wage and rules matters on a national basis and a deadlock develops.

The National Mediation Board has power to appoint experts and assistants to act in a confidential capacity and such other officers and employees as are necessary to carry out the work of the Board and to fix their salaries, etc. In addition, the National Mediation Board provides for offices, rent, etc., including expenditures for the National Railroad Adjustment Board, regional adjustment boards, and boards of arbitration.

The services of the National Mediation Board may be invoked by either party to a dispute under the following circumstances:

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

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

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

It should be pointed out that under circumstances where a labor organization after circulating a strike ballot involving unadjusted cases arising out of grievances, or out of the interpretation or application of agreements, threatens a strike, the National Mediation Board immediately attempts to mediate the dispute notwithstanding the Mediation Board might consider the issues are referable to the National Railroad Adjustment Board. In this situation cases referable to the National Railroad Adjustment Board are separated from those which are not referable to this Board.

The first group is given an "E" or emergency case file number and matters covered by Section 6 Notice served on the carrier for changes in rates, rules and/or working conditions, are given an "A" case number. At the conclusion of mediation if a settlement is reached, agreements are prepared on each portion of the dispute; that is, the cases covered by the "A" file and the cases covered by the "E" file. In the event the Board is unable to settle a dispute in mediation the mediator may be authorized to offer arbitration on the portion of the dispute covered by the "A" docket number and the remaining portion, covered by the "E" number, is closed out by Mediation Board action.

The National Mediation Board's policy of requiring disputes arising out of grievances to be submitted to the National Railroad Adjustment Board for final adjudication has support from the courts. For instance, the United States Court of Appeals for the Seventh Circuit held, in the case of the Chicago River and Indiana Railroad Company versus Brotherhood of Railroad Trainmen, February

6, 1956, that cases arising out of grievances, such as time claims, are minor considerations and should be referred to the National Railroad Adjustment Board and failure to do so would permit the carrier involved to seek an injunction to prevent a work stoppage in the event such was threatened. On March 25, 1957, the Supreme Court of the United States in this case sustained the judgment of the United States Court of Appeals for the Seventh Circuit on a writ of certiorari.

In general, where the services of the National Mediation Board have been invoked or made available and the Board is unable to effect a settlement, no further action may be taken by either party for a period of 30 days thereafter. In most instances, as a last effort to effect a settlement the Board endeavors to have the parties accept arbitration. If either party declines arbitration, the National Mediation Board notifies each party mediation has failed. Also, when arbitration is refused no changes may be made in the rates of pay, rules or working conditions, or established practices in effect prior to the time the dispute arose, for a period of thirty (30) days' thereafter.

In the event the carrier serves a notice under Section 6 of the Act for an intended change in agreements affecting rates of pay, rules or working conditions, and the parties fail to adjust the dispute, the organization must invoke the services of the National Mediation Board within ten days of the termination of conferences. Failure to invoke the services of the Board by the organization involved may permit the carrier to proceed to place its request into effect. The latter action, of course, would depend on whether or not the issue was of such importance as to cause a work stoppage by the employees involved.

In the event mediation is successful, the parties draw up an agreement, known as a Mediation Agreement, which is signed by the representative (mediator) of the National Mediation Board and the parties to the dispute. In the event a controversy should arise over the meaning or application of the agreement reached through mediation, either party may apply to the Mediation Board for an interpretation of the meaning or application of the agreement. The Mediation Board must render its decision within thirty days.

In recent years a new method has been adopted for settling controversies arising out of the meaning and application of agreements reached during mediation by groups of employees and carriers engaged in industry-wide bargaining as distinguished from mediation agreements that involve an individual carrier and its employees. As a part of the settlement, a committee, known as a Disputes Committee, is selected by the parties to perform this important function. The committee exists during the life of the agreement unless a termination date is included in such agreement.

When a Disputes Committee is provided under the terms of an agreement reached during mediation, disputes, including grievances, arising out of the meaning or application of the agreement, must be referred to the committee for disposition. The National Railroad Adjustment Board may not take jurisdiction of such grievances during the existence of the Disputes Committee. If a termination date is included in the agreement, on and after which date the Disputes Committee will cease to function, disputes arising out of the meaning and application of the particular agreement, so long as it is in effect, may then be referred to the National Railroad Adjustment Board. The decisions of the Disputes Committee, whether reached with or without the assistance of a referee on the meaning of the agreement, or grievances arising out of its application, are final and binding on the parties. There is no further appeal, the same as in arbitration.

In instances where the National Mediation Board is successful in having the parties accept arbitration, the Mediation Board is required to name the neutral member of the board in the event the parties accepting arbitration cannot agree on a third or neutral party. The Mediation Board must see that the arbiter named, whether done by the parties or the National Mediation Board, is wholly disinterested in the controversy and impartial and without bias. The Mediation Board has power to remove any arbiter if it is found such person is incompetent.

A Board of Arbitration thus agreed to may consist of three members or six members. If a two-member board is desired it consists of a representative of the carrier and a representative of the employees. If these two representatives fail to name a third or neutral party within five days the National Mediation Board will name such third party.

If a six-member board is chosen the carrier shall name two representatives, the employees two and if these representatives fail to agree on the additional two neutral members, the National Mediation Board shall within fifteen days name the neutral members.

The National Mediation Board pays the neutral members of the Board of Arbitration and the employees and carrier pays their own representatives.

The Arbitration Board, once organized, may employ assistants with approval of the Mediation Board. These employees are compensated by the National Mediation Board.

An Arbitration Board may request the clerk of the District Court (Federal), under whose jurisdition it is sitting, to supoena witnesses and to compel them to attend and testify. It also may require the Court to have the parties produce such books, papers, contracts, agreements and other documents it deems necessary to the proceedings. It is interesting to observe that arbitration does not necessarily come about owing to intervention by the National Mediation Board in attempting to settle a dispute. In fact, many disputes are voluntarily submitted to arbitration in instances where the Mediation Board's services are not in any way involved. An example of this type of Arbitration Board is a medical board set up to determine the physical condition of an employee in instances where the carrier's examining physician contends the employee is not physically qualified to perform all or part of his regular duties, and the employee's private physician contends otherwise. Here again, in the event two physicians representing the carrier and the employee, respectively, are unable to agree they may select a third or neutral physician to decide the dispute.

When arbitration proceedings are resorted to the decision rendered by such board is final and binding on the parties involved. There is no further appeal.

EMPLOYEE REPRESENTATION

Another important function of the National Mediation Board, as previously referred to under Section 2, General Duties, Ninth, involves the designation of the individuals or organization authorized to represent the employees.

If any dispute arises among a carrier's employees as to who is the authorized representative of the class or craft involved, it is the duty of the Mediation Board to investigate the dispute and to certify to both parties within thirty (30) days' the authorized representative of the craft or class for the

particular carrier involved. The Board is authorized to ascertain the majority wishes through use of a secret ballot. In the conduct of the election it may designate those authorized to participate in the election and formulate the rules.

When a representation election is to be conducted, after the National Mediation Board has determined a dispute exists, such election is confined to the craft or class involved on the individual railroad, air line or other property subject to the Railway Labor Act. The "individual railroad" includes all segments of a carrier which reports as a unit to the Interstate Commerce Commission. For example, the Southern Pacific (Pacific Lines) includes the El Paso and Southwestern Railroad and so reports to the Interstate Commerce Commission. On the other hand, Southern Pacific's Atlantic System (T&NO) reports separately to the Interstate Commerce Commission as do Southern Pacific's subsidiaries, the Northwestern Pacific Railroad, San Diego and Arizona Eastern Railroad, Pacific Electric, etc. In the event a representation election is held on Southern Pacific's Pacific Lines, involving a particular craft or class of employees, such election would not involve the employees of the Southern Pacific's Atlantic System or other subsidiaries reporting separately to the Interstate Commerce Commission. Air line representation disputes are confined to the employing carrier.

The Railway Labor Act does not define the terms "craft or class" in which the majority is given the right to determine the representation. Over the years most of the main craft or class issues have been settled by self-determination, thus creating precedents for settlement of such issues without the necessity for public hearings.

In determining craft or class issues, the National Mediation Board gives consideration to all relevant elements. Individual cases require consideration of facts peculiar to particular situations.

There are general factors, however, which include composition and permanency of employee groupings along craft or class lines on all railroads, as well as particular or local situations on individual carriers. So far as is possible the National Mediation Board has followed the past practice of the employees' voluntarily grouping themselves for representation purposes. Once the craft or class has been defined and recognized for representation purposes, the National Mediation Board has made few changes notwithstanding pressure by certain groups of employees to split the established classes or crafts, or to regroup them.

As an example of class grouping, yard foremen, helpers, herders and switchtenders are considered as forming one craft group while, on the other hand, yardmasters, in most instances promoted from the ranks of yardmen (switchmen), are considered as a separate group. To illustrate, in a representation election involving the craft of yardmen (switchmen), yardmasters would be excluded. In the air line industry pilots, engineers, stewardesses, ticket clerks, maintenance employees, etc., are similarly grouped for representation purposes.

When the Railway Labor Act was amended in 1934 the carriers subject to the Act were required to file with the National Mediation Board all copies of current agreements with organizations representing the various crafts or classes on the individual carrier's lines. In this manner the problem of determining the bargaining representative for each craft or class who was a party to such agreement was resolved at that time. In the railroad industry where no craft or class had a union organization prior to June 21, 1934 the individual or organization seeking to be the spokesman after that date, if not contested, in order to be certified as

the bargaining representative had to obtain only 35% of the individual authorizations of the total number of employees affected. The same procedure was followed in the air line industry after 1936. However, if there was a representation dispute a majority vote was necessary. These rules are currently followed by the National Mediation Board in determining craft representation.

In order to bring about a change in representation under existing agreements:

(1) The first step for the organization or individuals seeking such change is to solicit the individual authorizations of a majority of the employees in the particular craft or class involved. No authorizations will be accepted by the National Mediation Board which bear a date prior to one (1) year before date of application for investigation of the representation dispute. If the Mediation Board determines, by checking the carrier's records, that a majority of the employees of the particular craft have signed authorizations for another organization or individual to represent them and a representation dispute thus exists, the Mediation Board so notifies the parties to the dispute and the employing carrier of the time set for an election. It should be pointed out that the individual or organization seeking to be authorized as a collective bargaining representative is not required to qualify under the "national in scope" provisions of Section 3 of the Railway Labor Act but must be organized in compliance with the provisions of Section 2 of the Act.

(2) The second step is to determine the employees eligible to vote. The carrier is required to furnish the names, addresses, etc., of all employees in that particular craft or class, and where there is doubt the National Mediation Board attempts to have the parties agree on an individual's eligibility. If they cannot so agree, either party to the dispute may protest the vote of any individual who may be permitted to cast a ballot. Such ballots, whether cast by mail or ballot box, are then impounded by the Mediation Board for later determination as to whether the ballot may or may not be counted, provided such ballot would determine the outcome of the election.

In determining those eligible to vote, if the craft or class affected is clearly defined with no over-lapping service coming under the jurisdiction of another craft or class, it is fairly easy to agree on the eligibility list. However, in the railroad industry in elections which involve the engine service (engineers and firemen) and the train and yard service (conductors, brakemen and yardmen) where there is an interchange of service involved, including dual seniority rights, it isn't so simple.

Generally the National Mediation Board and the parties to the dispute approach this problem of eligibility in several ways:

(1) Set up a preponderance of service period, limited usually to several months (3 months, 6 months, etc.) prior to the date of election to determine the number of days an employee worked in the craft being voted, or

(2) As of a particular date, agreed to by the parties, all employees holding assignments either regular or extra on that date, in the particular class involved in the representation vote, are considered qualified.

Even under the preponderance of service method used to determine eligibility, any employee holding an assignment, either regular or extra, in the craft being voted, on the closing date set up for those eligible to vote, qualifies for a ballot. The closing date is generally established as the date of the close of the pay roll period next following the date the mediator officially arrives to commence taking the representation vote.

If the eligibility is determined by an employee's status as of a particular selected date an employee thus qualifying to vote remains eligible even though on the date the employee votes he may be holding a position in another craft in which he holds seniority.

In any election, once a closing date has been agreed upon in order to establish the eligibility list of voters, any person hired as a new employee subsequent to this date is ineligible to vote.

Employees on sick or other authorized leave of absence, on furlough, or retired on physical disability under age of 65, who hold seniority rights in the craft or class involved, on the basis of their last regular assignment, are eligible to vote. In addition to the foregoing, in any case, employees out of service owing to dismissal for cause, whose cases are being actively handled for reinstatement under agreement provisions, are permitted to cast a ballot.

Furloughed employees holding seniority rights in the craft or class being voted on a particular carrier who are employed on another carrier subject to the Railway Labor Act are ineligible to vote.

In all representation elections the National Mediation Board, acting through its assigned representative (mediator) and the parties to the election agree on the eligibility rules to govern the vote. Consequently, such rules may vary in order to meet the particular situation in each election.

The secret ballot may be taken either by (1) a ballot box election, (2) mail vote, or (3) by a combination ballot box election and mail vote. In connection with the latter, if an eligible employee is in the proximity of the voting place during the voting hours (usually considered as being in the city or town where the election is taking place) and is not otherwise prevented for good cause from appearing and casting a ballot, he is not given a mail ballot. He is considered as having declined to vote. This procedure varies considerably depending on the mediator conducting the election and the understandings reached with the parties to the election.

One or more mediators are assigned by the National Mediation Board to conduct an election and all parties agree on a particular date when the ballots will be counted, allowing time for mail ballots to be returned. At the counting all the parties in interest are present and certify to the accuracy of the count. The individual or organization receiving a majority of the votes cast is designated as the bargaining representative. In the event no one organization or individual receives a majority, or where a tie vote results, a new election will be held between the two receiving the greatest number of votes, provided a written request by one of the individuals or organizations entitled to appear on the ballot is made within ten (10) days.

The question may be raised as to how more than two organizations may become involved in the same representation dispute. This occurs in instances where one organization has solicited individual authorizations from more than 50% of the employees of a craft and in order for a third or fourth, etc., organization or

individual to be placed on the ballot as an intervener after it is determined by the Mediation Board a dispute exists, it is only necessary that the additional group or groups show they have at least 35% proven authorizations of the total number of the employees that may be in the craft or class. The Mediation Board will recognize such authorizations notwithstanding they may contain the signatures of employees who have previously signed authorizations for another organization or individual identified with the same dispute.

All ballots name the individuals or organizations, parties to the dispute and, in addition, leave a blank space for write-ins if an employee wishes to vote for some other representative. However, write-ins are not permitted on ballots for a run-off election.

Once the National Mediation Board has determined the winner in an election another election in that class or craft on the carrier involved cannot be held for a period of two years from the date of certification by the Mediation Board. This is done so that the new representative will be given ample opportunity to demonstrate ability to represent the craft or class in collective bargaining.

The National Mediation Board, on April 13, 1954, issued a ruling in connection with the handling of representation disputes by setting up a time limit on applications as follows:

> "4. Time Limit on Applications. (A) The National Mediation Board will not commence the investigation of a representation dispute for a period of two (2) years from the date of a certification hereafter issued covering the same craft or class of employees on the same carrier in which a representative was certified, except in unusual or extraordinary circumstances.
>
> "(B) Except in unusual or extraordinary circumstances, the Mediation Board will not accept for investigation under Section 2, Ninth, of the Railway Labor Act an application for its services covering a craft or class of employees on a carrier for a period of one (1) year after the date on which --
>
> '(1) An election among the same craft or class on the same carrier has been conducted and no certification was issued account less than a majority of eligible voters participated in the election; or
>
> '(2) A docketed representation dispute among the same craft or class on the same carrier has been dismissed by the Board account no dispute existed as defined in Rule 2 of these Rules and Regulations; or
>
> '(3) The applicant has withdrawn an application covering the same craft or class on the same carrier which has been formally docketed for investigation.'
>
> "Rule 4 (B) will not apply to employees of a craft or class who are not represented for purposes of collective bargaining."

In instances where there is an agreement in effect between a carrier and its employees signed by one set of representatives, and the employees choose new bargaining representatives who are properly certified by the National Mediation Board, such change in representation does not alter or cancel any existing agreement made in behalf of the employees of the craft or class by the previous representatives. The only effect of a certification by the National Mediation

Board where a change results in the representation is that the employees have chosen new representatives to deal with management under the existing agreement. If the new agents or representatives desire to change the existing agreement it must be so done as provided in Section 6 of the Act. In other words, the new bargaining representatives cannot be held to the existing agreement made with an incumbent organization if they desire to change it following proper certification.

The National Mediation Board performs another important function in connection with the formation of a President's Emergency Board. When a notice is served by an organization under Section 6 of the Act to change rates of pay, rules or working conditions, and a request is made by either party for its services, and the Mediation Board is unable to settle the matter and so notifies the parties, the next step the organization may take is to threaten a strike. If the National Mediation Board determines in its judgment that such proposed strike threatens to substantially interfere with interstate commerce under circumstances where the national interest is involved, it is required to notify the President of the United States who may at his discretion appoint a fact finding board, known as the Emergency Board, to investigate and report to the President on the dispute together with its (Emergency Board's) recommendations. The report and findings of the Emergency Board is not binding on either party to the dispute. After the Board is created it has thirty (30) days to conduct hearings and make a report subject to mutual agreement to extend the time.

Once the President of the United States has appointed an Emergency Board, no work stoppage may take place during the period the Board is in session and for thirty (30) days after the Emergency Board has made its report to the President. After the thirty (30) day period has expired a legal strike may take place. However, in practice when this point is reached, generally the issues are resolved along the lines recommended by the Emergency Board to dispose of the dispute.

In summary, the National Mediation Board's important functions are (1) settlement of disputes through mediation and arbitration and (2) the designation of the individuals or organizations authorized to represent the employees of various crafts or classes.

Agreements made during mediation are the most satisfactory from the viewpoint of good will which prevails when compulsion is not involved. Generally during mediation a number of cases forming a docket, or included in the docket, are disposed of through withdrawal, thus paving the way for a voluntary settlement of other issues. Many proposals contain "hay" for bargaining reasons and, of course, must be eliminated at the "right time." After Section 6 Notice has been served, each side probes the other during preliminary conferences attempting to locate the strong and weak issues. Once the basic issues have been determined, through this process of elimination and compromise, a settlement satisfactory to all concerned usually results. Mediation proceedings are by far the most advanced method of settling disputes, thus confirming the wisdom of the framers of the Railway Labor Act in placing main reliance on this form of settlement. Voluntary agreement between the parties immediately concerned is the foundation of the entire Act owing to the fact that emphasis is placed on non-interference by one party in the selection of the representatives of the other party. Moral and legal obligations to fulfill a contract arise only when the parties are bound by their self-chosen representatives.

SECTION 6

The Railway Labor Act makes an important distinction between disputes arising out of grievances or out of interpretations or application of existing agreements concerning rates of pay, rules or working conditions, and requests by either party to change or dopt rates of pay, rules or working conditions, that affect, supersede or nulify existing agreements or establish new agreements.

The Sixth Paragraph of Section 2 prescribes the manner in which grievances and disputes arising out of interpretation and application of existing agreements shall be handled by the parties to the contract. On the other hand, Section 6 prescribes the procedure to be followed when requests for changes are made in existing agreements or adoption of new agreements when one of the parties to a contract is not willing to negotiate with the other on a voluntary basis, or, under circumstances where one of such parties anticipates any change in the agreement or new request would be resisted by the other party.

In serving notices under Section 6 of the Act of any intended change in agreements affecting rates of pay, rules or working conditions, the parties must give thirty (30) days' written advance notice of the desired changes. The written notice must fully set forth theproposed change or request. The party to which the notice is directed is required to acknowledge its receipt and within ten days both parties must agree to the time and place for conference to discuss the new proposal. The initial conference then must take place within thirty (30) days of the date of the written notice of intended change in the agreement. Conferences may be held at any time following the initial discussion until the matter is fully disposed of through voluntary agreement reached by the parties or by Mediation procedure. Agreements negotiated in this manner have the same status under the Railway Labor Act as any other agreement which is consummated following the invocation of the procedures of Section 6, that is, they may not be subsequently changed or cancelled without compliance with this Section of the Act, unless, of course, the parties mutually agree to do so. Often when agreements are made on a voluntary basis the parties provide in the agreement that notice to change or cancel it does not constitute a change in rules, rates of pay, or working conditions as contemplated by Section 6.

It should be again emphasized that it is not necessary to conform to the procedure set forth in Section 6 to make any changes in or to adopt new rates of pay, rules or working conditions, if the parties to a contract voluntarily agree to negotiate on such request. In fact, a great majority of agreements are adopted in this manner.

NATIONAL RAILROAD ADJUSTMENT BOARD

In the original Railway Labor Act in 1926 only vague provision for the establishment of voluntary arbitration boards was included. The Train Service Board of Adjustment for the Western Region is an example of a board set up by a voluntary agreement. So long as the management and labor representatives agreed upon the disposition of cases submitted to it, the Board worked satisfactorily; however, once a case was deadlocked there was no way of settling the question. In other words, there was no provision for the employment of a neutral on this Board to decide a matter on which management and labor representatives could not agree. This defect was corrected with the setting up of the National Railroad Adjustment Board in the amendments of June 21, 1934.

The amended Railway Labor Act of June 21, 1934, set up the much needed

machinery to deal with disputes over the interpretation and application of agreements affecting wages, rules and/or working conditions.

It was the intention of Congress to make the National Railroad Adjustment Board as independent as possible of the National Mediation Board. It was assumed that each would specialize in the settlement of certain types of controversies. However, Congress did not succeed in separating the boards as completely as it hoped to do. This resulted in the Adjustment Board being controlled by the National Mediation Board through: (1) the financing of its activities; and (2) the appointment of referees in deadlocked cases in instances where the Division of the National Adjustment Board fails to agree on a neutral. With respect to financing, the National Mediation Board could, if it desired, affectively check or curtail the activities of the Adjustment Board.

As to the appointment of referees in deadlocked cases, the Mediation Board could exert (and sometimes does) considerable influence over the work of the Adjustment Board for the reason the settlement of deadlocked disputes is by far the most important function of a Division of the National Railroad Adjustment Board. The Mediation Board, consequently, through this statuatory authority to select referees in instances where the Divisions cannot agree on a neutral, may influence the manner in which deadlocked cases are disposed of by the character, training and economic views of the referees it selects.

The National Railroad Adjustment Board is a bi-partisan board composed of 36 members, half of which represent management and half represent labor. The management representatives are chosen from officers of railroads associated with the Eastern, Southeastern and Western Carriers' Conference Committees. They are paid by the Association of American Railroads.

The labor members are chosen by the Presidents of the various railroad Brotherhoods, unions national in scope, entitled to be represented on the National Railroad Adjustment Board, and are paid by the individual organizations.

The National Railroad Adjustment Board is composed of four Divisions:

(1) The First Division has jurisdiction over disputes involving the engine, train and yard service employees;

(2) The Second Division has jurisdiction over disputes pertaining to the so-called shop crafts, such as machinists, electrical workers, sheet metal workers, etc.;

(3) The Third Division has jurisdiction over disputes in connection with dining car employees, telegraphers, maintenance-of-way men, sleeping car employees, etc.;

(4) The Fourth Division has jurisdiction over disputes concerning employees of carriers not included in the jurisdiction of the First, Second and Third Divisions, and employees engaged in waterborne traffic of the railroads. Railroad yardmasters are also included in this group.

There are ten board members assigned to the First, Second and Third Divisions and six to the Fourth Division.

No labor organization may have more than one member on any Division of the Board.

In order to be eligible for representation on the Board, the organization must be designated as national in scope. If the Secretary of Labor deems a dispute exists as to the right of a claimant organization to be permitted representation on the National Railroad Adjustment Board, he shall notify the National Mediation Board who will request the labor members of the National Railroad Adjustment Board to select their representative who shall meet with a representative of the claimant and a neutral party selected by the National Mediation Board to resolve the dispute; that is, determine if the claimant organization is organized in accordance with Section 2, Third and Fourth of the Act and, in addition, meets the requirements of Section 3, Paragraph (a) as it relates to the requirements of being national in scope.

In a decison rendered by the Supreme Court of the United States on February 25, 1957, in the case of the Pennsylvania Railroad, Petitioners, v. N.P. Rychlik, individually and on behalf of himself and as representative of other employees of the Pennsylvania Railroad, the Court held that a labor union under the Act, in order to be designated as national in scope, must already be qualified as an elector under Section 3. A union or organization not thus having this status fails to qualify under the national in scope requirement.

Before grievances growing out of the interpretation or application of agreements governing rates of pay, rules or working conditions may be referred to the Adjustment Board, they must first be handled on the property from which they emanate. They must be processed in the manner provided for the handling of grievances under the agreement in effect, up to and including the highest officer designated to handle such matters. In other words, if there is a procedure set up by agreement, including time limits on the handling of grievances, the agreement between the parties must first be complied with in its entirety before progressing the case further to the National Railroad Adjustment Board. This is very important for the reason that failure to comply with the provisions of Section 3, Subparagraph (i) of the Act, will result in the case being dismissed by the National Railroad Adjustment Board for lack of jurisdiction.

The legislative background of the Railway Labor Act demonstrates a well-defined intention to preserve the employees' rights with respect to the handling of individual grievances and selection of a representative in the progressing of such individual grievances arising out of the controlling agreement. The representation of individuals with respect to the initiation and handling of such grievances relating to the governing agreement is to be distinguished from representation of the craft for collective bargaining purposes. The reasoning in this instance is that the former arises from the authorization by the individual while the latter emanates from the choice of the majority of a particular craft or class of employees. In the case of Elgin Joiliet and Eastern Railway vs. Burley (325-U.S.-711, 1945) the United States Supreme Court held that in the absence of authorization by the individual employee, the collective bargaining representative does not have the right to act as a representative in handling a grievance on behalf of the aggrieved employee before the National Railroad Adjustment Board unless authorized by such individual employee.

The whole spirit and intent of the Railway Labor Act, as amended, is opposed to any discrimination and to any coercion or influence operating against the exercise of an individual's freedom in his choice of a representative in protecting his individual rights secured by law or contract.

In connection with Section 3, Subparagraph (i) of the Act, where a change in representation in the handling of a claim by an individual or organization is authorized by the individual in behalf of whom the claim is made,

there is a question as to whether the new representative must comply with the time limitation provisions of the governing agreement as if handling the case from its inception. Award 14763 of the National Adjustment Board, First Division, indicates this requirement as it relates to the adjustment Board's interpretation of Section 3 (i) of the Act requiring that "grievances shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes."

When presenting a case, following compliance with Section 3, Subparagraph (i), before the National Railroad Adjustment Board the parties may be heard in person, by counsel, or by other representative. However, each Division has its own rules of procedure. For example, when a case is progressed to the National Railroad Adjustment Board, First Division, the general chairman of the organization submitting the case may present oral argument before the labor and management members of the Board. In doing so, oral presentation is confined to the written record of the case already submitted and he is not permitted to add to or introduce new evidence or other material. Further, at the hearing, if a neutral has been selected, the general chairman of the organization or his representative appealing the case does not have an opportunity to present the case before the referee. The neutral or referee meets only with the Board members.

When the Board members meet with the referee to argue a case, they are also limited in their oral presentation to the facts contained in the written record of the case as submitted, excepting that they may refer to decisions of the National Railroad Adjustment Board not previously cited or rules in the agreement covering the class or craft involved in the particular case to support their respective positions.

The members of the Adjustment Board may also refer to the decisions of Special Adjustment Boards established under Section 3, Second, of the Act. However, on the First Division the members of the Board have agreed that only decisions from Special Adjustment Boards will be cited in cases appealed to the First Division emanating from the carrier and its employees involving the same agreement where applicable.

When cases are heard by the Second, Third or Fourth Divisions of the Adjustment Board, to illustrate, the general chairman or other representative of the organization appealing the case may appear or give oral argument before the members of the Board with the referee (if appointed) present. However, all discussion of the case is confined to the written submission as presented to the respective Division under its particular rules of procedure.

Whenever the members of any Division of the Adjustment Board are unable to dispose of the case because of a deadlock or inability to secure the majority vote of the Division members, the Division will then attempt to agree upon and select a neutral person to act as referee. If the Division members of the Adjustment Board fail to agree on the selection of a referee, then the Division, or any member thereof, may certify that fact to the Mediation Board and petition the National Mediation Board to select the neutral, which must be done within ten days of receipt of such request.

Awards of the National Railroad Adjustment Board are final and binding upon both parties to the dispute, except in so far as they contain a money award. In the event a dispute should arise involving an interpretation of an award of any Division of the Board, either party to the dispute is privileged to request that particular Division to place an interpretation on its findings.

When an award is rendered by any Division of the Adjustment Board, the Secretary of the Board prepares an order directed to the carrier to make it effective, as of a particular date and, in addition, if the award includes the payment of money, the carrier is directed to pay the amount the employee is entitled to under the settlement. In the event a carrier fails to comply with an order of a Division of the Adjustment Board within the time limit indicated, the petitioner or any person for whose benefit the award is made may file a petition with the District Court of the United States in the District in which the person resides seeking enforcement of the award. Such a suit in the Circuit Court of the United States is handled the same as any other civil action. Actions at law must be commenced within two years from the time the award is rendered by the Division of the Adjustment Board.

Any Division of the National Railroad Adjustment Board has authority at its discretion to set up regional or supplementary adjustment boards to act in its place for such periods of time as the Division may deem necessary. Such regional or supplementary adjustment boards are formed and operate under the same rules which govern the Adjustment Board.

In addition, Section 3, Second, permits carriers and their employees through mutual agreement to establish system, group, or regional boards of adjustment, commonly referred to as Special Adjustment Boards, for the purpose of adjusting and deciding disputes arising out of the interpretation or application of agreements concerning rates of pay, rules or working conditions. The setting up of Special Adjustment Boards is conducted under the supervision of the National Mediation Board.

The rules of the National Railroad Adjustment Board are generally followed in drawing up the agreement establishing a Special Adjustment Board but the parties have some latitude in this respect as long as they comply in general with the Railway Labor Act. For example, when Special Adjustment Board No. 18, Southern Pacific (Pacific Lines), was established to hear disputes involving the BLE, BLF&E, BRT and ORC&B, the engineers' and firemen's organizations and the Carrier limited their oral argument before the referee to matters contained in the previously submitted written record of the case. On the other hand, the conductors' and trainmen's organizations and the Carrier permitted the introduction of new evidence, oral or written, or through witnesses, in addition to the material in the written submission, during oral presentation.

When there is more than one organization participating in a Special Adjustment Board, the Board, by agreement, divides itself into panels and each organization's cases are heard separately. A case involving the schedule rule of another craft or class, however, may not be disposed of without a representative of the craft or class present and participating. In this manner each contracting party is able to protect its interests. For example, when the Brotherhood of Locomotive Engineers presents a case in the enginemen's panel involving a fireman, the General Chairman or his representative of the Firemen's Organization is present to interpret the rule involved with the Carrier's representative. This procedure protects the firemen's contractual interest and, in addition, expedites the disposition of the case. This is also true when the Conductors' Organization handles a trainman's case or the Trainmen's Organization handles a conductor's case in their respective panels.

Special Adjustment Boards may operate as long as desired by the parties involved. The salary of the referee is paid by the National Mediation Board and all other expenses of the Special Adjustment Board are bone equally by the carrier and the organization or organizations participating.

The Special Adjustment Boards follow the same rules as the National Railroad Adjustment Board under the Division which they are created.

The awards of the Special Adjustment Board are final and binding and there is no further appeal. Its decisions are enforceable in the Federal Courts in the same manner as awards of the National Railroad Adjustment Board.

As previously pointed out, the Railway Labor Act distinguishes disputes involving individual grievances and interpretations or application of agreements from disputes arising out of changes in agreements involving rates of pay, rules or working conditions. Section 2, Sixth Paragraph, and Section 6 of the Act are to be noticed in this connection for comparison. In other words, request for changes in agreements relating to rates of pay, rules or working conditions, are subject to mediation by the National Mediation Board, while time claims, discipline matters, and other grievances arising out of the interpretation or application of agreements, are referable to the National Railroad Adjustment Board for adjudication.

The function of the National Railroad Adjustment Board is to interpret and apply rules of the agreement and this Board has no authority to make new rules or to modify existing schedule provisions. The framers of the Act recognized that where agreements covered the question in dispute mediation became unnecessary owing to the fact the issues are intended to be settled by the agreements. Obviously, to mediate or compromise such matters would result in modifying or changing the rules of the agreement. This situation would not be desirable.

The jurisdiction of the National Railroad Adjustment Board is logical, desirable and in accord with the intention of the creators of the legislation in performing the function of adjudicating disputes arising out of the interpretation or application of agreements just as business contracts often have to be adjudicated in the courts.

It is not always easy for the Adjustment Board to confine itself strictly to the function of the interpretation and/or application of the agreement in arriving at a decision in instances where the rule referred to or involved is silent in some respects, ambiguous, self-contradictory or otherwise does not express clearly what the parties intended when the rule was written, or a practice has developed not expressly covered by the rule. Cases of this nature are usually deadlocked and must be decided by a referee. The neutral's decision often has the effect of establishing an interpretation tantamount to a new rule, or modifying an existing rule. To this extent the decisions of referees do have a profound effect and influence on the nature and scope of the agreements between the carriers and the employees. For instance, the Constitution of the United States is a document not too long in length, yet its meaning and scope has been molded and modified through many years of interpretations by the U. S. Supreme Court. Similarly, collective bargaining agreements are influenced by decisions of the Adjustment Board.

The National Railroad Adjustment Board in effect supplements the work of the National Mediation Board which latter Board is charged by the Act with the responsibility of attempting to settle by mediation or arbitration all disputes not referable to the National Railroad Adjustment Board.

It should be noticed that the National Mediation Board does not possess appellate jurisdiction over the decisions of the National Railroad Adjustment Board, except the National Mediation Board may intervene as a mediator if a major controversy arises out of the carriers' failure or refusal to carry out an award

of the National Mediation Board. This may occur, for example, when the operating group elect to join together to enforce compliance with an award applicable on a particular railroad through a threat to use the organizations' economic strength if the carrier fails to carry out the terms of the National Railroad Adjustment Board's award, thus relieving the claimant in whose favor the award is rendered from filing suit for compliance in Federal Court.

The National Railroad Adjustment Board functions similar to a voluntary board of arbitration rather than an administrative agency of the Federal Government for the reason that the Adjustment Board is powerless to compel witnesses to attend hearings, has no power of subpoena and thus is unable to compel the parties to the dispute to produce relevant documents. Once an award is rendered the National Railroad Adjustment Board has nothing further to do with it so far as enforcement of its terms are concerned.

The award of the Adjustment Board becomes the responsibility of the petitioners or the person for whose benefit the award is rendered. As previously observed, the Railway Labor Act in Section 3 (p) provides that if a carrier fails to comply with an order of an Adjustment Board as to the time in which an award will be applied, the petitioner in whose favor the award was rendered may file a suit in the Federal District Court and handle it the same as any other civil case.

Generally, the Railroad Brotherhoods have used the strike threat to settle the issue and thereby enforce compliance with the terms of an award rather than appeal to the Federal District Court. However, these instances are rare. By and large the carriers comply with the awards of the National Railroad Adjustment Board. In some instances they attempt to have the Adjustment Board interpret an award before placing it into effect if the decision leaves some doubt as to how its terms are to be carried out.

It should be remembered that more awards are decided in favor of the carriers than the employees owing, in a large measure, to: (1) the poor quality of cases appealed; (2) poorly prepared cases; and (3) the desire of many organizations acting through their general committees to "pass the buck" on cases that should have been closed out by the representatives of the organization and the carrier on the property from which they emanated.

The National Railroad Adjustment Board renders a valuable service in labor-management relations making it possible to dispose of many major as well as minor controversies arising out of the application and interpretation of agreements, thus avoiding hundreds of situations that might otherwise result in interruption to the free flow of commerce on the American Railroads.

In Summary:

We have reviewed the most important provisions of Title I, Railway Labor Act, particularly: (a) Section 2, "General Purposes" and "General duties"; the Union Shop and Check-off of Dues; (b) the National Mediation Board and its functions; and (c) the National Railroad Adjustment Board and its functions.

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Title II of the Railway Labor Act was approved by Congress on April 10, 1936 and extended certain of the provisions of Title I to cover common carriers by air engaged in interstate and foreign commerce, and air lines transporting mail for or under contract with the U.S. Government and employees of such air lines.

All of the provisions of Title I of the Act apply to air lines in the same manner as they apply to railroad carriers with exception of Section 3, which

deals with the National Railroad Adjustment Board and its functions.

Disputes between an employee or groups 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, if not disposed of on the property or properties involved, may be referred by petition of the parties or by either party to an adjustment board having the same jurisdiction of system, group, or regional boards as provided by Section 3, Subparagraph (w), Title I.

Section 205 permits the National Mediation Board at its discretion to establish at some future date a permanent adjustment board to be known as the National Air Transport Adjustment Board. This adjustment board, when created, will consist of four members, two to be selected by the carriers and two by the labor organizations of the employees. It will organize and adopt rules of procedure in the same manner prescribed by Section 3 of Title I, governing the National Railroad Adjustment Board. Up to the present time there has not been a need for a creation of a National Air Transport Adjustment Board, apparently for the reason many matters are continuously handled and disposed of through mediation.

By bringing the air lines and their employees under the Railway Labor Act, Congress has extended to this industry a method of settling labor disputes that has been well tested by years of experience with Federal legislation in the railroad industry. However, many problems relating to employee-employer relationship and the application of the Railway Labor Act have arisen owing to the rapid expansion of the air line industry in a comparatively short period of time.

Technological improvements in air line operation, such as Jet propelled planes, has created situations which have been the subject of prolonged mediation proceedings in the negotiation of new agreements covering wages and working conditions. This, of course, is to be expected in a new transportation field where research is constantly opening up improvements in the industry.

Unlike the agreements in the railroad industry, a custom has developed among the air line carriers making so-called "closed" agreements from year to year with a "re-opening" period of thirty (30) days prior to the anniversary date of the agreement. Such agreements provide short periods of rate and rule stability but at the end of such moratorium periods the carriers are constantly confronted with yearly demands for wage increases and improvements in rules. This results, as previously indicated, in many disputes being referred to the National Mediation Board for settlement and which require long periods of mediation before the issues are resolved. No doubt when more experience is gained in employee-employer relationships in the air lines industry, more reliance will be placed upon settlement between the parties rather than having to resort to the services of a neutral. This may result in the necessity for setting up a National Air Transport Adjustment Board as previously mentioned. The settlements and precedents established by such a board would have a far-reaching effect in disposing of minor grievances arising out of the interpretation or application of agreements concerning rates of pay, rules or working conditions and thus contribute to stability in the industry.

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