

Longshore industry  
(1964 folder)

IS COMPULSORY ARBITRATION NEEDED  
IN THE MARITIME INDUSTRY?

by

J Bonner Ritchie

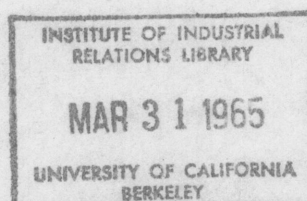
Graduate School of Business Administration

Business Administration 255

Dr. Arthur M. Ross

= Berkeley = University of California

January 13, 1964



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or  
photographs  
included*

January 13, 1964

Dr. Arthur M. Ross  
Professor of Industrial Relations  
University of California  
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Dear Dr. Ross:

This paper is submitted in satisfaction of a semester paper requirement for Business Administration 255. The paper is a discussion of the question: Is compulsory arbitration needed in the maritime industry?

I have thoroughly enjoyed the investigation conducted as part of this paper. I feel that I have gained much greater insight into the complex problems of the maritime industry and industrial relations in general. I also feel that I have developed a better criteria for evaluation of industrial relations problems.

I should like to acknowledge a debt of gratitude to the staff of the International Longshoremen's and Warehousemen's Union in their San Francisco office. They were very helpful in providing information and offering suggestions. Miss Anne Rand, the librarian, was especially cooperative.

I should also like to express my thanks to you, Dr. Ross, for the background in industrial relations received this semester in class.

Sincerely submitted,

*Bonner Ritchie*  
Bonner Ritchie

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## INTRODUCTION

"Labor relations are worse, collective bargaining works less well and there is more ruthlessness and less reason in the maritime and longshore industries than in any other." Thus spoke Secretary of Labor W. Willard Wirtz before the House of Representatives Committee on Merchant Marine and Fisheries during a 1963 hearing on a proposed amendment to the Merchant Marine Act.

Secretary Wirtz's statement reflects a situation in an industry where three Presidents of the United States have invoked the "national emergency" provisions of the Taft-Hartley Act eight times (more than in any other industry) in disputes involving either merchant marine or longshoring. Considering the evaluation of the Secretary of Labor and the past judgments of our chief executives as to the seriousness of these disputes, it may now be time to propose some changes in the conduct of maritime collective bargaining.

Being convinced that a change was in order, on January 17, 1963, Representative Herbert C. Bonner (D-N.Car.) introduced a bill (H.R. 1897) to amend the Merchant Marine Act which included a provision that unresolved disputes could be decided by "compulsory arbitration." During the course of the long hearings held on this bill the question was asked many times, "Is compulsory arbitration needed in the maritime industry?" It will be the purpose of this paper to consider that question in the context of current conditions.

For the purpose of this inquiry I should like to use the hypothesis that the time has arrived when compulsory arbitration is needed in the maritime industry. In order to substantiate the hypothesis it seems

that there are three criteria that are relevant: (1) that conditions in the maritime industry are so deplorable as to render inadequate the existing methods and laws for resolving labor disputes; (2) that a labor dispute in the maritime industry does in fact cause a "national emergency" requiring government action; and (3) that if the first two conditions exist, there is no other foreseeable solution than compulsory arbitration.

The factors involved in the above criteria will be considered in this paper under four sections dealing with the conditions of the industry, the response of congress, the compulsory arbitration issue, and the future of maritime "peace."

\* \* \*

## SECTION I

### THE INDUSTRY -

The Longshoremen and Merchant Marine.--There are accounts of intense and sustained labor-management strife in the history of many industries. Coal, steel, auto, rubber, meatpacking, railroads and others have witnessed some turbulent times in the struggle between employer and union. Perhaps nowhere, however, has the strife been quite so prolonged and chaotic as in the maritime industry. The unique characteristics of the industry may not offer a complete explanation of the problem, but mention of them is essential at least as part of the analysis.

The history of the maritime industry indicates a long period of extremely substandard conditions for men on the docks and in the vessels which were improved only after a long and bitter struggle. Most seagoing workers and longshoremen are hired through "hiring halls" on a one-trip, one-job basis. The absence of a stable and continuing relationship between employer and employee introduces an element of uncertainty and causes strained loyalties. The absolute authority of a captain of a ship at sea and the limited recourse (short of mutiny) by seamen is another factor. And as a counterforce, the devastating effect of a strike by a crew, or longshoremen, when a ship is in port adds an element of tension and a constant threat. The costly nature of "port time" for a shipping company means pressure to get the ship sailing as soon as possible. For the longshoremen the ship must be loaded sooner or later, and if they pull a "quickie" strike today they will probably get overtime tomorrow in an effort to speed up the

process. As a result the employer is under great pressure to "come to terms." The foreign competition of "low-wage" crews has resulted in a tremendous amount of subsidies to firms to keep American crews on our ships. The pressure of the government is also felt through their role as a shipper and regulatory agency, and lastly they have a responsibility for maintaining an effective merchant fleet as part of our defense program. Thus the government is hardly to be regarded as a third disinterested party in the maritime industry.

The romance of sailing the high seas and the intrigue "on the waterfront" have hardly compensated for the elements of uncertainty, tension, instability and pressure which have caused both workers and employers to sometimes act in an other than rational manner.

Although the behavior involved in this relationship can hardly be blamed on one party or the other, both union and employer have contributed their share to the dilemma. Bitter interunion rivalries constitute one of the serious continuing problems of the industry. Long standing jurisdictional disputes and mutual suspicion due to frequent raids and differing ideologies do not seem to abate. Also the whipsawing effect resulting from different contract expiration dates causes a problem for the employers. (It should be mentioned that most of the employers bargain through an employers association.) A veteran maritime observer had this terse comment to offer regarding the issue: "An inter-union maritime dispute is like the duck-billed platypus. Unique. You can't compare it to anything else but another duck-billed platypus. With fangs."<sup>1</sup> The comment may be extreme, but it is indicative.

Along with, and compounding the interunion rivalries, is a history of Communist and gangster elements in many of the maritime unions.

It is interesting to note that both the east and gulf coast longshoring union, the International Longshoremen's Association (ILA), and the west coast union, the International Longshoremen's and Warehousemen's Union (ILWU), were expelled from the AFL-CIO. (The ILA has since reaffiliated.)

Strong and different competitive pressures, varying economic interests (sometimes resulting from subsidized versus unsubsidized operators), and the different problems of the various employers resulted, in the past, in a lack of coordinated policy between many maritime companies. They have gone a long way today, through the employers associations, of uniting their position.

The above problems have certainly not been encouraging in the development of union-management relations. The bitter organizing campaigns, the strikes and violence of the late thirties still seem to cast a shadow over much of the industrial relations in the industry today.

A board of Inquiry appointed by the late President Kennedy to report on the facts of the 1961 seamen's strike made the following evaluation:

Much of the difficulty has come from the intense rivalry among the five unions involved and from the differences in the economic interests of the various employer organizations. This has resulted in a highly tense, bitter and emotional atmosphere on both sides of the table and on each side of the table. It is not an atmosphere conducive to orderly discussion and bargaining and is one of the reasons for the archaic labor relations in the industry.<sup>2</sup>

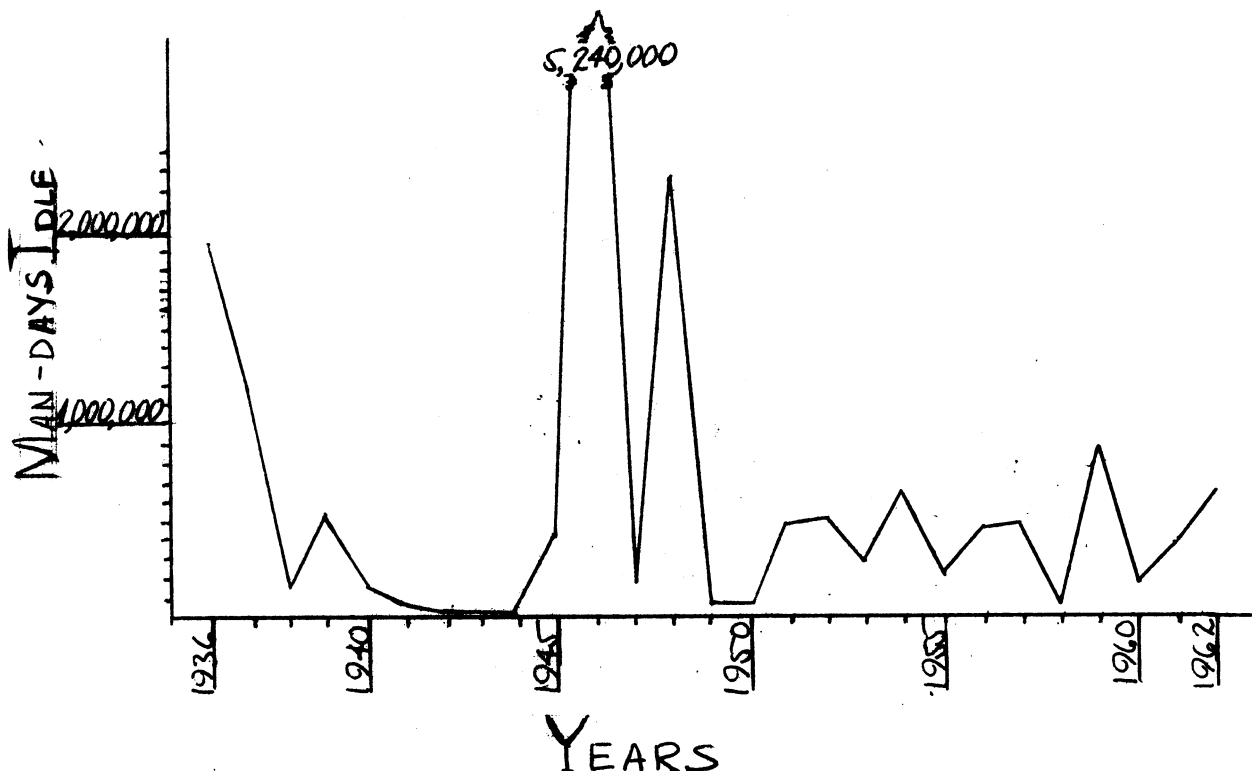
Maritime Labor Disputes.--Much has been written about the waterfront strikes, the issues involved and the damage inflicted. A detailed discussion of that history will not be undertaken in this paper.<sup>3</sup> Instead, I will focus on the cases where the national emergency provisions



of the Taft-Hartley Act have been invoked in the maritime industry and on some of the current disputes.

As a general picture, however, the following graph indicates the "ups and downs" and number of man-days lost through strikes in the water transportation industry.

Man-days idle in disputes from 1936-62.<sup>a</sup>



<sup>a</sup> Calculated from Bureau of Labor Statistics information as reported in U.S., Congress, House, Committee on Merchant Marine and Fisheries, Hearings on H.R. 1897, H.R. 2004, H.R. 2331, Maritime Labor Legislation, Serial 88-3, 88th Cong., 1st Sess, 1963, p. 1394.

The obvious intensity of the 1946-and 1948 disputes makes later history seem quite mild. That period was characterized by general unrest for American labor however, and as a response, the Taft-Hartley Act (1947) was passed in an attempt to curb the "growing power of labor." The use of that act in the maritime industry has become a most controversial issue.

Reflections on Taft-Hartley.--Reference was made to the effectiveness of the Taft-Hartley provisions by Harry Bridges, President of the ILWU, when he said, "Neither does the Taft-Hartley cooling off period which was last used against us in 1948 bother us too much. We turned it into a heating up period then. We can do it again."<sup>4</sup>

The instance mentioned by Bridges was the first use of the national emergency provisions in a maritime labor dispute. Since the passage of the act in 1947, they have been employed twenty-two times in American industry.<sup>5</sup> Eight have been in the maritime industry, five involving atomic energy, three with the United Mine Workers of America, two in 1963 involving aerospace negotiations, and one each in steel, nonferrous metals, telephone and meatpacking.

In sixteen of the above situations the dispute was settled prior to or during the cooling off period which may indicate a contribution to American industrial relations. But in the remaining six the machinery seemed to break down and a strike followed the 80-day period. The significance of this fact is that all six cases have been in the maritime industry!

In the first case, June 8, 1948, the executive order invoking the provisions resulted in three injunctions against west coast longshoremen and several seamen's unions. Partial settlement was reached with the seamen, but the longshoremen, turning the 80-days into "a heating-up period," resumed a strike for three months before settlement was reached.

In August, 1948, the North Atlantic longshoremen rejected a negotiated settlement and the strike resumed for two weeks after the injunction was dissolved. Again in October, 1953, the North Atlantic longshoremen were enjoined in what was basically an inter-

union dispute, and they continued a two-month strike following the expiration of the injunction. A strike was halted in November, 1956, involving east and gulf coast longshoremen by a Taft-Hartley injunction, but was continued in February, 1957. In October, 1959, settlement was reached at the end of a cooling off period in an east and gulf coast longshoremen dispute. A nationwide seamen's strike was stopped in June, 1961, and partial settlements were reached, but a west coast union resumed the strike following the expiration of the injunction. In April, 1962, a settlement was reached just before the time ran out on a west coast seamen's injunction.

The last application of the Taft-Hartley provisions came in October, 1962, when a board was named ten hours after the east coast and gulf coast longshoremen went on strike. The injunction followed in four days, but the strike continued on December 23. Settlement finally came only when a three-man Presidential board headed by Senator Morse made some "non-negotiable recommendations." Part of the "Memorandum of Settlements" between the New York Shipping Association and the ILA was a "Longshore Work Rules Study" to be undertaken by the Department of Labor. This study is currently under way in the east coast ports.

National Emergency versus National Inconvenience.---At this point it seems appropriate to interject a question concerning the application of the emergency provisions to the maritime industry. Due to publicity afforded "colorful" disputes by the national communications media, and the emotions of the moment when there is an obvious threat to industrial peace, public pressure usually demands government intervention. Even though each of the <sup>four</sup> ~~three~~ presidents has expressed concern over

the "value" of the Taft-Hartley Act (it was passed over President Truman's veto), they each have made judgments that the national health, safety or welfare were endangered and invoked its provisions. These responses may have been partly as a result of public, congressional or interest group pressure, but I think it is a valid assumption that the President would not have resorted to the provisions unless he was really convinced that a crisis was imminent. And perhaps in many cases this was true. But it seems in the six maritime disputes that resumed after the cooling off period, if they had in fact been national emergencies, they would have been intolerable after the cooling off period as well as before. If such had been the case, it seems Congress would have taken action such as they did under the Railway Labor Act when they wrote the first peacetime arbitration law in August, 1963. The mere fact that the strikes were allowed to continue seems to indicate that they were something short of critical situations. It must be admitted that it is a difficult thing to establish a satisfactory criterion for this determination. I do not intend to imply that a maritime dispute couldn't reach such proportions as to be a real threat to our national health, safety and welfare; they just do not seem to have done so in the past.<sup>6</sup> In The Public Interest in National Labor Policy the following comments are made about emergency disputes:

True emergencies have been rare. Since 1947 when the Taft-Hartley machinery for handling emergency disputes became effective, this machinery has been used only nineteen times [written in 1961] and in several of these cases the existence of a genuine emergency was at least doubtful....Study after study has shown that the emergency potential of a given labor dispute is always grossly exaggerated at the moment it occurs. Dire conjectures about "What would happen if" seldom become reality.<sup>7</sup>

Perhaps the reason they didn't become a crisis is because the government

did intervene. At any rate there seems to be a need for a better criterion for determining when the public interest is really endangered instead of inconvenienced.

The Situation Today.--In order to determine that compulsory arbitration is necessary in the maritime industry, it should be established that current conditions (regardless of the past) warrant such action.

A rather extreme situation can be observed in the maritime problems of Canada--of which we aren't entirely apart. On October 24, 1963, the Canadian government passed the "Maritime Transportation Unions Trustees Act" which placed the maritime unions under government trusteeship in order to resolve the emergency shipping situation on the St. Lawrence Seaway.<sup>8</sup> Business Week claimed that it was a custom-tailored device to get rid of Hal C. Banks, head of the Canadian wing of the Seafarers' International Union (SIU).<sup>9</sup> Canada said that the action was necessary for the economy of Canada, its international relations, and peace, order and good government on the seaway. They also added that democratic processes in certain maritime unions were poor and the rights and welfare of seamen were undermined. However, results were that ships moved through the seaway and Banks is still around.

The SIU, an AFL-CIO affiliate, had established an effective boycott in the Great Lakes ports against a Canadian shipping firm employing members of a rival Canadian union. With the ILA's support, the boycott has been rather effective. A Canadian ship, John Ericsson, left Chicago to return--empty--to Canada after trying for seven months to receive a load of grain. The NLRB sought and received an injunction against the ILA for engaging in an illegal secondary boycott--but the

court order was ignored. Fines amounting to \$50,000 resulted and a U.S. District Judge claimed he would "put the whole local in jail" until the fine was paid.<sup>10</sup>

Jurisdictional disputes on three other vessels, the nuclear ship Savannah, the cargo ship Maximus, and the passenger ship America, have caused a considerable commotion last year. The America case has probably been the most discussed because it involved an alleged charge of racial discrimination by a National Maritime Union (NMU) crew against a Marine Engineers' Beneficial Assn. (MEBA) engineer. The controversy reflects an historic rivalry between the two unions. (The same two parties of the Savannah dispute.) During the dispute the unions were chided sharply by the Federal Maritime Subsidies Board for "irresponsibility" and the companies' action was deplored as "less than resolute."

The dispute was finally resolved, the charge found to be "without foundation" and the America will sail on February 7, after being stranded since September 14. Business Week interpreted the dispute as follows:

Does all this mean that the NMU manufactured a grievance that dry-docked a \$20-million ship, idled a 660-man crew, and handed U.S. lines a minimum gross loss of \$1-million (for two cancelled voyages) out of sheer irresponsibility and spite against a rival organization?

Not exactly. Some America crewmen undoubtedly felt they had a legitimate grievance against Neurohr [the MEBA engineer] just as some MEBA officials felt strongly that he had been framed. And at this point in history, racial charges undoubtedly constitute "A beef you can't back away from," in the words of an NMU spokesman.

Nevertheless, equally serious charges involving equally moral unions get settled every day of the week. The America case escalated rapidly into crisis because the almost paranoid enmity between the two maritime labor camps makes it impossible to use formal channels of settlement--or to create informal ones--at the same time it pushes both sides to exploit each conflict for partisan advantage.<sup>11</sup>

Another side of the interunion disputes issue can be seen in the

effort of five maritime unions (NMU, Masters, Mates and Pilots--MM&P, American Radio Assn., Brotherhood of Marine Officers--BMO, and the United Marine Division--UMD), all AFL-CIO affiliates, to form a joint committee pledged to organize the unorganized, work for constructive legislation, and combat raiding and other disruptive activities on the waterfront. They went on to say that the SIU and MEBA are endeavoring to promote their interests by "rule or ruin strategy" which only discredits maritime labor and causes the enemies of labor to exploit the situation and try to shackle all maritime unions with compulsory arbitration. Their goals sound good, but it looks like just a united front against the SIU and MEBA. There is a ray of hope, however, in their statement of purpose:

Each of us recognizes that there is room in our industry for free, independent and democratically self-governed unions representing unlicensed and licensed seamen, living in peace with each other, respecting the rights and vital interests of each other and making no attempt to interfere with, harass, raid or dominate each other.<sup>12</sup>

The above problems are not isolated and they are symptomatic of the seagoing unions' jurisdictional problems which have aroused the ire of the public, shipping companies and the government.

Another current issue which is receiving a lot of comment comes as an aftermath of the ILA strike of 62-63. The problem has not been solved--just postponed. The Department of Labor work rules study previously mentioned is part of the effort to find a solution. In looking toward 1964 the Wall Street Journal reported:

More possible headaches for the White House are lurking on the east coast docks. In January the Labor Department is slated to release a study of automation's impact on longshore workers and to recommend ways to ease the job-elimination effects of mechanized cargo handling. The danger is that the ILA may react as it did in early 1963, when it staged a crippling dock strike over the same issue.<sup>13</sup>

The east coast longshoremen are not alone in this problem of work rules (the current railroad issue is a case in point.) However, solutions have been found. One in the maritime industry that seems to be a landmark case is the Modernization and Mechanization Agreement between the Pacific Maritime Association (PMA) and the ILWU. On October 8, 1963, Harry Bridges, president of the ILWU, and J. Paul St. Sure, president of the PMA, both testified before the Clark Subcommittee on Employment and Manpower as to the success of this endeavor.<sup>14</sup> The PMA and ILWU have also jointly published a pictorial account of this triumph of collective bargaining--Men and Machines.<sup>15</sup> Bridges, in his testimony was quick to point out that this agreement came as a result of bargaining only between the PMA and the union--no government help! He also mentioned that he feared that a new crisis in east coast longshoring would result in compulsory arbitration as it did in the railroad issue. Bridges seemed to criticize the ILA for resisting reductions in their manning scales--the ILWU's goal is to provide full employment for the union members rather than spreading the work among the many "casuals" as the ILA does. Bridges has admitted that probably the ILA didn't get as good an offer as the ILWU and therefore wasn't willing to concede their gang size.

The PMA-ILWU agreement on this issue indicates more than just a solution to the mechanization problem. It reflects another step in a long and relatively successful period of stability in Pacific Coast longshoring. Clark Kerr said in 1949, following a bitter 95-day strike in 1948, that "If the peace [between the ILWU and employers] proves durable it will be the most extraordinary transformation in American labor history."<sup>16</sup> The peace apparently proved durable; there hasn't been a coast-wide longshore strike since 1948. And, as Bridges points



out, it was done by the two parties without the government. I suppose it could be questioned whether the employers had to give up too much to obtain this relationship--but the available evidence seems to indicate an equitable balance. If Kerr was right in his analysis of this relationship, there is certainly hope for the rest of the industry. *the hope for a change - that compulsory arbitration is not needed in the maritime industry.*

Another indication of agreement is the extension last August of a contract between the NMU and the American Merchant Marine Institute from 1965 to 1969 including a "no strike" clause. An interesting feeling was reflected during the bargaining for the extension when a government official tried to get information on the progress of the negotiations. A telegram from the NMU to the official stated:

We want to inform you of our strenuous objection to this interference by your office in our collective bargaining. We are not accustomed to nor do we intend quietly to accept the replacement of free collective bargaining in the American tradition with Soviet-type government controlled bargaining.<sup>17</sup>

Realizing the current state of the industry some officials are apprehensive of future developments while others seem to be rather optimistic. J. Paul St. Sure says, "it has been demonstrated that voluntary collective bargaining is not working in substantial segments of the maritime industry," but at the same time his PMA is conducting meetings with the seafaring unions to try and resolve problems outside of contract negotiation periods. Alexander P. Chopin, chairman of the New York Shipping Assn., says it is time for his organization to work with the ILA in a "mutual approach to our mutual problems for mutual benefit and mutual survival."

If we can reduce the industry's problems to their simplest dimensions (which always has dangers) it seems there are two issues: the inter-union disputes of the seagoing unions and the work rules dispute of the east and gulf coast longshoremen. Neither problem is unsolvable--but they both require action from someone!

## SECTION II

### THE RESPONSE OF CONGRESS

The Public Demand.--In theory the United States Congress reflects the will of the public. Sometimes it is hard to separate the public from certain pressure groups, the press and private interests; but suffice it to say that pressures are brought to bear. On October 2, 1962, the New York Journal of Commerce made the following editorial comment:

Compulsory arbitration is the only solution for the latest costly tieup of New York and other eastern ports and for the general malaise that still infects the ILA and makes it almost impossible for employers to deal with it in any purposeful way.

During the resumption of the longshoremen's strike the Philadelphia Inquirer on January 24, 1963, said,

Are we in such good shape that we can afford to throw away \$25 million a day in this strike--or any of the many others like it? Can we afford the economic attrition? We think not. The hour has struck for more intelligent, more efficient handling of these industrial impasses. And if that involves a labor-management "court" which can enforce its binding arbitration, we had better start getting used to that idea, too.

Proposed Legislation.--Representative Herbert C. Bonner has been the Chairman of the House Committee on Merchant Marine and Fisheries for many years. In 1956 his committee was conducting hearings on problems in the maritime industry. One of their efforts was directed against the "whipsawing" effect of different contract expiration dates by the various maritime unions bargaining with an employers' association. At that time Representative Bonner made the following statement:

In an industry which is traditionally unstable in the sense that it is subject to repeated peaks and valleys of prosperity, the deficiencies in labor-management relations can only tend to increase that instability. Again, I speak for the entire committee

in expressing the hope that most of these problems can be worked out by the industry itself without government intervention of interference. However, in some few areas it has seemed to be appropriate for government to insert itself if only to bring the parties together for a round table discussion and possibly a satisfactory solution of the issues.<sup>1</sup>

After an unsuccessful attempt at arriving at uniform contract expiration dates, Bonner sounded a little pessimistic when he said,

Unfortunately, however, the problem has turned out to be more complex than was at first thought. Tentative agreement was reached on August 1 as the common date in an informal meeting some weeks ago. However, certain obstacles have arisen by reason of the existing situation between rival unions in the port of New York.<sup>2</sup>

By January, 1963, Bonner stated his earlier hopes had been in vain. He said that he believed in free collective bargaining, "but experience in recent years has weakened my faith in its application to the maritime industry." He also said that existing law was not adequate to deal with maritime strikes. As his partial solution to the problem he proposed a bill (H.R. 1897) which would provide for prevention of work stoppages in major maritime disputes and would authorize the President to employ compulsory arbitration as a final step to settle such disputes.

Bonner was not alone in proposing legislative remedies to the maritime problems in the 1st session of the 88th Congress. Senator McClellan (D-Ark.) reintroduced a bill making strikes by transportation works a federal crime (S.288). Senator Dirksen (R-Ill.) introduced a bill (S. 21) in which all disputes involving vessels on which the government pays operating-differential subsidies would be referred to a government arbitration panel. Representative Martin (R.Neb.) proposed a bill using the antitrust approach which would limit collective bargaining to a single employer and the representative of his own employees (H.R. 333). (It is questionable how this would be applied

to the maritime industry.)

Another bill was introduced by Senator Lausche (D-Ohio) that would ban strikes resulting from disputes between maritime unions. The bill (S. 2222) would provide for the Secretary of Labor to appoint an arbitrator in an unresolved dispute. This bill was motivated by the disputes involving the America, the Savannah, and the Great Lakes shippers. (Hearings were conducted on the bill and are now suspended until late January.) Unions said the bill was unnecessary because we already had adequate measures for settling disputes under the Landrum-Griffin Act. Employers argued that the machinery was too slow to really solve the problem. Following unaccepted recommendations of a board in a national emergency dispute, the bill would provide for either government seizure or binding arbitration.

The bills mentioned (there were many other related ones) give an indication of the type of approach some of the congressmen think will improve our maritime labor relations and it is interesting to note that most of them provided for some form of compulsory arbitration. It is also interesting to note that political observers didn't really expect the bills to ever get to the floor and due to 1964 being an election year the bills are not expected to come to the floor this year unless there is a maritime crisis of some sort.

Hearings on the Bonner Bill.--The bill probably taken most seriously of those discussed above was the Bonner Bill. Extensive hearings were conducted in which most officials of the maritime industry and most of the maritime union leaders had the opportunity to discuss the issues. In fact, Senator Morse said in a speech to the ILWU in San Francisco, 5 April 1963, "I think that the hearings

now underway in the House of Representatives on the Bonner bill are more than anything else an opportunity for a lot of people to express their opinions about unions for the public record." I would agree that it was an opportunity to express opinions, but I feel the real issue was our institution of collective bargaining. In reading the record of the hearings one gets an excellent opportunity to see what America is thinking about collective bargaining.

The conduct of the hearings involved an interesting interplay of ideas between the Committee and the Departments of Labor and Commerce. Both Secretary Wirtz and Secretary Hodges expressed their feelings that something needed to be done, but compulsory arbitration was not one of those things! The position of the two departments seemed to be that the provisions of the bill (less the compulsory arbitration provision) were basically in agreement with the recommendations of the President's Advisory Committee on Labor-Management Policy, but they wanted a bill that would cover all industries instead of just the maritime. They therefore never gave their full endorsement to it.

It is interesting to observe that as collective bargaining was "on trial" through the course of the hearings and as more testimony was given, the attitude of the Committee eventually reflected the view that the compulsory arbitration aspect of the bill should be deleted. The union position was completely against the bill while most, but not all, of the shippers and business were in favor of it--some qualify their support by advocating the bill minus the compulsory arbitration provision. It is interesting to note that the ratio of correspondence received by the Committee was ten to one in favor of the bill. However, nearly all the correspondence seemed to be from

employers or firms using shipping facilities and from unions. I think that it is a valid assumption that there are many more firms than unions.

In August the proposed bill was amended and the compulsory arbitration provision was discarded. In its place was a 150-day "no-strike" period in which sixty days would be used as a flexible settlement effort by a Presidential Maritime Emergency Board and then ninety days for Congress to decide what to do. It seems that the more the Committee considered the issue, the more it became convinced of the danger of the compulsory arbitration provision unless there was "clear justification." I feel that the material and testimony introduced in the hearings does fall short of this criterion. The bill was finally tabled on October 9, 1963.

In conclusion, the activities conducted thus far in this area do constitute a real warning to the maritime industry. Max Harrison, president of the American Maritime Assn. stated the issue very succinctly when he said, "we must devise more constructive ways of handling our problems, or face government control and regulation."<sup>3</sup>

### SECTION III

#### THE COMPULSORY ARBITRATION ISSUE

The Principle Involved.--Thomas W. Gleason, executive vice-president of the ILA said: "Those who advocate compulsory arbitration evidently believe that they are correcting an error that was originally made on Mr. Sinai. They have been campaigning ever since to add an 11th Commandment: "Thou shalt not strike."<sup>1</sup>

I feel that those being accused by Gleason are in a minority, but there is a definite reaction that seems to be growing in America, that when the parties are unable to resolve an industrial dispute they should forfeit their right of collective bargaining. Our "enlightened" generation seems to have come to the conclusion that conflict and violence are unacceptable in industrial relations decision-making.<sup>2</sup> People seem to think that by now we should have better ways than strikes of solving problems; and, perhaps we should. But the fact of the matter is--we don't--at least not as a universally applicable system we can superimpose on any situation. It is true that many firms and many unions have excellent records of "no-strike" negotiations over many years--whether problems are really resolved or just covered up is not always clear, however. At any rate, since we come face to face with the problem relatively frequently--railroads, newspapers, aerospace, waterfront, etc.--compulsory arbitration is repeatedly and with increasing frequency being suggested as a means of achieving "peace."

J. Paul St. Sure takes the following stand:

I have had occasion to give frequent thought to the arguments for and against the "outside" of "compulsory" adjudication of labor

disputes. I have reached the conclusion that the availability of a tribunal to hear and settle disputes--at least those of a national emergency nature, is essential to the preservation of our free collective bargaining system, perhaps our free society.<sup>3</sup>

The Congressional response to the issue was mentioned in the previous section discussing proposed legislation. The most current indication of legislative action is the railway arbitration law and the possibility of further action if settlement isn't reached on the remaining issues by the end of January. The reaction to Congresses' first peacetime arbitration law has led many to ask, "After the railroads, what?"

In a labor law textbook, Harbert R. Northrup and Gordon F. Bloom make the projection that "In years to come, historians may look back upon the Taft-Hartley Act as the first step down the road to compulsory arbitration of labor disputes."<sup>4</sup> I suppose they would point to the railway act as another step. But in spite of this action, dealing with a long standing dispute in a troubled industry, everyone hasn't resigned himself to the fact that this is the only solution. The best indication of this position seems to be the action of the House Committee in dropping the compulsory arbitration provision of the Bonner bill after hearing the extensive testimony from labor, management and government.

Harry Bridges in his rather succinct style states his objections to compulsory arbitration as follows:

Right at the outset I want to dissociate myself from those labor officials who oppose compulsory arbitration because it is "un-American," or because we don't want to be like the Russians. I oppose compulsory arbitration for the simple reason that it takes away the right to strike and by so doing destroys collective bargaining.<sup>5</sup>

Removing the right to strike and thereby destroying labor's most



effective weapon in collective bargaining is an oft-repeated objection to compulsory arbitration (even if it wouldn't be used to that extent),

Another objection is that it would lead to increased government control. As James P. Mitchell ex-Secretary of Labor said:

As soon as government fixes wages it is logical that it must go on to determine conditions of work, fix hours, hear grievances and possibly eventually dictate details of production. And does anyone think for a moment that the government can determine what wages are fair and what are not fair without eventually determining what prices are fair and what are not fair?...and once the government is in the business of setting wages and prices in major industries, it is not so large a step to government domination of an entire economy.<sup>6</sup>

A general surrender of freedom is the concern of John J. Collins, professor of labor at Florida University, who states the compulsory arbitration provision of the Bonner bill would be "just one more nail in the coffin of individual liberties."<sup>7</sup>

In other countries such as Australia, where compulsory arbitration is on the statute books, it hasn't eliminated strikes--even though they may be illegal. Peace and good will cannot be decreed by a law or decision, and if the problem remains after arbitration it may erupt in other ways--wildcat strikes, slowdowns, poor workmanship, or an adverse effect on morale or absenteeism.

It seems that almost everyone connected with labor-management problems has had something to say about compulsory arbitration; and usually there appears to be a trace of emotion in addition to logic. This is natural when people feel that there is a menace to freedom: and this seems to be precisely the issue upon which most judgments are made. People either feel that the innocent public are victims of an abuse of power in a labor dispute and therefore denied their freedom, or that the rights of the workers and management to act as free agents

are restricted and therefore they are denied their freedom. Somewhere a judicious balance must be reached.

Alternative Applications.--When compulsory arbitration is discussed as a possible government tool, it must be realized that there are many contexts in which it could be used. Probably the most frequent proposal would be to have it as one of many alternative choices to be employed by the President. Senator Morse proposes it as one choice--government seizure being the other--of his amendment to the emergency provisions of the Taft-Hartley and Railway Labor Acts.

Normally compulsory arbitration is thought of only as a last resort measure. But there is a possibility of employing it immediately when the dispute is of significant gravity. A labor court could function in this manner. It might also accept cases at the decision of the two parties involved.

There is also the alternative of having compulsory arbitration as the final step in a series of attempts to resolve the dispute. Usually fact-finding, mediation, appointment of boards, etc. would precede that step. Here there is also the alternative of requiring binding arbitration by statute or leaving it at the decision of the executive, Congress or another party such as the secretary of labor.

Another concept is that employed by the short-lived Weimar Republic in Germany. Under this procedure the arbitration panel was limited to a confirmation of either the union or management position--but no compromise terms. The theory of this system is to force reasonable and responsible offers by both parties, thereby increasing the likelihood of voluntary settlement.

It should also be mentioned that arbitration can be performed by

an individual, permanent board, an ad hoc appointment or any number of other methods of selection.

Due to our commitment to free collective bargaining, it seems probable that compulsory arbitration would only be the last step after all other measures were exhausted or one of an "arsenal of weapons" for coping with the final stages of an imminent crisis. A point often made regarding this stage of the dispute is that a "strategy of uncertainty" should be involved--different available courses of action--so that neither party could anticipate forming their own strategy.

Effect on Collective Bargaining.--George W. Taylor indicates "when the rights to strike and to lockout are withdrawn, as during a war or under compulsory arbitration, a most important inducement to agree is removed."<sup>8</sup> On the other hand, Neil W. Chamberlain points out that the mere threat of binding arbitration could be a very real inducement for the parties to settle on their own--since neither generally welcomes outside intervention.<sup>9</sup> An exception to this would be when one party was unyielding in unreasonable demands, and the other would like to see a third party judgment.

While threats may induce voluntary action, they can also have a negative influence. It is known that psychologically some people react better when a threat is involved, and some respond when they feel a sense of responsibility for their actions--and a threat can cause resentment. Such is the dilemma when determining strategy with vastly different union leaders, employers, etc.

An objection to compulsory arbitration is voiced by John R. Van de Water when he says, "involuntary arbitration places decision-making over the very heart of business operations, and of the economic

relation between labor and management, into the hands of persons not economically responsible for taking the risks and paying the costs which result from central economic decisions."<sup>10</sup>

Carl M. Stevens in a recent book applying game theory to collective bargaining says that as a variant in game sequence "compulsory arbitration is not efficient in the sense that it tends to nullify the contribution of prearbitration play to the ultimate solution."<sup>11</sup> It is probable that if a final arbitration decision was expected the parties would establish "high" demands and then not bargain over them in fear of weakening their position.

The exact effect of compulsory arbitration, of course, couldn't be known until it was some way written into our laws. And even then its effect would largely be predicated upon the possibility and extent of application. It is difficult to evaluate in terms of its effect in other countries because of the many different circumstances involved. For instance, I was told while visiting in Sweden, that compulsory arbitration is not part of contract negotiation--the Labor Court only serves to handle grievances. But the vast amount of laws, the number of employment matters regulated by the government, the strength of the central organizations, the national "Basic Agreements," and the effect of national policy in soliciting cooperation from employers' organizations and the union centrals all tend to bring open conflict to a minimum.

Between the two positions that compulsory arbitration is sure to destroy our free economy and that it is the only thing that will save it, I feel that the following points can be made pro and con.

In favor of compulsory arbitration it can be said--

--That it is a simple and clear cut system for resolving disputes;

--That if the national health or welfare are really in danger, it provides a quick solution.

--That as a possible weapon of government, it would force labor and management to achieve voluntary settlements in order to avoid it.

--That it would provide a useful addition to the emergency provisions of the Taft-Hartley Act so Congress would not have to enact special legislation on each occasion.

The negative aspects of compulsory arbitration are--

--That it is inconsistent with our principles of democracy and freedom.

--That the end result could be more government control including wages, prices and eventually a totalitarian state.

--That it may remove an incentive for real collective bargaining.

--That it doesn't really solve the problems or end the strikes.

--That experience in other countries hasn't proved entirely successful.

--That appointment of arbitrators may become a political issue with decisions reflecting the views of the party in power--a charge sometimes leveled against the NLRB.

--That the people making the decisions would not be the ones with knowledge of conditions or responsibility for implementing the contract terms.

--That the outcome is victory, while the result of collective bargaining is agreement.

Comments on Effect in Maritime Industry.--Considering compulsory arbitration in general is necessary in understanding its role, but the proposal in question concerns its use in the maritime industry. I previously concluded that the two major problems seem to be the work rules issue on the east and gulf coast ports, and the interunion disputes of the seagoing unions. The question should be posed as to how compulsory arbitration would effect these two issues. Would there still be the same tensions and conflicts? Would the issue break out

in other harmful ways? Would the parties really live with the arbitration decision? In other words, would the greatest good be accomplished by binding arbitration in these issues?

J. Paul St. Sure feels that the answer is yes. He feels that it is the solution to the stability of the industry and preservation of our merchant marine. His counterpart, Harry Bridges, says it "would do nothing to correct some of the really serious problems confronting collective bargaining in the maritime industry." Bridges further points out that it won't "eliminate fragmentation" even though it may limit the whipsawing effect. And finally he says, "compulsory arbitration will not get ships loaded and sailed if there is a determined and united union" which he indicated is the case with the ILWU.<sup>12</sup>

Jim Calhoun, president of the MEBA, feels that employers have adequate relief machinery (Taft-Hartley and Landrum-Griffin) for handling jurisdictional disputes. (Although he didn't indicate why it doesn't seem to work.) And he says, "any additional machinery for the maritime industry will cure nothing and probably add to the confusion and difficulty."<sup>13</sup> Max Harrison, president of the American Maritime Association, feels that "no new legislation is needed to regulate negotiations between companies and seagoing unions."<sup>14</sup>

The idea of compulsory arbitration as a deterrent to progress was put forth by the ILWU when it speculated that the "Modernization and Mechanization" agreement would never have been realized if the union had been prohibited from striking. Bridges claims that the ~~ILWU~~ would have had no inducement to settle if there had been no threat of strike, even though the weapon was not employed.

Joseph P. Goldberg has concluded in a book on the maritime industry that "ample opportunities exist for further development of

bonafide collective bargaining in the maritime industry, and thus for stable maritime labor relations."<sup>15</sup> He feels that any governmental machinery which did not evolve out of joint negotiations and joint determination of the parties involved would recreate the old climate of hostility.

Although preservation of a healthy maritime industry is a necessity in the United States, it is not clear that compulsory arbitration would accomplish this goal--indeed it may obstruct it. The attitudes of the parties are an important variable--although it should be realized that their pronouncements during the Bonner bill hearings would be more extreme than their daily conduct may indicate. And while all of the unions express violent opposition, (it is generally conceded that they stand to lose the most) the employers are not united in favor of compulsory arbitration. A review of the correspondence received by the House Committee seems to indicate that most of the support came from small business firms who utilize the shipping services and are adversely affected by a work stoppage. While some of the representatives of employers' bargaining associations, such as St. Sure, were completely in favor of arbitration, most of them eliminated the procedure from their recommendations. The consensus seems to indicate that the parties involved do feel that there are better alternatives to solve the maritime problems.

## SECTION IV.

### THE FUTURE OF MARITIME PEACE

The Meaning of "Peace."--It might be well to pause for a moment and see where we want to be when maritime peace is achieved. Also we should decide how much of a price we would be willing to pay for that peace.

In the book The Quest for Industrial Peace, David L. Cole gives an excellent treatment to the general subject.<sup>15</sup> He points out that absolute peace is unattainable in industrial relations (as well as in our society in general). Resolution of different interests is an intrinsic function of our systems. The right to disagree is vital. The operation of this system produces waste and excesses--in all of our institutions and especially in government--as we try to reconcile and order the various interests. However, the manifestation of this conflict takes different forms in different contexts; it is reflected as strikes, pickets, boycotts and lockouts in industrial relations. It may not be what many would call peace, but workable and functional agreements do result and progress has been, and is being, made. Cole points out that "the community seeks more from collective bargaining than industrial peace; it demands economic efficiency, stability, democratic participation and equality of treatment."<sup>26</sup> These aims are not always entirely consistent, but I think it would be agreed that the price of selling any of them for convenience would not be worth the return.

Our goal then should not be to eliminate the disputes or the strikes, or especially the opportunity to strike. We should rather be seeking for



ways to resolve the causes of the problems instead of the symptoms.

The concept of peace must not be the absense of conflict, but rather the means to a reasonable solution. And perhaps, a strike will be part of this solution in process. Most strikes have not been cataclysmic in the past and chances are they won't be so in the future. And, if the time comes when our national health or safety are actually endangered, then a "price" will have to be paid by all the parties-- not to bring peace, but to protect the public interest. Not as a general simple solution, but as a one-time determination.

Other Cases.--As was previously mentioned, the Pacific coast longshore was regarded prior to 1948 as one of the most strife-ridden segments of the industry. The equilivant of about two out of the previous fifteen years had been lost time due to strikes. With considerable progress and no strikes since then, it appears that ~~the~~ "new look" on the west coast waterfront has lasted.

A classic example of change is also observable in the bituminous coal industry. During the first three years of the Taft-Hartley Act, its emergency provisions were used eight times. Three of these involved John L. Lewis and the United Mine Workers in industry-wide strikes. The last one was settled as President Truman was asking Congress for authority to seize the mines. But since that time the parties have settled their disputes without strike or commotion.

Another example reported satirically in the Wall Street Journal, December 4, 1963, involves work on our Federal missile and space projects. In 1960 the Missile Sites Labor Commission was created in the midst of 207 work stoppages. The following year there were only 62. So the Defense Department awarded the AFL-CIO their

Meritorious Award in recognition of this record. (The "Journal" says the way to get the award is to strike a lot, then strike a little less and you get an award.) At any rate, it shows progress.

The criteria in the above cases for good industrial relations has been the absense of strikes--which isn't necessarily true. More would really need to be known about these cases to make a meaningful analysis; it is indicative, however.

The negative side of this story might be the current railroad strife. In spite of much government intervention, little seems to be accomplished. Whether it is more or less than would be achieved without government intervention probably won't be known--the government seems committed to not letting the dispute go to a national strike.

I suppose the most that can be said from a cursory analysis of strife-torn industries is that <sup>it has</sup> ~~some do~~ evolved into apparently successful industrial relations.

Prospects on the Waterfront.--The optimism of many union and industry officials would offer some hope that they may convert this hope into concrete action for resolving the primary problems of work rules and interunion disputes. The FMA is making such an effort with the seafaring unions in off-negotiation meetings.

The Commerce Department's Maritime Administration has been working on ways of promoting peaceful collective bargaining in the industry as has a Maritime Evaluation Committee with the seagoing personnel. The Department has also employed a management consulting firm to advise it on problems relating to maritime technology and productivity. The Labor Department is also carrying on studies to bring out facts (although it is argued that facts aren't usually in

doubt) and make recommendations to try and improve conditions.

It would seem that the hearings of the Bonner Committee should provide much valuable information regarding the condition of the industry and possible actions to improve it. Most of the significant people of the industry gave testimony and the problems seem to be clearly delineated, if not the solutions, and that is at least a start.

An area of improvement would be the handling of representation cases in the seagoing unions by the NLRB. It has been mentioned that their actions regarding elections have sometimes been disruptive in the bargaining process. Hopefully they could devise procedures which would facilitate rather than interfere with bargaining.

Efforts by the AFL-CIO to develop a coordinated maritime union approach have not been too successful because some of the primary seagoing and longshoring unions are not affiliated with the AFL-CIO. Their controversy with the Canadian Labor Congress regarding the SIU and the Canadian Maritime Union has not helped matters any either.

A thought interjected by Harry Bridges in his testimony on the Bonner bill throws another light on the problem. He indicated that the real reason for the present drive for compulsory arbitration is not that collective bargaining has broken down, but "on the contrary it threatens to be too successful." He said in the ILA east and gulf coast strike the "problem for the employers and government in that situation was the danger that the strike would be successful."<sup>3</sup> I think that his analysis may be less than complete, but it should remind us that the problem has two sides and maybe management needs some straightening up also.

An interesting conclusion that I feel reduces the issue to

its primary values is found in the PMA-IILWU publication Men and Machines where they say,

The M&M Agreement was born of necessity recognized by both sides--a bargain of equals.

The men sure of their strength and their union. The employers confident in their association and its ability to get performance out of the contract.

The rockbottom foundation of bargaining was broadscale participation by the members of both sides; men willing to put it on the line, hard bargaining by seasoned adversaries.

But agreement does not end argument, and the debate goes on:

We could have hung tough,

we could have gotten more,

we gave up too much for too little--

We bought what we already owned,

we paid too much for too little,

our operation doesn't fit this agreement,

we can not mechanize; we are too small--

Such doubts are a byproduct of change--the answers will be found through the same machinery which brought about the agreement in the first place.<sup>4</sup>

With the above philosophy I concur.

## CONCLUSION

A cursory review of the maritime industry could easily lead one to conclude that the hypothesis stated in the Introduction was true. Many have decided that the incredibility of allowing such trivial (in relation to the whole economy) difficulties to cause such a nuisance is too much for our "advanced" culture.

It was to prevent just such an emotional subjective conclusion that I decided, prior to writing this paper, to determine what I felt would be a valid criteria for deciding whether the time has in fact arrived when compulsory arbitration is needed in the maritime industry. My reactions to those criteria are as follows:

1. "That conditions in the maritime industry are so deplorable as to render inadequate the existing methods and laws for resolving labor disputes."

There are currently two primary problems to overcome in the maritime industry; the seagoing unions' interunion disputes and the east and gulf coast longshoring work rules issue. These two problems can cause serious problems, but I don't feel that the evidence indicates their solution is beyond the scope of the existing framework.

2. "That a labor dispute in the maritime industry does in fact cause a "national emergency" requiring government action."

With the benefit of hind-sight, the history of the disputes in which the Taft-Hartley Act was invoked does not seem to indicate that a real emergency existed. This reinforces the need for a better definition of "national emergency" to distinguish from "national inconvenience." And if and when this criterion is met in the maritime industry, the existing law can be applied to rectify the crisis. Although, improvements could be made to facilitate better handling of such an issue by such

passing into law such provisions as the Bonner bill (minus the compulsory arbitration provision).

3. "That if the first two conditions exist, there is no other foreseeable solution than compulsory arbitration."

If the first two conditions were proven true, I would have to concede the necessity of this one. But since this is not the case, I conclude that other alternatives are available.

It seems to me that a good lesson to be learned in a study of this sort is one stated by Charles M. Rehmus in the conclusion of an article on the same topic. He said, "Easy solutions for difficult problems are always tempting: They are seldom adequate to the occasion."<sup>1</sup>

Our goal must not be to buy "peace" in this conflict, but rather to help in creating an environment where the parties involved can resolve their own difficulties. And it seems that only if they work them out together will the results really be of value.

A perspective often lost in our search for the "efficient" solution to problems of this nature is the effect on the men involved. A thought very important in the value system to which we are committed is that "just as necessary to the public interest as merchant vessels, it must be remembered, are the seafaring workers represented by their responsible trade unions."<sup>2</sup>

I therefore conclude that the hypothesis "that compulsory arbitration is needed in the maritime industry" is not substantiated.

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## FOOTNOTES

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2. Charles M. Rehmus, "Taft-Hartley Title II: An Emergency at Sea," Labor Law Journal, XIV (October, 1963), p. 870.
3. See Joseph P. Goldberg, The Maritime Story (Cambridge: Harvard University Press, 1958).
4. Harry Bridges, Statement by, in Opposition to H.R. 1897 (before House Merchant Marine and Fisheries Committee, Washington, D. C., March 20, 1963), p. 1. (Mimeographed.)
5. Herbert R. Northrup and Gordon F. Bloom, Government and Labor (Homewood, Illinois: Richard D. Irwin, Inc., 1963), pp. 358-362.
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9. "Canada Gets the Ships Moving--At a Price," Business Week, November 2, 1963, p. 51.
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4. Northrup and Bloom, loc. cit., p. 110.
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7. Daily Labor Report, No. 99, May 21, 1963, p. A-4.
8. George W. Taylor, "Is Compulsory Arbitration Inevitable?" Industrial Relations Research Association, Proceedings of the First Annual Meeting, Cleveland, Ohio, December 29-30, 1948.
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14. Daily Labor Report, No. 157, August 13, 1963, p. A-10.
15. Goldberg, loc. cit., p. 302.



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