

industry on five occasions,¹ each occurring during a time of war declared by the Congress.

In addition, there have been three seizures of single railroads in connection with labor disputes, each occurring during a time of war declared by Congress (Executive Order 9108, 7 F.R. 2201 (1942); Executive Order 9602, 10 F.R. 10957 (1945); Executive Order 10141, 15 F.R. 4363 (1950)).

The United States is not now in a state of war declared by the Congress. The state of war with Germany terminated on October 19, 1951. P.L. 82-181, H.J. Res. 289, 82d Cong., 1st Sess. (1951). On March 20, 1952, the Senate ratified the peace treaty with Japan, and the state of war with Japan was terminated by Presidential Proclamation on April 28, 1952. Proclamation No. 2974, 17 F.R. 3813 (1952).

Upon the termination of the war with Japan, the last Congressionally-declared war, Congress had occasion to consider whether to declare that the various statutes which confer powers on the President "in time of war" would remain available for application in the post-war period. It should be noted that United States troops were at that time engaged in combat in Korea. The President's power under the Act of August 29, 1916, to seize transportation facilities received particular Congressional attention because the railroad seizure of August 27, 1950, under authority of the 1916 Act, was still in effect at the time of the termination of war with Japan and continued in effect until May 23, 1952. The Administration proposal expressly provided for the continuation of the President's powers under the 1916 Act. H.R. Doc. No. 368, 82d Congress, 2d Sess. (1952) at p. 7.

However, although the Congress continued in force certain of the President's statutory wartime powers, it declined to continue the seizure power under the 1916 Act. Emergency Powers Continuation Act of 1952, 66 Stat. 330 (1952). Noting that the Administration's assumption in seeking the Continuation Act was that "the military action in Korea does not constitute a state of war within the meaning of the statutes conferring authority in time of war", the House Committee on the Judiciary concluded that—

"Congress should be cautious and slow in extending this tremendous grant of power [to seize transportation facilities] in the Executive to a period where there is no state of actual declared war." H.R. Rep. No. 2041, 82nd Cong., 2d Sess. (1952) at pp. 3, 4; see also p. 22.

In the light of this legislative history, we conclude that Congress did not contemplate the use of 10 U.S.C. § 4720 under such circumstances as those now prevailing.²

Direction and coordination of operating transportation facilities

The President is authorized by the Defense Production Act of 1950, 64 Stat. 799 (1950), 50 U.S.C. Appendix Sec. 2071, as amended, to require acceptance and performance of contracts or orders and to allocate materials and facilities and assign priorities as he deems "necessary or appropriate to promote the national defense." Pursuant to this statute, the President or his delegatee is empowered to direct and coordinate transportation activities for the statutory purposes. This authority has been delegated to the Director of the Office of Emergency Planning, see Exec. Order 10480, 18 F.R. 4939 (1953), as amended, and re-delegated to the Interstate Commerce Commission and the Department of Commerce, see 28 F.R. 12164 (1963). To exercise the authority under this statute, it is not necessary either for the Congress to declare war or for the President to declare a national emergency.

However, nothing in the Defense Production Act empowers the President either to seize the railroads or to prevent railroad workers from striking. As originally passed, the Act added only a provision for "voluntary conferences" at the behest of the President to the labor dispute procedures of the Taft-Hartley and Railway Labor Acts. Defense Production Act, Title V, 64 Stat. 812 (1950),

¹ See: Presidential Proclamation, 40 Stat. 1733 (1917), Executive Order 9412, 8 F.R. 17395 (1943), Executive Order 9727, 11 F.R. 5461 (1946), Executive Order 9957, 13 F.R. 2503 (1948), Executive Order 10155, 15 F.R. 5785 (1950).

² See also President Kennedy's Special Message of July 22, 1963, on the Railroad Rules Dispute, H.R. Doc. No. 142, 88th Cong., 1st Sess. (1963); *Brotherhood of R.R. Trainmen v. Akron & Barberton Belt R.R. Co.*, — F. 2d — (D.C. Cir. May 12, 1967) ("[In July, 1963] a strike was imminent. . . . No outstanding techniques [for resolving the dispute] remained. . . . Only Congress could avert a national catastrophe, and it was to Congress that President Kennedy turned. . . ." Slip Opinion, p. 9).