

STATEMENT OF LESTER P. SCHOENE, GENERAL COUNSEL, RAILWAY LABOR EXECUTIVES' ASSOCIATION

Mr. Chairman and members of the Committee, my name is Lester P. Schoene. I am a partner in the law firm of Schoene and Kramer, 1625 K Street, N.W., Washington, D.C. and I appear before you today as general counsel to the Railway Labor Executives' Association. In this statement on H.J. Res. 559, I intend to discuss first of all some of the results of the previous compulsory arbitration law enacted by Congress in a national railroad dispute, namely Public Law 88-108.

The report of the Senate Committee on Commerce that accompanied the Joint Resolution which became Public Law 88-108 providing for compulsory arbitration of the work rules dispute in 1963, referred to the fear expressed on behalf of labor interests that a bill for arbitration would provide a precedent which might have far reaching and unfortunate effects. The report sought to allay such fears stating that the proposal "is not and cannot conceivably be considered as a precedent for the railroad industry" and that it was what it purported to be, "a one shot solution."

The introduction of House Joint Resolution No. 559 to bring to a termination the current dispute between the railroads and the six shopcraft labor organizations through the process of compulsory arbitration, coming less than four years since the enactment of Public Law 88-108, has vindicated the apprehension expressed by the labor interests in 1963 that Public Law 88-108 would become a precedent in future attempts to resolve labor-management disputes.

The proponents of the measure disclaim any intent or desire to impose compulsory arbitration on the parties, and characterize the proposal with such terms as "mediation with finality." The appellation attached to a particular proposed course of conduct is, of course, not the governing consideration. The relevant consideration is its practical consequences. There can be no question that what has been proposed here has pronouncedly all the objectionable features of compulsory arbitration.

The objections which have been voiced in the past by representatives of labor, and indeed by most informed persons, is to the establishment of a procedure whereby a third party is interposed into a labor-management dispute and dictates the terms and conditions to the parties, instead of leaving the parties in interest to resolve the dispute between themselves through the processes of collective bargaining. The procedure set forth in Section 5 of the proposed resolution is to have the terms and conditions established by a third party, and referring to the procedure as "mediation with finality" means no more than there now is a synonym for compulsory arbitration.

It has been suggested that the Joint Resolution is not really arbitration since the parties were close to reaching agreement through collective bargaining and all that now is required is a procedure to bridge the remaining gap which bargaining has not closed. The term "arbitration" is not appropriate, the suggestion concludes, because the third party is charged with resolving the dispute on the basis of what already had been accomplished in collective bargaining.

The parallel between the proposed resolution and the admittedly compulsory arbitration under Public Law 88-108, however, is striking in this very respect, among others. Thus, Public Law 88-108, in its preamble referred specifically to the fact that collective bargaining has resulted in "tentative agreement," and Section 3 of Public Law 88-108 charged the board of arbitration with the duty "to incorporate in such decision any matters on which it finds the parties were in agreement, shall resolve the matters on which the parties were not in agreement, and shall, in making its award, give due consideration to those matters on which the parties were in tentative agreement."

Clearly, Congress was then of the view that the procedure it was establishing was not stripped of its nature of being an involuntary arbitration simply because the board of arbitration was required to fill in gaps. Incidentally it should be noted that notwithstanding the mandate of Congress that the board of arbitration "shall incorporate in such decision any matters on which it finds the parties were in agreement," the board of arbitration did not do so, and the District Court for the District of Columbia, in which suit was brought to impeach the award, held that the board of arbitration was not required to incorporate such agreements in its award. The Court stated:

"Obviously, the purpose of the clause was to point the attention of the board to any agreements reached in order that the board might give them due weight,