

Mr. SPRINGER. May I ask you, Counselor—you are making a very fine presentation here—what language would you incorporate in this to make it specific that there is a duty in the intervening 2-year period, should this become law? You do not advocate the bill, I understand, but I am trying to get whatever language you may suggest.

Mr. SCHOENE. I do not think there is any language you can put in there that will adequately enforce the obligation to bargain. I don't think you could make it any plainer than Congress made it under Public Law 88-108, that there was the obligation to bargain during the interim.

The court of appeals reversed the district court on this point. It is now established by the court of appeals that there was this duty to bargain in the interim.

Mr. SPRINGER. In other words, what is the effect as of this minute today? Is it, unless they go to the Supreme Court, they do have a duty to bargain in the 2-year period?

Mr. SCHOENE. That is right.

Mr. SPRINGER. That is the law today?

Mr. SCHOENE. That is the law today. One year after the award has expired we are finally told by the court of appeals that all during the 2-year period that the award was in effect they had the duty to bargain. A lot of good that does us now.

Mr. SPRINGER. Thank you, Mr. Chairman.

Mr. SCHOENE. There is another interesting issue in this decision of the court of appeals that was handed down a week ago Friday. The district court had even held that the effect of the law was to limit the nature of the proposals that the Brotherhood of Locomotive Firemen and Enginemen might be able to make with reference to employment of firemen on diesels after the award had expired.

The district court found in the law a new standard of what kind of proposals could be the subject of collective bargaining, and said that the brotherhood could not even propose, in collective bargaining, new rules that would restore some of the firemen that had been taken off.

Here again the court of appeals reversed the district court, but in a year after the expiration of the award the firemen are told that they can validly propose a restoration of the jobs.

Gentlemen, this shows you what you can get into when you propose or enact compulsory arbitration. In my judgment, there could not have been framed a more carefully drafted law imposing compulsory arbitration than the one that was enacted in 1963, and yet its effect has been disastrous, extending way beyond the contemplated period of the award.

Now I want to turn to another subject, the alternative of seizure which previous union witnesses have advocated as an alternative if you feel that some congressional intervention is indeed necessary.

So far, however, we have not had much discussion as to what elements of seizure should go into a seizure bill if that alternative were to be adopted.

It appears that there are many different kinds of possibilities with respect to seizure. I would like to discuss some of those very briefly with you.

First, however, I should like to point out that seizure should not be regarded as a punitive action. I don't think we should view this whole