

arbitration as before a court, with the proponent of each issue having the burden of proof upon it, and the responsibility of sustaining its burden of proof on that issue. But the procedure involved in this resolution is not arbitration in that sense.

This resolution, may I say, provides basically for a procedure calling for extended collective bargaining and mediation ending up if necessary with a ruling of finality on the part of the Government ordering a continuation of the operation of the railroads on a basis of a reasonable application and adaptation of what would seem to be a fair and equitable compromise of the position taken by the parties in collective bargaining and mediation.

Out of all that speech, I think those are the two pertinent paragraphs. Could you comment on that now, if you would, as a lawyer? I am sure you have had extended experience in this field.

Can you refine this any further, or make any clearer distinction between what he is talking about and what you have in mind?

Mr. SCHOENE. I will be glad to comment on it. As I said in the course of my remarks, I have the greatest respect for Senator Morse. He is an outstanding authority in the whole field of labor relations as well as in arbitration.

Senator Morse has set up a definition of arbitration, and he says that everything that falls outside of that is not arbitration. I also said in the course of my remarks that I have no quarrel with Senator Morse's right to make his own definition of arbitration. But, in my experience—

Mr. SPRINGER. May I just refine this a little further?

I think we make this distinction, counselor. He is talking about arbitration as a judicial process, in which you sustain your own position and you finally arrive at a decision.

He is saying, in effect, as I understand it in some of the other paragraphs, that he is using the word mediation leading to finality. He is talking about mediation leading to finality as different from arbitration.

Do you agree with that distinction?

Mr. SCHOENE. No, I don't. I think arbitration in practice is a much broader term than the term as Senator Morse has defined it.

To me, everything that puts in the hands of third parties the power to make a binding decision, however you call it, is arbitration, and if it is done compulsorily, it is compulsory arbitration.

If it is done by voluntary agreement of the parties, it is voluntary arbitration, as the chairman has pointed out. In practice, arbitrators, in my experience, have departed from the strict procedures that Senator Morse sets up as characteristic of arbitration, and not only engage in mediation but in what I have called concurrence shopping, of trying to effect a compromise through the process of arbitration.

Mr. SPRINGER. In effect, you are saying what is talking about, mediation leading to finality, is arbitration.

Mr. SCHOENE. That is correct.

Mr. SPRINGER. Mediators ordinarily try to settle a matter between two parties. In arbitration, you are talking about where they have the right to make the final decision. All of that is arbitration, regardless.

Mr. SCHOENE. That is my position.

Mr. SPRINGER. Now let me read, if I may, from the record of the Committee on Labor and Public Welfare of the U.S. Senate, volume 5, at page 614. This is Senator Morse whom I am quoting:

If you are going to go there by arbitration in this case, their using labels does not make the President's proposal arbitration. It simply shows a complete