

At whichever point the President announces his intent to establish a Special Board (if he ever does decide to do so), the parties have 10 days from the announcement to select members of a Special Board which will have authority to make a final and binding determination of matters in dispute. The parties may also establish procedures for the Board, and ascertain the matters in dispute which shall be determined by the Board.

If the parties fail to establish the Special Board, the President shall appoint three public members of the Board; also, one member shall be appointed by the representatives of the employees and one by the carriers involved. In reaching its determination, the Special Board may, in its discretion, adopt the recommendations of the Emergency Board, and shall take into consideration all relevant information surrounding the dispute.

The Special Board would make and publish its determination within 60 days after its appointment except that the President may extend the period for not more than an additional 60 days. With certain exceptions, the determination of a Special Board would be final and binding upon the parties for the period prescribed by the Special Board, as long as the period does not exceed 2 years. The decision of the Special Board shall be enforceable by proceedings in the U.S. district courts.

The determination of a Special Board may be set aside only by application of a party to the Board proceedings, and only on the grounds that the determination was based on fraud or corruption, or was not in accordance with section 10 of the Act or with the Constitution. In no event would the reviewing court have jurisdiction to review or set aside a determination of a Special Board on the ground that rates of pay, rules, or working conditions prescribed were not just and reasonable.

APPLICATIONS OF H.R. 5638

The major points of H.R. 5638 which should be emphasized in light of the current dispute and the proposed solution to that dispute are several in number.

First, under H.R. 5638, the parties are allowed to continue negotiations throughout the proceedings. Collective bargaining remains as the major vehicle for arriving at a settlement, and only after collective bargaining had demonstrated that it could not consummate a settlement would other procedures be invoked.

Further, at every stage of the process, the parties will not know whether a Special Board is to be created at the final step. Consequently, bargaining is not tainted by the expectation that an arbitrated settlement would be at the end of the line. The corollary, of course, is that under H.R. 5638, a strike can occur. The President's discretionary authority is invoked whenever a dispute threatens to deprive a section of the country of essential transportation services, but it does not necessarily follow that the full scope of the bill would be used in every such case.

Finally, and I would say most pertinently to the deliberations on House Joint Resolution 559, is the fact that H.R. 5638 is a permanent remedy to the type of dispute facing us. When the President makes the proper choices under H.R. 5638, the final solution is very similar to that followed in House Joint Resolution 559.

I would agree that there are ways in which my bill could be strengthened, borrowing, in part, from the procedures of House Joint Resolution 559. Still, the important thing is to realize that permanent legislation can be created which will leave enough flexibility to preserve the basic cornerstone of our national labor policy, and at the same time remove Congress from the task of mediating disputes on a case-by-case basis.